

# SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

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June 14, 2017

## VIA EMAIL

Ms. Lisa Cameron, MPA  
Zoning Administrator  
City of Powder Springs Community Development  
4488 Pineview Drive  
Powder Springs, GA 30127

Re: Application of Municipal Communications, LLC to Rezone a 4.3± Acre Tract to accommodate a Telecommunications Tower (3215 New Macland Road) - No. PZ 17 - 008

Application of Municipal Communications, LLC for a Special Use Permit to accommodate a Telecommunications Tower (3215 New Macland Road) - No. PZ 17 - 009

Dear Ms. Cameron:

You will recall that this firm represents Municipal Communications, LLC (“Applicant”) regarding the above-captioned applications. As a follow up to our appearance before the Planning Commission at its Work Session last week and, more specifically, in response to your email of June 9, 2017, this letter will serve as our response to your inquiries.

1. Attached, please find a locations/coverage map of existing Telecommunication Towers within the City Limits of Powder Springs. The Applicant’s proposed tower is designated by the star on the map and other existing towers are represented by red circles. This map depicts all towers within three (3) miles of the proposed Facility.

Please note that the closest existing tower is located at Wild Horse Creek Park which is 0.7 miles east of the proposed location. The Radio Frequency Justification Analysis (pages 9 & 10) which we submitted concurrently with both applications specifically addresses the reasons that collocating on the Wild Horse Creek Tower does not solve the coverage/capacity issues.

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Ms. Lisa Cameron, MPA  
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2. The Mayor and City Council under applicable Georgia Law, like other Municipal and County governing authorities, have the legislative latitude to impose stipulations/conditions which go toward ameliorating perceived adverse impacts with respect to any SUP and/or Rezoning Applications. More specifically, even though present in most metropolitan Zoning Ordinances [such as Cobb Code Section 134-273(3)(a)(2)]<sup>1</sup> the UDC does not make specific reference to that legislative latitude concerning Telecommunication Towers; however, Section 16-6 of the UDC makes general references to the granting of such relief by the City's Community Development Director.
3. Attached please find a copy of the Agreement between Municipal Communications and the Property Owner, Money Management Consultants, LLC, to purchase that portion of the Subject Property (0.2296 acres) for the construction and erection of the proposed Telecommunications Tower. The contract, is, of course, subject to the approval of the Rezoning and Special Use Permit applications, respectively.
4. Municipal Communications has followed the City's requirements regarding the construction and erection of notification signage. As you can see by the color photograph which is attached and was emailed to you concurrently with the Subject Property's posting, the sign is clearly observable from New Macland Road.

To ensure that we are following your direction and the direction from the Planning Commission, please instruct us to the exact location where you would find that the sign is "conspicuously situated".

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<sup>1</sup> The Code gives the Cobb County Board of Commissioners the discretion to waive setback requirements upon a finding that the placement of the proposed tower at a different location on the parcel would mitigate any negative effects of the proposed tower upon adjoining parcels. Of course, it is not applicable to the City of Powder Springs' Mayor and City Council.

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VIA EMAIL

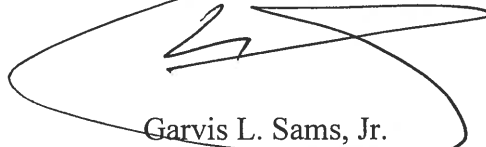
Ms. Lisa Cameron, MPA  
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Please let me know if you, Ms. Garver or any members of the City's Community Development Department's Staff need any further information or documentation prior to these applications being heard and considered by the Planning Commission on June 26, 2017. With kind regards, I am

Very truly yours,

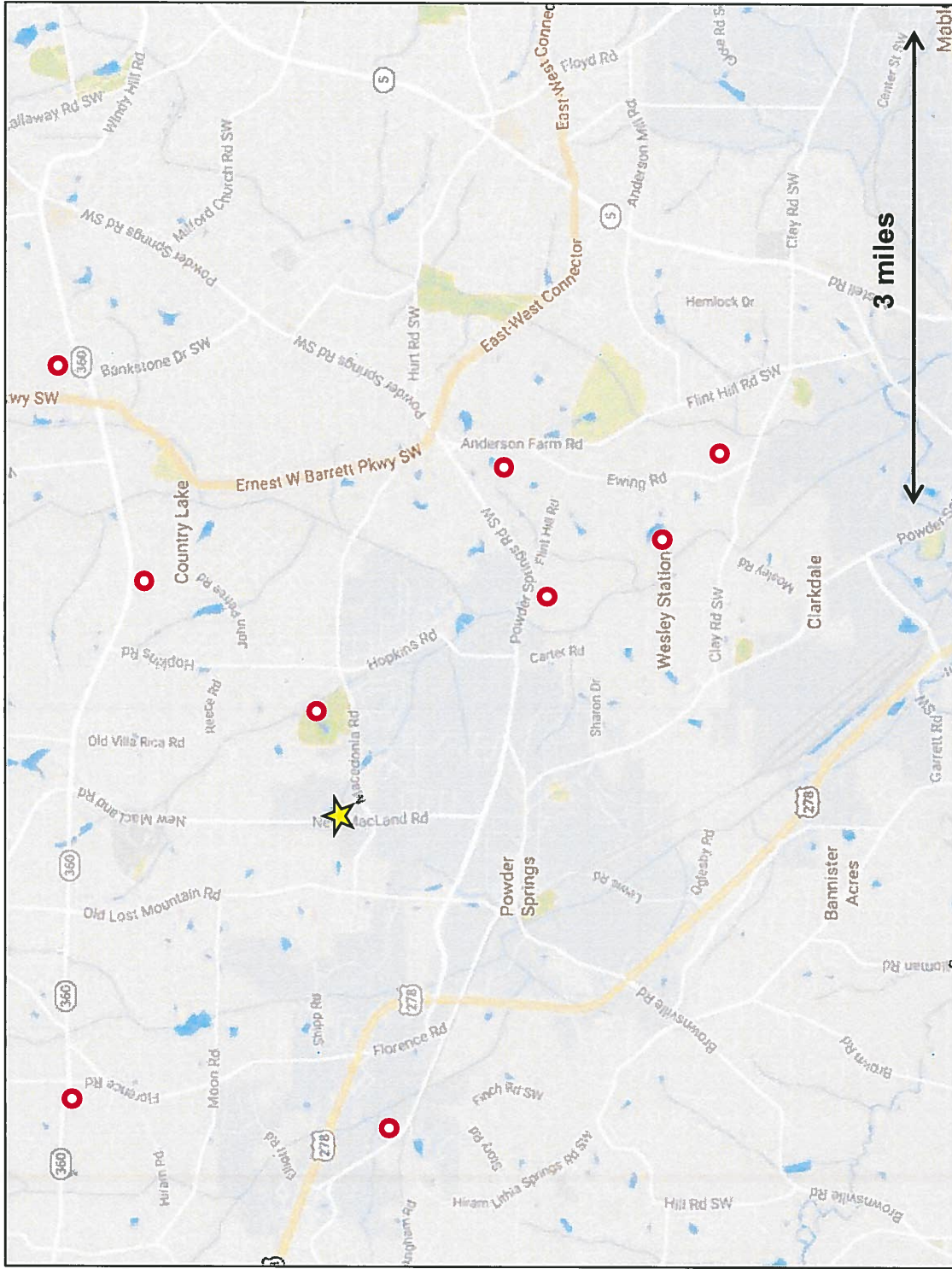
SAMS, LARKIN, HUFF & BALLI, LLP

A handwritten signature in black ink, appearing to read 'G. Sams, Jr.', is written over the printed name. The signature is enclosed within a large, hand-drawn oval.

Garvis L. Sams, Jr.  
[gsams@slhb-law.com](mailto:gsams@slhb-law.com)

GLS/klk  
Attachments

cc: Members, City of Powder Springs Planning Commission (via email w/attachments)  
Ms. Pam Conner, City Manager (via email w/attachments)  
Ms. Tina Garver, AICP, Community Development Director (via email w/attachments)  
Mr. Peter Corry, CEO, Municipal Communications, LLC (via email w/attachments)  
Mr. John Throckmorton, Vice President Municipal Communications, LLC (via email w/attachments)



Sitename: Commodore

170' Monopole

New MacLand Rd

Powder Springs, GA

Cobb County

Existing towers indicated by red circle

Proposed tower indicated by star

# COMMERCIAL PURCHASE AND SALE AGREEMENT

Offer Date: 01/27/2017



2017 Printing

## A. KEY TERMS AND CONDITIONS

**1. Purchase and Sale.** The undersigned buyer(s) ("Buyer") agree to buy and the undersigned seller(s) ("Seller") agree to sell the real property described below including all fixtures, improvements and landscaping therein ("Property") on the terms and conditions set forth in this Agreement.

**a. Property Identification:** Address: 3215 New Macland Rd.

City Powder Springs, County Cobb, Georgia, Zip Code 30127

MLS Number: \_\_\_\_\_ Tax Parcel I.D. Number: 19072500020

**b. Legal Description:** The legal description of the Property is [select one of the following below]:

- (1) attached as an exhibit hereto;
- (2) the same as described in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the land records of the above county; **OR**
- (3) Land Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section/ GMD, Lot \_\_\_\_\_, Block \_\_\_\_\_, Unit \_\_\_\_\_, Phase/Section \_\_\_\_\_ of \_\_\_\_\_ Subdivision/Development, according to the plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, et. seq., of the land records of the above county.

**2. Purchase Price of Property to be Paid by Buyer.**  
\$ 140000.00

**3. Closing Costs.**  
Seller's Contribution at Closing: \$ 0

**4. Closing and Possession.**

**a. Closing Date:** see special stips

**b. Seller Retains Possession**

**of Property Through:** see special stips

**5. Holder of Earnest Money ("Holder").**  
5000.00

**6. Closing Attorney/Law Firm.**  
TBD

**7. Earnest Money.** Earnest Money shall be paid by  check  cash or  wire transfer of immediately available funds as follows:

a. \$ \_\_\_\_\_ as of the Offer Date.

b. \$ 5000.00 within 3 days from the Binding Agreement Date.

c. \_\_\_\_\_

**8. Due Diligence Period:** Property is being sold subject to a Due Diligence Period of 140 days from the Binding Agreement Date.

**9.** Buyer shall have 14 days from the Binding Agreement Date in which to furnish written title objections to Seller.

**10.** Seller shall deliver Due Diligence Materials to Buyer within 14 days from Binding Agreement Date.

**11.** Buyer  may **OR**  may not assign this Agreement in accordance with the terms of this Agreement.

**12.** Disputes regarding earnest money shall be resolved by a reasonable interpretation by  Holder; **OR**  arbitration.

**13. Brokerage Relationships in this Transaction.**

**a. Selling Broker is \_\_\_\_\_ and is:**

- (1)  representing Buyer as a client.  
(2)  not representing Buyer (Buyer is a customer).  
(3)  acting as a dual agent representing Buyer and Seller.  
(4)  acting as a designated agent where:

\_\_\_\_\_ has been assigned to exclusively represent Buyer.

**b. Listing Broker is Norton Commercial and Acreage Group LLC and is:**

- (1)  representing Seller as a client.  
(2)  not representing Seller (Seller is a customer).  
(3)  acting as a dual agent representing Buyer and Seller.  
(4)  acting as a designated agent where:

\_\_\_\_\_ has been assigned to exclusively represent Seller.

**c. Material Relationship Disclosure:** The material relationships required to be disclosed by either Broker are as follows:

**14. Consent to Share Non-Public Information.** Buyer and Seller hereby consent to the closing attorney preparing and distributing an American Land Title Association ("ALTA") Estimated Settlement Statement-Combined to Buyer, Seller, Brokers and Broker's affiliated licensees working in this agreement for their various uses.

**15. Time Limit of Offer.** The Offer set forth herein expires at 5 o'clock p.m. on the date 2/10/2017.

Buyer(s) Initials RG

Seller(s) Initials \_\_\_\_\_

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## B. CORRESPONDING PARAGRAPHS FOR SECTION A

1. **Purchase Price and Method of Payment.** The Purchase Price shall be paid in U.S. Dollars at closing by wire transfer of immediately available funds, or such other form of payment acceptable to the closing attorney.
2. **Due Diligence.** Buyer has paid Seller the sum of \$25, the receipt of which is hereby acknowledged by Seller, as option money for Buyer having the right to terminate this agreement during the Due Diligence Period. Prior to closing, Buyer and Buyer's agents shall have the right to enter upon Property at Buyer's expense, and at reasonable times, to inspect, survey, examine, and test Property as Buyer may deem necessary as part of Buyer's acquisition of Property. Buyer shall indemnify and hold Seller and all Brokers harmless from and against any and all claims, injuries, and damages to persons and/or property arising out of or related to the exercise of Buyer's rights hereunder. During the Due Diligence Period Buyer may evaluate Property, the feasibility of the transaction, the availability and cost of financing, and any other matter of concern to Buyer. During the Due Diligence Period, Buyer shall have the right to terminate this Agreement upon notice to Seller if Buyer determines, based on an evaluation of the above, that it is not desirable to proceed with the transaction. In such event, Holder shall promptly refund Buyer's earnest money in accordance with the earnest money paragraph below.
3. **Earnest Money.**
  - a. **Receipt:** In the event Buyer terminates this Agreement during the Due Diligence Period or does not otherwise close this transaction, Buyer shall promptly return all Due Diligence materials to Seller. 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 (5) banking days from the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not be required to return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored for any reason by the bank upon which it is drawn, Holder shall promptly give notice to Buyer and Seller. Buyer shall have 3 banking days after notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon written notice to Buyer.
  - b. **Entitlement to Earnest Money:** Subject to the Disbursement of earnest money paragraph below:
    - (1) Buyer shall be entitled to the earnest money upon: (a) failure of the parties to enter into a binding agreement; (b) failure of any contingency or condition to which this Agreement is subject; (c) termination of this Agreement due to the default of Seller; (d) the termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement; or (e) upon the closing of Property.
    - (2) Seller shall be entitled to the earnest money if this Agreement is terminated due to the default of Buyer. In such event, 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.
  - c. **Disbursement of Earnest Money:** Holder shall disburse Earnest Money only as follows: (a) at Closing; (b) upon a subsequent written agreement signed by Buyer and Seller; (c) as set forth below in the event of a dispute regarding earnest money; or (d) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). No party shall seek damages from Holder, nor shall Holder be liable for any such damages, for any matter arising out of or related to the performance of Holder's duties hereunder.
  - d. **Disputes Regarding Earnest Money:** In the event Buyer or Seller notifies Holder of a dispute regarding the disposition of Earnest Money that Holder cannot resolve, Holder shall settle the dispute in accordance with method selected on the cover page of this Agreement.
    - (1) **Reasonable Interpretation by Holder:** In the event earnest money disputes are to be resolved by Holder herein, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties 10 days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the ten (10) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. If there is a dispute over the earnest money which the parties cannot resolve after a reasonable period of time, and where Holder has a bona fide question as to who is entitled to the earnest money, Broker may 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 attorney's fees actually incurred. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees and court costs and the amount deducted by Holder from the non-prevailing defendant.
    - (2) **Arbitration:** In the event arbitration is selected as the method to resolve earnest money disputes, such disputes shall be resolved by arbitration in accordance with the Federal Arbitration Act 9 U.S.C. § 1 et. seq. and the rules and procedures of the arbitration company selected to administer the arbitration. Upon making or receiving a demand for arbitration, the parties shall work together in good faith to select a mutually acceptable arbitration company with offices in Georgia to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitration company, the company shall be selected as follows. Each party shall simultaneously exchange with the other party a list of three arbitration companies with offices in Georgia acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitration company that is common to both lists, that company shall administer and conduct the arbitration. If there is more than one arbitration company that is common to both lists, the parties shall either mutually agree on which arbitration company shall be selected or flip a coin to select the arbitration company. If there is not initially a common arbitration company on the lists, the parties shall repeat the process by expanding their lists by two each time until there is a common name on the lists selected by the parties. The decision of the arbitrator shall be final and the arbitrator shall have authority to award attorneys' fees and allocate the costs of arbitration as part of any final award.

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**4. Seller's Obligations at Closing.** At Closing, Seller shall deliver to Buyer: (a) a Closing Statement; (b) Limited Warranty Deed; (c) FIRPTA Affidavit (indicating that Seller is not a "foreign person" or "foreign corporation" as that term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986); (d) an Affidavit of Seller's Residence Regarding Georgia Withholding Tax, establishing that Seller is exempt from the requirements of O.C.G.A. § 48-7-128, the Georgia Withholding Statute (or Affidavit of Exemption or Affidavit of Seller's Gain, if withholding is required); (e) a transfer tax declaration form properly signed and executed by Seller; and, (f) all documents which Seller must execute under the terms of this Agreement to cause the Title Company to deliver to Buyer the Title Policy, including, without limitation, a title affidavit from Seller to Buyer and to the Title Company in the form customarily used in Georgia commercial real estate transactions so as to enable the Title Company to issue Buyer the Title Policy with all standard exceptions deleted and subject only to the Permitted Exceptions and evidence reasonably satisfactory to Title Company of its due and proper authority and power to perform its obligations hereunder. In addition, Seller shall deliver to Buyer at Closing all documents/items indicated in Exhibit "C", if any. (All documents to be delivered by Seller under this paragraph, including all documents/items indicated in Exhibit "C" are collectively "Seller's Closing Documents".)

**5. Conditions to Closing.**

**a. Conditions in Favor of Buyer:** The obligation of Buyer to consummate the transaction contemplated herein is conditioned upon the following conditions precedent as of the Closing Date:

- (1) All representations and warranties of Seller made herein shall remain true and correct;
- (2) Seller shall have performed all of the covenants undertaken by Seller in this Agreement to be performed by Seller at or prior to Closing;
- (3) Seller shall have delivered to the Buyer properly executed originals of Seller's Closing Documents;
- (4) There shall have been no material adverse change in the physical condition of Property, except as otherwise provided for in this Agreement; and
- (5) The issuance at Closing of the Title Policy (or marked binder), with all standard exceptions deleted and subject only to the Permitted Exceptions.

**b. Conditions in Favor of Seller:** The obligation of Seller to consummate the transaction contemplated herein is conditioned upon the following conditions precedent as of the Closing Date:

- (1) All representations and warranties of Buyer made herein shall remain true and correct;
- (2) Buyer shall have performed all of the covenants undertaken by Buyer in this Agreement to be performed by Buyer at or prior to Closing; and
- (3) Buyer shall have: (a) delivered to the Seller properly executed originals of the transfer tax declaration form, title policy documents, closing statement, and any other documents identified in Exhibit "C" that require Buyer's signature; and (b) paid the Purchase Price, plus or minus prorations and adjustments, to Seller.

**6. Costs.**

**a. Seller's Costs:** Seller shall pay the amount of Seller's Monetary Contribution at Closing, if any, referenced in this Agreement, the cost of recording any title curative document, including, without limitation, satisfactions of deeds to secure debt, quitclaim deeds and financing statement terminations; all deed recording fees and the fees of Seller's counsel.

**b. Buyer's Costs:** Buyer shall pay the cost of Buyer's counsel and consultants; all transfer taxes; any costs in connection with Buyer's inspection of Property and any costs associated with obtaining financing for the acquisition of Property (including any intangibles tax, all deed recording fees and the cost of recording Buyer's loan documents); and the cost of any title examination, survey of the Property obtained by Buyer and any owner's or lender's title insurance.

**7. Taxes and Prorations.** Ad valorem property taxes, community association fees, solid waste and governmental fees and utility bills for which service cannot be terminated as of the date of closing; rents, tenant improvements costs and leasing commissions on Property for the calendar year in which the Closing takes place shall be prorated as of 12:01 a.m. on the Closing Date. In the event ad valorem property taxes are based upon an estimated tax bill or tax bill under appeal, Buyer and Seller shall, upon the issuance of the actual tax bill or the appeal being resolved, promptly make such financial adjustments between themselves as are necessary to correctly prorate the tax bill. In the event there are tax savings resulting from a tax appeal, third party costs to handle the appeal may be deducted from the savings for that tax year before re-prorating. Any pending tax appeal shall be deemed assigned to Buyer at closing.

**8. Title.**

**a. Warranties of Seller:** Seller warrants that at Closing, Seller shall convey good and marketable, fee simple title to Property to Buyer by limited warranty deed, subject only to the following exemptions:

- (1) Liens for ad valorem taxes not yet due and payable;
- (2) Those exceptions to which Buyer does not object or which Buyer waives in accordance with the Title Objections paragraph below.
- (3) Those Permitted Exceptions attached hereto and incorporated herein as an exhibit to which Buyer has agreed not to object. For all purposes under this Agreement, "Good and marketable, fee simple title" with respect to Property shall be such title: (a) as is classified as "marketable" under the Title Standards of the State Bar of Georgia; and (b) as is acceptable to and insurable by a title insurance company doing business in Georgia ("Title Company"), at standard rates on an American Land Title Association Owner's Policy ("Title Policy").

**b. Title Objections:** Seller shall have until the Closing to cure all valid title objections ("Title Cure Period"). Seller shall satisfy any existing liens or monetary encumbrances identified by Buyer as title objections which may be satisfied by the payment of a sum certain prior to or at Closing. Except for Seller's obligations in the preceding sentence, if Seller fails to cure any other valid title objections of Buyer within the Title Cure Period (and fails to provide Buyer with evidence of Seller's cure satisfactory to Buyer and to the Title Company), Buyer may, as Buyer's sole remedies: (1) rescind the transaction contemplated hereby, in which case, Buyer shall be entitled to the return of Buyer's earnest money; (2) waive any such objections and elect to close the transaction contemplated hereby irrespective of such title objections and without reduction of the Purchase Price; or (3) extend the Closing Date for a period of time not to exceed fifteen (15) days to allow Seller further time to cure such valid title objections. Failure to act in a timely manner under this paragraph shall constitute a waiver of Buyer's rights hereunder. Buyer shall have the right to re-examine title prior to Closing and notify Seller at Closing of any title objections which appear of record after the date of Buyer's initial title examination and before Closing.

**9. Destruction of Property Prior to Closing.** If the Property is destroyed or substantially destroyed prior to Closing, Seller shall give Buyer prompt notice thereof, which notice shall include Seller's reasonable estimate of: (1) the cost to restore and repair the damage; (2) the amount of insurance proceeds, if any, available for the same; and (3) whether the damage will be repaired prior to Closing. Upon notice to Seller, Buyer may terminate this Agreement within 7 days of receiving such notice from Seller. If Buyer does not terminate this Agreement, Buyer shall be deemed to have accepted Property with the damage and shall receive at Closing: (1) any insurance proceeds which have been paid to Seller but not yet spent to repair the damage; and (2) an assignment of all unpaid insurance proceeds on the claim.

**10. Representations and Warranties.**

**a. Seller's Representations and Warranties:** As of the Binding Agreement Date and the Closing Date, Seller makes the representations and warranties to Buyer, if any, as indicated in Exhibit "D", if attached.

**b. Buyer's Representations and Warranties:** As of the Binding Agreement Date and the Closing Date, Buyer represents and warrants to Seller that Buyer has the right, power and authority to enter into this Agreement and to consummate the transaction contemplated by the terms and conditions of this Agreement; and the persons executing this Agreement on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this Agreement and shall have the right, power and authority to enter into this Agreement and bind Buyer.

**11. Brokerage.** Seller has agreed to pay Listing Broker(s) a real estate commission pursuant to that certain brokerage engagement agreement entered into between the parties and incorporated herein by reference ("Listing Agreement"). Pursuant to the terms of the Listing Agreement, the Listing Broker has agreed to share that commission with the Selling Broker.

The closing attorney is hereby authorized and directed to pay the Broker(s) at closing, their respective commissions out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission shall pay any shortfall at closing. If more than one Broker is involved in the transaction, the closing attorney is directed to pay each Broker its respective portion of said commission. The acceptance by the Broker(s) of a partial real estate commission at the closing shall not relieve the Seller of the obligation to pay the remainder thereof after the closing unless the Broker(s) have expressly and in writing agreed to accept the lesser amount in full satisfaction of the Broker(s) claim to a commission.

**12. Disclaimer.** Buyer and Seller have not relied upon any advice or representations of Brokers other than what is included in this Agreement. Brokers shall have no duty to advise Buyer and Seller on any matter relating to the Property which could have been revealed through a survey, title search, Official Georgia Wood Infestation Report, inspection by a professional home inspector or construction expert, utility bill review, an appraisal, inspection by an environmental engineering inspector, consulting governmental officials or a review of this Agreement and transaction by an attorney, financial planner, mortgage consultant or tax planner. Buyer and Seller should seek independent expert advice regarding any matter of concern to them relative to the Property and this Agreement.

**13. Assignment.** If Buyer does not have the right to assign this Agreement, then Buyer cannot assign this Agreement without the prior written permission of Seller. Any such approved assignment shall not release the original Buyer from any liabilities or obligations herein. Notice of such assignment shall be delivered to the Seller within 2 working days of execution, but not less than 5 days from closing. If Buyer has the right to assign this Agreement, then this Agreement may be assigned by the Buyer to any legal entity of which the Buyer or a principal or principals of Buyer own at least a 25% interest.

**14. Time Limit of Offer.** The Time Limit of the Offer shall be the date and time referenced herein when the Offer expires unless prior to that date and time both of the following have occurred: (a) the Offer has been accepted by the party to whom the Offer was made; and (b) notice of acceptance of the Offer has been delivered to the party who made the Offer.

**C. OTHER TERMS AND CONDITIONS**

**1. Notices.**

**a. Generally:** All notices given hereunder shall be in writing, legible and signed by the party giving the notice. In the event of a dispute regarding notice, the burden shall be on the party giving notice to prove delivery. The requirements of this notice paragraph shall apply even prior to this Agreement becoming binding. Notices shall only be delivered: (1) in person; (2) by courier, overnight delivery service or by certified or registered U.S. mail (hereinafter collectively "Delivery Service"); or (3) by e-mail or facsimile. The person delivering or sending the written notice signed by a party may be someone other than that party.

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- b. **Delivery of Notice:** A notice to a party shall be deemed to have been delivered and received upon the earliest of the following to occur: (1) the actual receipt of the written notice by a party; (2) in the case of delivery by a Delivery Service, when the written notice is delivered to an address of a party set forth herein (or subsequently provided by the party following the notice provisions herein), provided that a record of the delivery is created; (3) in the case of delivery electronically, on the date and time the written notice is electronically sent to an e-mail address or facsimile number of a party herein (or subsequently provided by the party following the notice provisions herein). Notice to a party shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the party set forth herein (or subsequently provided by the party following the notice provisions herein).
- c. **When Broker Authorized to Accept Notice for Client:** Except where the Broker is acting in a dual agency capacity, the Broker and any affiliated licensee of the Broker representing a party in a client relationship shall be authorized agents of the party and notice to any of them shall for all purposes herein be deemed to be notice to the party. Notice to an authorized agent shall not be effective unless the written notice is sent to an address, facsimile number or e-mail address of the authorized agent set forth herein (or subsequently provided by the authorized agent following the notice provisions herein). Except as provided for herein, the Broker's staff at a physical address set forth herein of the Broker or the Broker's affiliated licensees are authorized to receive notices delivered by a Delivery Service. The Broker, the Broker's staff and the affiliated licensees of the Broker shall not be authorized to receive notice on behalf of a party in any transaction in which a brokerage engagement has not been entered into with the party or in which the Broker is acting in a dual agency capacity. In the event the Broker is practicing designated agency, only the designated agent of a client shall be an authorized agent of the client for the purposes of receiving notice.

## 2. Default.

- a. **Rights of Buyer or Seller:** A party defaulting under this Agreement shall be liable for the default. The non-defaulting party may pursue any lawful remedy against the defaulting party.
- b. **Rights of Broker:** In the event a party defaults under this Agreement, the defaulting party shall pay as liquidated damages to every broker involved in this transaction with whom the defaulting party does not have a brokerage engagement agreement an amount equal to the share of the commission the broker would have received had the transaction closed. For purposes of determining the amount of liquidated damages to be paid by the defaulting party, the written offer(s) of compensation to such broker and/or other written agreements establishing such broker's commission are incorporated herein by reference. The liquidated damages referenced above are a reasonable pre-estimate of the Broker(s) actual damages and are not a penalty. In the event a Broker referenced herein either has a brokerage engagement agreement or other written agreement for the payment of a real estate commission with a defaulting party, the Broker shall only have such remedies against the defaulting party as are provided for in such agreement.
- c. **Attorney's Fees:** In any litigation or arbitration arising out of this Agreement, including but not limited to breach of contract claims between Buyer and Seller and commission claims brought by a broker, the non-prevailing party shall be liable to the prevailing party for its reasonable attorney's fees and expenses.

## 3. Other Provisions.

- a. **Warranties Transfer:** Seller agrees to transfer to Buyer, at closing, subject to Buyer's acceptance thereof (and at Buyer's expense, if there is any cost associated with said transfer), Seller's interest in any existing manufacturer's warranties, service contracts, termite treatment and/or repair guarantee and/or other similar warranties which, by their terms, may be transferable to Buyer.
- b. **Repairs:** All agreed upon repairs and replacements shall be performed in a good and workmanlike manner prior to closing.
- c. **Entire Agreement, Modification and Assignment:** This Agreement constitutes the sole and entire agreement between all of the parties, supersedes all of their prior written and verbal agreements and shall be binding upon the parties and their successors, heirs and permitted assigns. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement may not be amended or waived except upon the written agreement of Buyer and Seller. This Agreement may not be assigned by Buyer except with the written approval of Seller. Any assignee shall fulfill all the terms and conditions of this Agreement.
- d. **Survival of Agreement:** The following shall survive the closing of this Agreement: (1) the obligation of a party to pay a real estate commission; (2) any warranty of title; (3) all representations of Seller regarding the Property; (4) the section on condemnation; and (5) any obligations which the parties herein agree shall survive the closing or may be performed or fulfilled after the closing.
- e. **Governing Law and Interpretation:** This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original and shall be interpreted in accordance with the laws of Georgia. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. All references to time shall mean the time in Georgia. If any provision herein is to be unenforceable, it shall be severed from this Agreement while the remainder of the Agreement shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract.
- f. **Time of Essence:** Time is of the essence of this Agreement.
- g. **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. The letters "N.A." or "N/A", if used in this Agreement, shall mean "Not Applicable", except where the context would indicate otherwise.
- h. **Binding Agreement Date:** The Binding Agreement Date shall be the date when a party to this transaction who has accepted an offer or counteroffer to buy or sell real property delivers notice of that acceptance to the party who made the offer or counteroffer in accordance with the Notices section of the Agreement. Notice of the Binding Agreement Date may be delivered by either party (or the Broker working with or representing such party) to the other party. If notice of accurate Binding Agreement Date is delivered, the party receiving notice shall sign the same and immediately return it to the other party.
- i. **Duty to Cooperate:** All parties agree to do all things reasonably necessary to timely and in good faith fulfill the terms of this Agreement. Buyer and Seller shall execute and deliver such certifications, affidavits, and statements required by law or reasonably requested by the closing attorney, mortgage lender and/or the title insurance company to meet their respective requirements.

- j. **Electronic Signatures:** For all purposes herein, an electronic or facsimile signature shall be deemed the same as an original signature; provided, however, that all parties agree to promptly re-execute a conformed copy of this Agreement with original signatures if requested to do so by, the buyer's mortgage lender or the other party.
- k. **Extension of Deadlines:** No time deadline under this Agreement shall be extended by virtue of it falling on a Saturday, Sunday or federal holiday except for the date of closing.
- l. **GAR Forms:** The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. 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.
- m. **No Authority to Bind:** No Broker or affiliated licensee of Broker, by virtue of this status, shall have any authority to bind any party hereto to any contract, provisions herein, amendments hereto, or termination hereof. However, if authorized in this Agreement, Broker shall have the right to accept notice on behalf of a party.
- n. **Condemnation:** Seller shall: (1) immediately notify Buyer if the Property becomes subject to a condemnation proceeding; and (2) provide Buyer with the details of the same. Upon receipt of such notice, Buyer shall have the right, but not the obligation for 7 days thereafter, to terminate this Agreement upon notice to Seller in which event Buyer shall be entitled to a refund of all earnest money and other monies paid by Buyer toward the Property without deduction or penalty. If Buyer does not terminate the Agreement within this time frame, Buyer agrees to accept the Property less any portion taken by the condemnation and if Buyer closes, Buyer shall be entitled to receive any condemnation award or negotiated payment for all or a portion of the Property transferred or conveyed in lieu of condemnation.

4. **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:

- Exhibit "A" Legal Description
- Exhibit "B" Due Diligence Materials
- Exhibit "C" Addition to Seller's Closing Documents
- Exhibit "D" Seller's Warranties and Representations
- Exhibit "E" Permitted Title Exceptions
- Other \_\_\_\_\_
- Other \_\_\_\_\_
- Other \_\_\_\_\_
- Other \_\_\_\_\_

**SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph (including any changes thereto made by the parties), shall control:

See attached special stipulations

10. Closing shall be within 10 days following expiration of due diligence.

Additional Special Stipulations  are or  are not attached.

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH Randy Gordy IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE GEORGIA ASSOCIATION OF REALTORS® AT (770) 451-1831.

**Buyer Acceptance and Contact Information**

*[Signature]* Ex Municipal Communications, LLC

**1 Buyer's Signature**

*[Signature]* 2/10/2017  
Print or Type Name Date

Everen Piedmont Center 3445 Piedmont Rd  
Buyer's Address for Receiving Notice

Suite 411 Atlanta, GA 30305

(404) 995-1891  
Buyer's Phone Number:  Cell  Home  Work

pcorrey@municipal.com.com  
Buyer's E-mail Address

**2 Buyer's Signature**

Print or Type Name Date

Buyer's Address for Receiving Notice

Buyer's Phone Number:  Cell  Home  Work

Buyer's E-mail Address

Additional Signature Page  is  is not attached.

**Selling Broker/Affiliated Licensee Contact Information**

Selling Brokerage Firm

**Broker/Affiliated Licensee Signature** Date

Print or Type Name GA Real Estate License #

Licensee's Phone Number Fax Number

Licensee's E-mail Address

REALTOR® Membership

Broker's Address

Broker's Phone Number Fax Number

MLS Office Code Brokerage Firm License Number

**Seller Acceptance and Contact Information**

**1 Seller's Signature**

Print or Type Name Date

Seller's Address for Receiving Notice

Seller's Phone Number:  Cell  Home  Work

Seller's E-mail Address

**2 Seller's Signature**

Print or Type Name Date

Seller's Address for Receiving Notice

Seller's Phone Number:  Cell  Home  Work

Seller's E-mail Address

Additional Signature Page  is  is not attached.

**Listing Broker/Affiliated Licensee Contact Information**

Norton Commercial and Acerage Group LLC  
Listing Broker Firm

**Broker/Affiliated Licensee Signature** Date

Randy Gordy/ John Drew 113199/102718  
Print or Type Name GA Real Estate License #

706-499-7035  
Licensee's Phone Number Fax Number

rgordy@gonorton.com  
Licensee's Email Address

ACBR  
REALTOR® Membership

434 Green St. Gainesville, Ga. 30501  
Broker's Address

770-297-4800  
Broker's Phone Number Fax Number

H-66501  
MLS Office Code Brokerage Firm License Number

**Binding Agreement Date:** The Binding Agreement Date in this transaction is the date of \_\_\_\_\_ and has been filed in by \_\_\_\_\_.

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**Buyer Acceptance and Contact Information**

**1 Buyer's Signature**

Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Address for Receiving Notice \_\_\_\_\_

Buyer's Phone Number:  Cell  Home  Work

Buyer's E-mail Address \_\_\_\_\_

**2 Buyer's Signature**

Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Address for Receiving Notice \_\_\_\_\_

Buyer's Phone Number:  Cell  Home  Work

Buyer's E-mail Address \_\_\_\_\_

Additional Signature Page  is  is not attached.

**Selling Broker/Affiliated Licensee Contact Information**

Selling Brokerage Firm \_\_\_\_\_

Broker/Affiliated Licensee Signature \_\_\_\_\_ Date \_\_\_\_\_

Print or Type Name \_\_\_\_\_ GA Real Estate License # \_\_\_\_\_

Licensee's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Licensee's E-mail Address \_\_\_\_\_

REALTOR® Membership \_\_\_\_\_

Broker's Address \_\_\_\_\_

Broker's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

MLS Office Code \_\_\_\_\_ Brokerage Firm License Number \_\_\_\_\_

**Seller Acceptance and Contact Information**

**1 Seller's Signature**

Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Seller's Address for Receiving Notice \_\_\_\_\_

Seller's Phone Number:  Cell  Home  Work

Seller's E-mail Address \_\_\_\_\_

**2 Seller's Signature**

Print or Type Name \_\_\_\_\_ Date \_\_\_\_\_

Seller's Address for Receiving Notice \_\_\_\_\_

Seller's Phone Number:  Cell  Home  Work

Seller's E-mail Address \_\_\_\_\_

Additional Signature Page  is  is not attached.

**Listing Broker/Affiliated Licensee Contact Information**

Norton Commercial and Acreage Group LLC  
Listing Broker Firm \_\_\_\_\_

Broker/Affiliated Licensee Signature \_\_\_\_\_ Date \_\_\_\_\_

Print or Type Name \_\_\_\_\_ GA Real Estate License # \_\_\_\_\_

Licensee's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Licensee's Email Address \_\_\_\_\_

REALTOR® Membership \_\_\_\_\_

Broker's Address \_\_\_\_\_

Broker's Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

MLS Office Code \_\_\_\_\_ Brokerage Firm License Number \_\_\_\_\_

**Binding Agreement Date:** The Binding Agreement Date in this transaction is the date of \_\_\_\_\_ and has been filled in by \_\_\_\_\_.

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**SPECIAL USE NOTICE**

Application has been made to  
special use approval for  
to be heard by the  
Powder Springs Planning Commission  
Location 3312 New MacLeod Ave  
on JUNE 29, 2012 at 7:30 P.M.  
Aid by the Mayor and City Council  
on JULY 16, 2012 at 7:00 P.M.  
Council Chambers;  
4488 Pineview Drive  
770-943-1666

**ZONING NOTICE**

Application has been made to  
rezone this property  
From NR To C  
to be heard by the  
Powder Springs Planning Commission  
On JULY 23, 2012 at 7:30 pm  
and the Mayor & City Council  
of Powder Springs, Georgia  
On JULY 23, 2012 at 7:00 pm  
Council Chambers;  
4488 Pineview Drive  
770-943-1666