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09-CV-00657-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CORBIS CORPORATION, a Nevada
corporation,

Plaintiff,

v.

INFINITY COMMERCIAL CAPITAL LLC,
a Georgia corporation,

Defendant.

No. **CV9 657JPD**

**COMPLAINT FOR
DAMAGES AND
INJUNCTIVE RELIEF**

COMES NOW plaintiff Corbis Corporation, by and through its attorneys Dan J. Donlan and Lane Powell PC, and alleges as follows:

PARTIES

1. Plaintiff Corbis Corporation ("Corbis") is a Nevada corporation doing business in Seattle, King County, Washington. Specifically, Corbis owns and operates certain computer servers at 710 Second Avenue, Suite 200, Seattle, Washington. These servers are used to maintain Corbis' website, www.corbis.com, and Corbis' collection of hundreds of thousands of images, including the intellectual property that is at issue in this lawsuit.

2. Upon information and belief, defendant Infinity Commercial Capital ("ICC") is a Georgia corporation with its principal place of business at 90 Commerce Drive, Suite B, Fayetteville, Georgia 30214.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF- 1

1 **JURISDICTION AND VENUE**

2 3. This is a civil action seeking damages and injunctive relief for direct and
3 vicarious copyright infringement, and breach of contract.

4 4. Jurisdiction by the Court over this action is proper pursuant to 28 U.S.C.
5 § 1331 (federal question) and 28 U.S.C. § 1338 (copyright) in that this case involves claims
6 brought under federal copyright law, 17 U.S.C. § 101 *et seq.* Additionally, this Court has
7 diversity jurisdiction over the matter pursuant to 28 U.S.C. § 1332, in that the matter in
8 controversy exceeds \$75,000 exclusive of interests and costs, and is between citizens of
9 different states.

10 5. Venue in the Federal District Court for the Western District of Washington is
11 proper pursuant to 28 U.S.C. §§ 1391(b)(2) and (3).

12 **BACKGROUND**

13 6. Plaintiff Corbis is in the business of licensing photographs and fine art images
14 on behalf of itself and the photographers it represents. Generally, the images in Corbis'
15 collection were taken by professional photographers who earn most or all of their livelihoods
16 from the licensing fees Corbis is able to obtain for their images. Many of the images in
17 Corbis' collection are produced by well-known photographers, and include some of the most
18 recognized images in contemporary society.

19 7. The images in Corbis' collection are the subject of copyright protection under
20 the laws of the United States, and at considerable expense and effort, Corbis has protected
21 images in its collection by systematically registering the copyrights to the images.

22 8. Corbis owns and operates a website located at the Internet address
23 www.corbis.com. At Corbis' website, professional and consumer users are able to search
24 hundreds of thousands of images from Corbis' collection and then pay to license the images
25 for personal or commercial use. Visitors to the www.corbis.com site interact with and obtain
26

1 Corbis images from servers that are located in Seattle, Washington. The www.corbis.com
2 site also prominently displays that Corbis' headquarters are in Seattle, Washington.

3 9. Upon information and belief defendant ICC is in the business of providing
4 hotel and commercial mortgage lending services nationwide. At all times relevant hereto,
5 ICC owned and operated a website located at the Internet domain address
6 www.infinitycommercialcapital.com. ICC uses the www.infinitycommercialcapital.com
7 website to market its products and services and thereby receives a direct financial benefit
8 from the content displayed on the website.

9 10. Upon information and belief, on an as yet unknown date, ICC and/or its agents
10 visited Corbis' website, and without authorization, downloaded or copied at least sixteen (16)
11 Corbis images that had previously been registered with the United States Copyright Office
12 and that were stored on Corbis' servers located in the Western District of Washington. These
13 same images were then uploaded and displayed on the www.infinitycommercialcapital.com
14 website without authorization.

15 11. At all relevant times hereto, ICC has had the right and ability to control the
16 content displayed on the www.infinitycommercialcapital.com website.

17 12. Visitors to the www.corbis.com website are required to agree to a Corbis
18 Content License Agreement as a condition of being able to access and use the images on the
19 website. Pursuant to the terms of the Corbis Content License Agreement, a party who uses
20 Corbis images without authorization agrees to pay ten (10) times the licensing rate in addition
21 to other fees damages and penalties available to Corbis.

22 13. Attached hereto as Exhibit A are true and correct copies of the Corbis images
23 as they were displayed on ICC's website without authorization.

24 14. At all relevant times hereto, neither defendant ICC nor its agents had license or
25 other authorization to display the Corbis images on the www.infinitycommercialcapital.com
26 website.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF- 3

1 15. Some if not all of the images identified on Exhibit A have been registered with
2 the United States Copyright Office, which evidences that Corbis owns or controls the
3 registered copyrights to the images that were displayed on the
4 www.infinitycommercialcapital.com website.

5 16. The defendant's unauthorized use of copyright protected images has caused
6 Corbis to suffer damages in Washington.

7 **FIRST CAUSE OF ACTION – DIRECT COPYRIGHT INFRINGEMENT**

8 17. Plaintiff Corbis incorporates paragraphs 1 through 16 above, as though fully
9 set forth herein.

10 18. Corbis holds valid and exclusive registered copyrights to the images that are
11 the subject of this action and that are evidenced by copyright registration certificates.

12 19. Defendant ICC reproduced, distributed and displayed those images without
13 Corbis' authorization on its website.

14 20. The actions and conduct by Defendant as described above infringe upon
15 Corbis' exclusive rights granted under 17 U.S.C. § 106 to display, reproduce and distribute
16 the registered copyrighted works to the public.

17 21. Such actions and conduct constitute direct copyright infringement under the
18 Copyright Act of 1976, 17 U.S.C. § 501.

19 22. As a result of the copyright infringement described above, plaintiff Corbis is
20 entitled to relief including, but not limited to, injunctive relief, actual or statutory damages,
21 statutory costs and attorneys' fees, and prejudgment interest.

22 **SECOND CAUSE OF ACTION – VICARIOUS COPYRIGHT INFRINGEMENT**

23 23. Plaintiffs incorporate paragraphs 1 through 22 above as though fully set forth
24 herein.

25 24. Upon information and belief, a web developer (either related or unrelated to
26 ICC) created the www.infinitycommercialcapital.com website at the behest of ICC.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF- 4

1 25. Upon information and belief, such web developer infringed Corbis' copyrights
2 by visiting Corbis' website, downloading at least seventeen (16) Corbis images without
3 authorization, and uploading and displaying the images on the
4 www.infinitycommercialcapital.com website.

5 26. At all relevant times hereto, ICC received a direct financial benefit as a result
6 of the infringing activity ICC's web developer.

7 27. As the purchaser of the www.infinitycommercialcapital.com website, ICC had
8 the ability to control the infringing activity of the web developer.

9 28. As a result of the actions and conduct described above, ICC is liable for
10 vicarious copyright infringement in an amount to be proven at trial.

11 **THIRD CAUSE OF ACTION – BREACH OF CONTRACT**

12 29. Plaintiffs incorporate paragraphs 1 through 28 above as fully set forth herein.

13 30. By using Corbis images obtained from the www.corbis.com website, ICC and
14 its agents agreed to be bound by the terms of the Corbis Content License Agreement, which
15 governs use of Corbis' images obtained from the www.corbis.com website.

16 31. Pursuant to the terms of the Corbis Content License Agreement, by using
17 Corbis images without authorization, ICC agreed to pay Corbis ten (10) times the licensing
18 rate in addition to other fees damages and penalties available to Corbis.

19 32. ICC breached the Corbis Content License Agreement by using Corbis' images
20 without authorization and failing to pay Corbis ten (10) times the license rate for such usage
21 as is required under the Corbis Content License Agreement.

22 33. As a result of the breach described above, Corbis is entitled to damages in the
23 amount of ten (10) times the licensing rate for the use of such images, in addition to other fees
24 damages and penalties available to Corbis.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Corbis prays for the following relief:

1. On the First Cause of Action, for an award of defendant's profits and for actual damages in such amount as may be found, or for statutory damages of not less than \$750 or more than \$30,000 per image pursuant to 17 U.S.C. § 504(c)(1). Alternatively, for an award of up to \$150,000 upon a finding of willful infringement pursuant to 17 U.S.C. § 504(c)(2). And for an order permanently enjoining defendant from infringing plaintiff's copyrighted images pursuant to 17 U.S.C. § 502 and for an award of costs and attorneys fees pursuant to 17 U.S.C. § 505;

2. On the Second Cause of Action, for an award of defendant's profits and for actual damages in such amount as may be found, or for statutory damages of not less than \$750 or more than \$30,000 per image pursuant to 17 U.S.C. § 504(c)(1). Alternatively, for an award of up to \$150,000 upon a finding of willful infringement pursuant to 17 U.S.C. § 504(c)(2). And for an order permanently enjoining defendant from infringing plaintiff's copyrighted images pursuant to 17 U.S.C. § 502 and for an award of costs and attorneys fees pursuant to 17 U.S.C. § 505;

3. On the Third Cause of Action, for an award of damages in the amount of ten (10) times the licensing rate for the use of such images, in addition to other fees damages and penalties available to Corbis;

4. For prejudgment interest on the amount of the award to plaintiff; and

5. And for such other and further relief as the Court deems just and proper.

DATED: May 11, 2009

LANE POWELL PC



By _____
Dan J. Donlan, WSBA No. 25374
Attorneys for Plaintiff
Corbis Corporation

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF- 6

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107



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Infinity Commercial Capital Corporate Headquarters

90 Commerce Dr. Suite B, Fayetteville, Georgia 30214
 Phone: (770) 716-0068 Fax: (770) 716-7795
 Toll Free: (866) 716-0068

Please complete the provided form below to contact Infinity via email. However, the best way to get answers to your commercial loan questions is to complete our [Quick Loan Request Form](#). We welcome all other comments and questions in the contact form below.

First Name	<input type="text"/>
Last Name	<input type="text"/>
Company	<input type="text"/>
Role in Request	Select Role <input type="button" value="v"/>
Address	<input type="text"/>
Address (Cont.)	<input type="text"/>
City	<input type="text"/>
State	Select State <input type="button" value="v"/>
Zip Code	<input type="text"/>
Best Time to Contact	<input type="text"/>
Phone	<input type="text"/>
Mobile	<input type="text"/>
Fax	<input type="text"/>
Email	<input type="text"/>
Loan Purpose	<input type="text"/>

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EXHIBIT A



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EVENTS

- Infinity Commercial Capital has no scheduled events at this time. Please keep checking back frequently our website is currently being updated.

PRESS RELEASE

- [December 2007 - Monalisa Jones joins Infinity Commercial Capital in Atlanta, Georgia](#)
- [January 2008 - Kamal Amin joins Infinity Commercial Capital in Atlanta, Georgia](#)
- [September 12, 2008 - Message from the Director - Re-Structuring of Programs](#)



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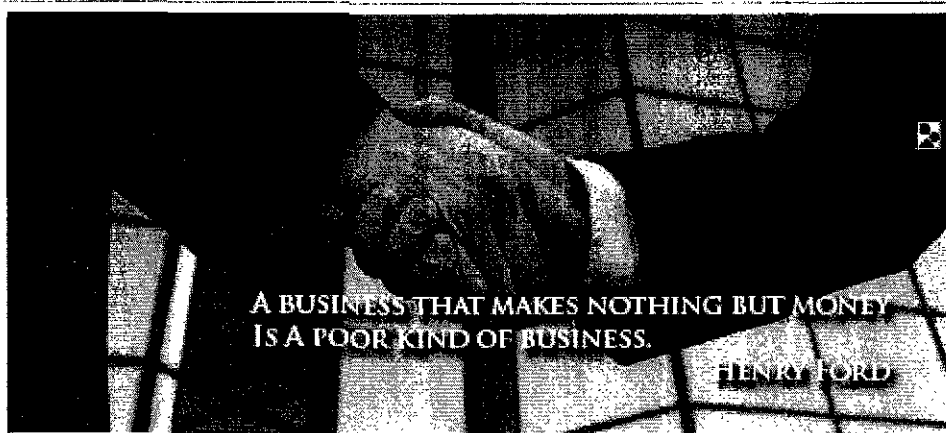
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Infinity Commercial Capital Shared Values

These values underscore our commitment to a work environment that fosters respect for all employees and help us deliver on the Infinity promise to exceed our clients' expectations by being trustworthy, reliable, demonstrating our competence and making customers feel valued.

- Integrity - Our reputation is defined by how we respect and treat with dignity our customers, shareholders, communities and each other.
- Teamwork - We work cooperatively and rely on each other for our individual and shared success.
- Excellence - We are dedicated to producing the best results for our clients, shareholders, communities and each other.

Infinity has long-established, clearly stated policies of how we expect all employees to conduct business. These policies are very much a part of the fabric of our organization and provide resources for employees to help them resolve ethical problems. They include:

- Our Code of Conduct
- Our Code of Ethics

Infinity also provides business ethics training support to all employees so that they are prepared to handle a host of challenges in today's global marketplace and to commit to doing business with the highest standards of integrity.

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Join The Infinity Team

Infinity Commercial Capital is committed to building an all star team of "A" Players. We find, motivate and reward the best in the business through an entrepreneurial culture built on support, respect and responsiveness. Customer Service is our main priority, and about providing opportunity for our team. And while we take what we do very seriously, we try not to take ourselves too seriously.

If you are outstanding at what you do, we want to talk with you. We can provide you with the tools and support you need to take your career to the next level.

Infinity is expanding rapidly, and we are always looking for great talent.

Please contact us to discuss your future with Infinity.



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About Infinity Commercial Capital

Founded in 2003, Infinity Commercial Capital has grown to be one of the South East leading commercial mortgage brokerage and banking firms, headquartered in Atlanta, Georgia.

Our professionals act as mortgage consultants, not simply as loan officers, focusing on providing the appropriate financing solutions for each deal and each client. We manage every detail of the loan process from start to finish that's effortless and transparent to our clients. We act as your personal mortgage consultants to find the best financing solutions for each deal and each client. From small loans to large loans, we deliver the results that have earned the trust and confidence of borrowers nationwide.



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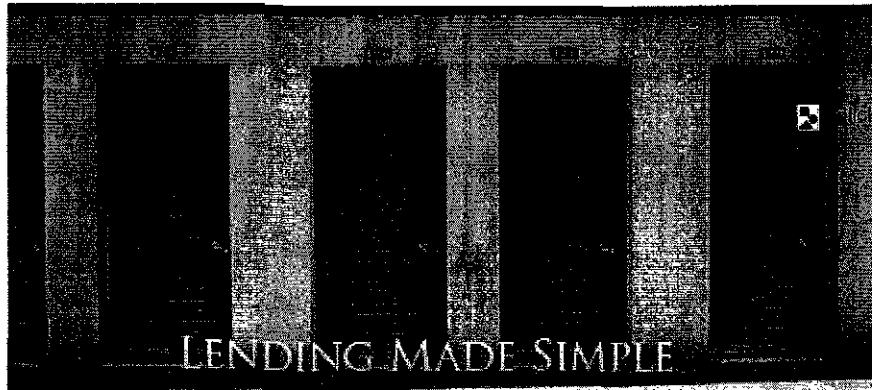
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Self Storage Nationwide Lending

Infinity Commercial Capital recognizes self-storage as an investment property, which compares favorably to many more glamorous types of real estate. Infinity Commercial Capital can place borrowers with capital sources who understand the seasonal and economic cycles of this industry, providing opportunities for building or expansion of self-storage facilities.

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Industrial Nationwide Lending

Changes in industry have created a need for new industrial buildings and older warehouses. These buildings have become attractive for a variety of alternate uses, from retail space to research and development to newer flex products. Exciting opportunities abound for repositioning older structures and acquiring or developing new ones. Infinity Commercial Capital has a broad array of relationships with lenders who appreciate the evolving nature of the industrial market and its market potential.

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Multi-Family Nationwide Lending

Multifamily loans are the largest component of our business. Transactions involve all types of multi-family properties, from those with only a few units to large multi-building complexes with hundreds or thousands of residences. The company has access to multiple sources of capital in addition to Fannie Mae, including national and local banks, Wall Street mortgage conduits, and insurance companies. With our track record and strong relationships within the lending community, Infinity Commercial Capital can offer first mortgages or refinancing with maximum diversity in terms, rates and capital sources.

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Loan Process - In Only Four Easy Steps

This page is temporarily undergoing construction. Please check back soon for updates. There are four basic steps to getting a loan from Infinity Commercial Capital, and we are going to support you along every step:

Step 1: Loan Application

This process starts when you contact your Infinity Representative. Typically, this will be your Business Development Officer (BDO). Your BDO will discuss your financing needs and determine the best Infinity product for you. Your BDO will then provide you with the Infinity loan application (or you can download the application here). Your BDO will also be available to provide assistance to you in completing the application.

We can give you a very good idea immediately about whether your lending needs are going to be a fit with our products. If we can help you, we will ask you to give us some more information so we can provide you with a loan. We will ask you to provide us with:

- Interim financial statements no older than 45 days from application date.
- Copies of your Business Federal Tax Returns for the last three fiscal years.
- If your business is a startup, or does not demonstrate historical debt service ability, a business plan or projections for the next two years will be required.
- If you are purchasing real estate or other business assets, we will need a copy of the purchase agreement. If your business is a franchise

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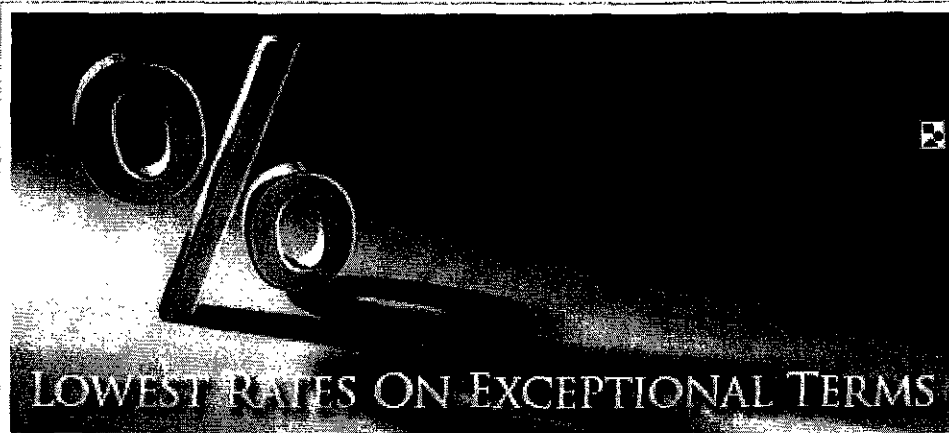
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Infinity Commercial Capital - Loan Programs

Infinity Commercial Capital offers a full range of commercial loan products designed to meet the many needs of our clients. Thanks to our understanding of the demands of your business, we have the knowledge and flexibility to find and negotiate the best possible rates and terms available. With the support of our in house CMBS underwriters and processors, we stay with you all the way through the successful funding of your transaction. Below is a list of the different types of loans Infinity offers.

- [Conventional Loans](#)
- [Construction Loans](#)
- [SBA Loans](#)
- [USDA Loans](#)
- [HUD Loans](#)
- [SBA Alternative Loans](#)
- [No Doc Loans](#)
- [Bridge Loans](#)

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Infinity Commercial Capital Loan Center

Infinity Commercial Capital is committed to provide responsive and timely solutions to our borrowers' financing needs. Use the above navigation in the menu bar to choose the property type that is right for you.

- We guarantee a response to your completed submission within 72 hours!
- We are not in the business to waste your time. If we can help we will do it fast. If we can't we will tell you why.
- We are committed to making the loan process as easy as possible. Closing typically takes place within 30 – 45 days of a signed commitment letter, and the entire process, from first contact to closing, should take less than 60 days unless you are doing a Conduit Loan.



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Infinity Commercial Capital Success Stories

At Infinity Commercial Capital we pride ourselves on adding value to our clients through creativity and speed of service. Our borrowers come to us for money, but they stay with us because we do a lot more. We help them advance their business.

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Infinity Commercial Capital Client Testimonials

Here is what some of our clients have to say.

"I want to thank you for all of your efforts in closing our loan. I still can't believe you delivered an LOI in two days, and closed in under 60 days. I'm glad we left our local broker behind after they over promised and under delivered. We would recommend you to any of our colleges."

Nitin R. Amin
 Gujarati Samaj President

"We were very pleased with your service and if you treat all your clients like we were treated, then Infinity be around for a long long time."

Terry & Barbara King
 Kings Plaza LLC

"We have encountered many obstacles in every transaction we have undertaken in the hotel business, because buying and renovating a hotel is always messy. Infinity is truly the hotel expert. Infinity was able to get me better rates and terms on my hotels than anyone else. Thank you Infinity!"

Dipak Amandavia
 Shri Giri Raj. LLC

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Infinity Commercial Capital Featured Transactions

Infinity Commercial Capital would like to share a few of our most recent transactions with you. Infinity provides nationwide lending to a large array of multiple property types. For more information about obtaining financing for your next project contact [Infinity](#) today.

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<p>Hotel - Hammond, LA \$1.5 Million Refi. December 2007</p>	<p>Hotel - Portsmouth, OH \$4.2 Million Refi. December 2007</p>
<p>Hotel - Augusta, GA \$2.5 Million Refi.</p>	<p>Hotel - Ridgeland, MS \$1.35 Million Refi.</p>



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Office Building Nationwide Lending

The office market provides diverse opportunities for owners and developers. For new acquisitions or refinancing, Infinity has a wealth of lending sources which specialize in office properties. Whether there is a leasing issue, a need for significant tenant improvements or a complicated ground lease. Infinity Commercial Capital can work through the issues and help you take advantage of the unique opportunities in the office financing market. We can provide the capital resources that help borrowers maximize the potential of new or existing properties in the dynamic office building marketplace.

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Infinity Commercial Capital Company Profile

Founded in 2003, Infinity Commercial Capital has grown to be one of the South East leading commercial mortgage brokerage and banking firms, headquartered in Atlanta, Georgia.

Our professionals act as mortgage consultants, not simply brokers, focusing on providing the appropriate financing solutions for each deal and each client. We manage every detail of the loan process from start to finish that's effortless and transparent to our clients. We act as your personal mortgage consultants to find the best financing solutions for each deal and each client. From small loans to large loans, we deliver the results that have earned the trust and confidence of borrowers nationwide.

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