

EXCLUSIVE LISTING AGREEMENT

NOTE: THIS AGREEMENT IS NOT AN AGENCY AGREEMENT.

The undersigned ("Seller") hereby grants to \_\_\_\_\_ ("Broker") the exclusive right to sell, trade, convey, or exchange the Property (as hereinafter defined) upon the terms and conditions set forth below. Seller and hereby appoints Broker as Seller's exclusive representative authorized to market the Property to all potential buyers, including both customers and/or clients of Broker, subject to the terms of this Agreement.

The "Property" subject to this Agreement is described as follows:

Street Address

City \_\_\_\_\_, County \_\_\_\_\_, State \_\_\_\_\_ Zip \_\_\_\_\_

Legal Description

(the \_\_\_\_\_ and Parcel ID \_\_\_\_\_)

ANY ATTACHED SELLER PROPERTY INFORMATION SHEETS ARE INCORPORATED INTO AND MADE A PART OF THIS AGREEMENT. IT IS ILLEGAL TO DISCRIMINATE IN THE SALE OR LEASE OF REAL PROPERTY BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, NATIONAL ORIGIN, SEXUAL ORIENTATION, GENDER IDENTITY OR FAMILIAL STATUS.

1. TERM: This Listing Agreement shall be effective for a period of time beginning on \_\_\_\_\_, 20\_\_\_\_, and expiring on \_\_\_\_\_, 20\_\_\_\_, at 11:59p.m. unless extended by written amendment (the "Term").

2. TERMS/CONDITIONS ON WHICH PROPERTY IS TO BE OFFERED FOR SALE: Seller and Broker agree that the Property shall be offered for sale on the following terms and conditions, or on such terms and conditions that Seller and Broker may subsequently agree to.

- (a) Price \$ \_\_\_\_\_ Payment Terms: \_\_\_\_\_
- (b) Seller agrees to maintain and keep in force sufficient hazard insurance until sale of Property is closed.

3. DISCLOSURE: To the extent required by law, Seller hereby specifically authorizes Broker and all cooperating brokers to disclose to potential buyers any material defects, latent or otherwise, known to Seller. Seller acknowledges that Broker and Broker's associates do not have the responsibility to discover latent defects in the Property or to advise on matters outside the scope of real estate licenses promulgated by the Alabama Real Estate Commission.

4. LEAD-BASED PAINT: Seller represents that, to the best of Seller's knowledge, the residence or any portion thereof on the Property [ ] was [ ] was not constructed before January 1, 1978. Seller acknowledges that, if the residence was constructed prior to January 1, 1978, Seller shall provide to any buyer an EPA-approved lead hazard information pamphlet, make certain disclosures regarding the presence of any known lead-based paint or lead-based paint hazards on the Property and (unless the parties agree to a different period or the buyer waives his/her rights in writing) provide any potential buyer a ten (10) day period to conduct a risk assessment or inspection for the presence of lead-based paint and lead-based paint hazards.

5. MARKETING THE PROPERTY: Broker is hereby authorized to engage in the marketing of the Property, which includes, but is not limited to, listing the Property for sale on any multiple listing service ("MLS"), publication of written materials, flyers, yard signs and print media, publication of digital marketing via websites and social media platforms, causing the Property to appear on any Internet Data Exchange, telephone marketing, digital video meeting marketing, digital communications marketing including but not limited electronic mail communications and via mobile applications, multi-brokerage listing sharing networks,. Seller grants Broker the right to provide timely notice of status changes to the listing to the MLS, and to provide sales information, including selling price to the MLS, upon the sale of the Property. Seller and Broker acknowledge that the MLS is

not obligated to, cannot reasonably and does not review this Agreement, the Seller Property Information Sheets, or other such information or data provided by Seller and Broker for accuracy or completeness.

Seller agrees that for either the active or coming soon options below, that marketing of the Property shall be on \_\_\_\_\_ (the "Marketing Date").

Seller must initial one of the following options: (1) for utilizing "Active Marketing" described in Option 1 below (2), utilizing the "Coming Soon" status in described in Option 2 below, or (3) utilizing the Unpublished Listing (Office Exclusive) status described in Option 3 below. If the active marketing or the coming soon options are not selected, the listing will be an Unpublished Listing (Office Exclusive), and the Unpublished Listing Certification must be filed with the MLS within one business day.

(1) Option 1 - Active Marketing: Seller authorizes Broker to utilize active marketing of the Property. Seller does not select the Coming Soon option. If the Coming Soon status is selected then marketing shall occur in accordance with Section 5 (a)(2), and this paragraph shall apply when the Coming Soon status expires. Broker agrees to use reasonable efforts in marketing the Property in accordance with the terms of this Agreement. Seller gives Broker the exclusive right to place a "For Sale" or other appropriate signs on the Property. Seller also agrees to (i) refer all inquiries regarding the Property to Broker promptly; (ii) furnish Broker with keys to the Property; (iii) allow the use of Seller's name and Seller Property Information Sheets in marketing the Property; and (iv) make the Property available for showing during reasonable hours to prospective buyers and grant permission to Brokers to enter the Property for the purpose of showing the Property to potential buyers.  
\_\_\_\_\_ (initials of Seller to choose Option 1: "Active Marketing")

(2) Option 2 - Coming Soon: Seller authorizes Broker to utilize the "Coming Soon" status in the MLS system while the Property is being prepared for sale and marketing. If the Coming Soon status is selected, Seller understands that the Property will be entered into MLS according to MLS rules and as stated above in Section 5 Marketing the Property. The Coming Soon status is a temporary status limited to 15 days. If the Coming Soon listing is updated in MLS to any status other than Active, it will be subject to an audit by MLS. Seller must execute a separate, signed addendum regarding the Broker's use of the Coming Soon status.  
\_\_\_\_\_ (initials of Seller to choose Option 2: "Coming Soon")

Option 3 - Unpublished Listing (Office Exclusive): By initialing below, Seller elects to restrict the marketing of the listing as an Unpublished Listing (Office Exclusive) Designation: Seller does not authorize the Property to be disseminated via the MLS system. Seller acknowledges that per MLS rules, the Unpublished Listing will not be permitted to be publicly marketed as described above. If the Property is publicly marketed, Seller acknowledges that Broker must submit the listing to the MLS as an active listing within one business day of the public marketing.

If the listing is not disseminated via the MLS, it will:

- NOT be seen by any participants of the Greater Alabama Multiple Listing Service
- NOT be in auto-alerts from the MLS to potential buyers
- NOT be disseminated by the MLS for display on MLS broker websites (IDX)
- NOT be displayed on LiveInAlabama.com
- NOT be searchable in the MLS by agents;
- NOT be permitted to be displayed on third party portal sites (i.e., Zillow, Realtor.com, Trulia, etc.)
- NOT be marketed to the general public via yard signs, display on public facing websites and other digital communications marketing

\_\_\_\_\_ (initials of Seller to choose Option 3: "Unpublished Listing"). By selecting this Option 3, Seller agrees to hold harmless and release Broker from claims for any damages suffered by Seller as a result.

6. LOCKBOXES: Seller  grants  does not grant Broker the authority to place a lockbox on the Property to facilitate showing and inspection of the Property during the term. Seller acknowledges and agrees that neither Broker nor Broker's associates shall be responsible for any damage to the Property or loss of personal property, except in the event of the gross negligence of Broker or Broker's associates. SELLER ACKNOWLEDGES THAT ANY SUCH LOCKBOX IS INTENDED ONLY AS A MARKETING AID BUT IS NOT INTENDED TO SERVE AS A SECURITY DEVICE.  
CONTENT CREATION SERVICES:

7.

- (a) Authorization: Seller hereby authorizes Broker to have interior and exterior photographs and/or videos of the Property taken, and to create other digital media content (the "Content Creation Services") and have such content (the "Content") digitized, reproduced, published, transmitted, and/or disseminated and displayed in any form or manner, including and without limitation, in and through computerized MLS, television programs, internet programs, local publications, fact sheets concerning the Property, social media platforms, as well as any other use, media or means to aid in the sale or rental of Seller's Property. Seller also hereby acknowledges that potential buyers who view the Property may take photographs or videos ("Buyer Photographs") of the Property for their personal use.

Broker is the owner of all property listings data and information subject to copyrights written by Broker or

- (b) its associates (the "Protected Materials") , and Broker is entitled to and shall solely own all rights to the Protected Material (including, without limitation copyright rights and all other intellectual and/or other property rights). To the extent that it could be deemed that the Seller owns any rights in or to the Protected Materials, by execution hereof the Seller agrees that such right, title, and interest owned by the Seller shall be deemed automatically assigned from Seller to Broker as of the moment of creation without the necessity of any further action on the part of either party.

Waiver of Liability: Seller hereby waives, acquits and forever releases, and agrees to defend and hold

- (c) harmless, Broker, its officer(s), director(s), employee(s), broker(s), agent(s), and representative(s) from any responsibility or liability whatsoever concerning any Content, Content Creation Services or Buyer Photographs relating to the Property, or the use, distribution, or display of any Content, Content Creation Services or Buyer Photographs in any form, medium or manner whether such was taken or created by a representative of the Buyer or by a potential buyer.

Seller may provide content such as photos or videos of the Property ("Seller Content") to the Broker.

- (d) Seller grants to Broker a non-exclusive, perpetual, world-wide, transferable, royalty free license to sub-license (including through multiple tiers), reproduce, distribute, display, perform and create derivative works of the Seller Content. Seller warrants it has the authority to provide this license, and that Seller Content does not violate any third-party intellectual property rights or laws. Seller agrees to execute any further documents that are necessary to affect this license.

8. **BROKER COMPENSATION: THE BROKERAGE FEE DESCRIBED IN THIS SALE IS NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC.; CALHOUN COUNTY AREA BOARD OF REALTORS®; ST. CLAIR REALTORS® ASSOCIATION; THE TALLADEGA COUNTY BOARD OF REALTORS®, NOR BY STATE LAW, BUT IN ALL CASES IS SET BY THE BROKER AND THE SELLER.** The brokerage fee may be a flat fee amount, a percentage of the sale price, or any other lawful consideration agreed to by Broker and Seller and is negotiable.

- (a) **BROKERAGE FEE.** In this Agreement, Seller agrees to pay Broker a brokerage fee as indicated below:
- (i) For finding a buyer, ready, willing and able to purchase the Property upon the terms herein mentioned or at any price upon terms acceptable to Seller, Seller agrees to pay Broker a brokerage fee of \_\_\_\_\_, whether buyer be secured by Broker or Seller, or by another person, or, if the Property is afterward sold within \_\_\_\_\_ days from the termination of this Agreement or extensions thereof, to any person to whom the Property has been shown by anyone including the Seller during the Listing Period. However, no brokerage fee shall be due Broker if after this listing is expired the Property is relisted with another licensed real estate broker and sold through his/her exclusive right of sale.
- (ii) Seller agrees that the Broker may engage other Brokers to assist in marketing the Property and may share its brokerage fee with such other brokers on a basis determined solely by Broker (but shall not be required to do so under this Agreement). In any event, Seller will pay the full brokerage fee as directed by the Broker.
- Seller \_\_\_\_ agrees \_\_\_\_ does not agree (check one) that the Broker shall pay a portion of the
- (iii) brokerage fee to a broker or agent representing the Buyer of the Property. If Seller agrees, then

such amount paid to a broker representing the buyer shall be \_\_\_\_\_ unless otherwise agreed in writing signed by the Seller, Broker, and the buyer's broker.

- (b) COMMISSION EARNED ON COMPLETION OF TRANSACTION AFTER EXPIRATION. Seller's obligation to pay the Brokerage Fee described above shall terminate upon the expiration or earlier termination of this Agreement except as described in this Section 8(b). If within \_\_\_\_ days (90 days if left blank) after the expiration of this Agreement (the "Good Faith Payment Period"), the Property is sold to any person whom the Property has been shown by anyone including the Seller during the Listing Period, Seller is obligated to pay the Brokerage Fee described hereinabove upon the date of the buyer's acquisition. Prior to the expiration of the Good Faith Payment Period, if Seller is contacted directly by a buyer of real property or another real estate agent or broker in regards to interest or potential interest in the Property, Seller shall immediately refer such buyer, agent or broker to Broker.

BY ENTERING INTO THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT CLIENT'S OBLIGATIONS UNDER THIS SECTION 8(B) SHALL REMAIN ENFORCEABLE AFTER THE EXPIRATION OF BROKER'S OBLIGATIONS UNDER THIS AGREEMENT. SELLER'S OBLIGATIONS DESCRIBED UNDER THIS SECTION 8(B) SHALL REMAIN ENFORCEABLE UNTIL THE EXPIRATION OF THE GOOD FAITH PAYMENT PERIOD.

SELLER'S INITIALS: \_\_\_\_\_

- 9. SELLER CONCESSIONS. Broker is authorized to market any concessions or incentives to potential buyers which are authorized by Seller in writing, including but not limited to the following: \_\_\_\_\_
- 10. NO OTHER AGREEMENTS: Seller and Broker acknowledge that there are no other agreements, promises or understandings either expressed or implied between them other than as specifically set forth herein. Seller warrants that there are no prior agreements on this Property (listing, sale or otherwise) that have not been terminated.
- ATTORNEY FEES; COSTS OF LITIGATION:
- 11. Seller shall be liable for any reasonable legal fees incurred by Broker in the event Broker is exposed to legal fees in pursuit of enforcing or defending its rights and obligations hereunder.
- 12. SELLER'S WARRANTY OF AUTHORITY, ACCURACY AND COMPLETENESS OF INFORMATION: Seller specifically represents and warrants that Seller has complete authority to sell the Property and convey title. Seller has personally reviewed this Agreement and the attached Seller Property Information Sheets and any other exhibits and acknowledges that all of the information in this Agreement, the Seller Property Information Sheets, and exhibits relating to the description and physical condition of the Property were provided by Seller and are accurate and complete to the best of Seller's knowledge. SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE BROKER AND BROKER'S AGENTS AGAINST AND FROM ANY LOSSES, DAMAGES, CLAIMS, SUITS OF LAW (INCLUDING COURT COSTS AND ATTORNEY'S FEES) OR OTHER COST OR EXPENSES RELATING TO OR RESULTING FROM ANY COPYRIGHT INFRINGEMENT (DIRECT, CONTRIBUTORY, OR OTHERWISE), BY ANY ENTITY, OR RESULTING FROM ANY ACTUAL OR ALLEGED INACCURACY OR INCOMPLETENESS OF THE SELLER PROPERTY INFORMATION SHEETS CONTAINED HEREIN OR OF ANY OTHER REPRESENTATIONS, ORAL OR WRITTEN, PROVIDED BY SELLER TO BROKER AT THE DATE OF THIS LISTING AGREEMENT AS WELL AS SUBSEQUENT INFORMATION PROVIDED BY SELLER. SELLER FURTHER AGREES THAT ALL THE INFORMATION PROVIDED BY THE SELLER TO BROKER FOR MARKETING THE PROPERTY IS INCLUDED IN THIS AGREEMENT.

13. SURVEILLANCE DEVICES: WARNING - FEDERAL AND/OR STATE LAWS GOVERN SELLER'S USE OF AUDIO, VIDEO, OR OTHER TYPES OF SURVEILLANCE DEVICES ON THE PROPERTY. RECORDING AND/OR TRANSMITTING AUDIO, VIDEO, OR IMAGES DURING SHOWINGS, OPEN HOUSES, INSPECTIONS, OR OTHER SIMILAR ACTIVITIES MAY RESULT IN A VIOLATION OF FEDERAL AND/OR STATE LAWS.

Seller hereby indemnifies and releases Broker and its associates from any liability which may result from Seller recording or transmitting of audio, video, or images, on the Property.

- 14. COUNTERPARTS: This Agreement may be executed and delivered by any party hereto by counterparts or by any lawfully binding electronic signature platform. Such counterparts and electronic signatures shall be binding.
- 15. AGENCY: This Agreement is not an Agency Agreement.
- 16. SEVERABILITY : Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event a court having jurisdiction over the parties holds any provision of this Agreement invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability, exclusion of warranty, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate unless the parties agree to the contrary.
- 17. GOVERNING LAW; VENUE: The laws of the state of Alabama shall govern this Agreement and its interpretation. Any action to enforce or interpret this Agreement shall have venue in the County in Alabama where the Property is located and the parties hereby submit to personal jurisdiction in that venue.

*This Agreement, including the attached Seller Property Information Sheets, and any other attached addendum or exhibits, are intended to be the legal and binding contract of all parties. If it is not fully understood, Seller should seek professional legal advice. This Agreement may not be modified or amended except by writing, which writing must be signed by both the Seller and the Broker.*

Broker (Print Listing Company Name) \_\_\_\_\_ Listing Agent \_\_\_\_\_

Seller's Mailing Address: \_\_\_\_\_

Seller's Email: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Business Phone: \_\_\_\_\_