

**MLS EXCLUSIVE LISTING AGREEMENT**

**NOTE: THIS AGREEMENT IS NOT AN AGENCY AGREEMENT.**

The undersigned \_\_\_\_\_ (hereinafter referred to as **"Seller"**) of the Property (described below), does hereby grant to \_\_\_\_\_ (Listing 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 agent to represent Seller as Client and 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. Broker is the owner of all property listings data and information subject to copyrights written by Broker or its associates, and Broker is entitled to and shall own all copyright rights therein and all other intellectual or other property rights in or relating thereto. Such right, title, and interest shall be deemed assigned as of the moment of creation without the necessity of any further action on the part of either party.

The Real **"Property"** which is the subject of this Agreement is described as follows:

Street Address \_\_\_\_\_,

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

Legal Description \_\_\_\_\_

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

**THE 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.

*(initials of Seller)*

~~SELLER AND BROKER AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE GREATER ALABAMA MULTIPLE LISTING SERVICE, INC. ("MLS") AND THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC., AGAINST AND FROM ANY CLAIMS, SUITS, DAMAGES, LOSSES OR OTHER COSTS OR EXPENSES (INCLUDING COURT COSTS AND ATTORNEY'S FEES) RELATING TO, ARISING OUT OF OR IN CONNECTION WITH ANY ACTUAL OR ALLEGED INACCURATE OR INCOMPLETE INFORMATION OR UNLAWFUL RESTRICTIONS OR REMARKS REGARDING THE PROPERTY THAT IS ENTERED INTO THE MLS SYSTEM BY BROKER.~~

*(initials of Seller)*

**1. PERIOD OF AGREEMENT TERM:** This Listing Agreement shall be effective for a period of time beginning on \_\_\_\_\_, 20\_\_\_\_, (the "Agreement Date") and ending expiring on \_\_\_\_\_, 20\_\_\_\_, at 12:00 Midnight, \_\_\_\_\_ 11:59p.m. unless the expiration date is extended in writing 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. ~~LIMITED CONSENSUAL DUAL AGENCY: See Company Policy as provided on Addendum \_\_\_\_\_.~~

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

*MLS Listing Non Agency Agreement, 2021 — Page 1 of*

4

DRAFT

5. **LEAD-BASED PAINT:** Seller represents that, to the best of ~~Seller's~~Seller's knowledge, the residence or any portion thereof on the Property ~~is~~is was ~~is~~is was not constructed before January 1, 1978. Seller acknowledges that, if the residence was constructed prior to January 1, 1978, Seller ~~will be required to~~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) ~~permit the~~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.

65. **MARKETING THE PROPERTY:** ~~The listing for this Property will be entered by Broker into the Greater Alabama Multiple Listing Service, Inc. ("MLS") system within one (1) business day of~~ is hereby authorized to engage in the marketing a property to of the public. Public marketing Property, which includes, but is not limited to, listing the Property for sale on any multiple listing service ("MLS"), publication of written materials, flyers displayed in windows, yard signs, and print media, publication of digital marketing on public facing via websites, brokerage website displays and social media platforms, causing the Property to appear on any Internet Data Exchange, telephone marketing, digital video meeting marketing, digital communications marketing (e.g., email blasts), including but not limited electronic mail communications and via mobile applications, multi-brokerage listing sharing networks, and mobile applications available to the general public, including social media. 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. ~~A fine of \$500 each will be charged to both the listing agent and listing broker for noncompliance with these terms.~~

(a) ~~Marketing via MLS: Seller authorizes the Property to be disseminated via the MLS system. Seller acknowledges that per MLS rules Broker must enter all listings into the MLS system, and the Property will be disseminated to, or viewable by, other MLS participants and subscribers, as well as disseminated by MLS to the public through print and/or electronic media.~~

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

\_\_\_\_\_  
(the "Marketing Date"). Seller must initial one of the terms following options: (1) for utilizing "active marketing" "Active Marketing" described in (1) or the "coming soon" Option 1 below (2), utilizing the "Coming Soon" status in (2) 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 65 (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~~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 65 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~~Broker's use of the Coming Soon status.

\_\_\_\_\_  
(initials of Seller) to choose Option 2: "Coming Soon"

(b) \_\_\_\_\_  
system.

Option 3 - U

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.

\_\_\_\_\_  
(initials of Seller)

**7. LOCKBOX AUTHORIZATION:**

~~Seller~~ 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 ~~it~~ does not give permission for an ~~it~~ Electronic ~~it~~ Other ~~not~~ grant Broker the authority to place a lockbox ~~to be placed on the Property. If Seller gives permission for a lockbox to be used, Seller hereby releases~~ facilitate showing and holds harmless ~~inspection of the MLS, Property during the MLS Broker term. Seller acknowledges and their agents from all responsibility~~ agrees that neither Broker nor Broker's associates shall be responsible for any loss, damage or theft which might occur while the Property is listed to the Property or loss of personal property, except in the event of the gross negligence of Broker or Broker's associates. SELLER ~~ALSO ACKNOWLEDGES THAT ANY SUCH LOCKBOX IS INTENDED ONLY AS AN AID IN A~~ MARKETING ~~THE PROPERTY. IT AID BUT IS NOT INTENDED OR DESIGNED TO SERVE AS A~~ SECURITY DEVICE.

\_\_\_\_\_  
(initials of Seller)

**8. PHOTOGRAPHIC CONTENT CREATION SERVICES:**

- (a) (a) Authorization: Seller hereby authorizes Broker to have interior and exterior photographs and/or videos of the Property taken ~~(the "Photographic, and to create other digital media content (the "Content Creation Services")")~~ and have such ~~photographs~~ content (the ~~"Photographs"~~ "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~~ 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.
- (b) Broker is the owner of all property listings data and information subject to copyrights written by Broker or 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.
- (b) (c) Waiver of Liability: Seller hereby waives, acquits and forever releases, and agrees to defend and hold harmless, Broker, its officer(s), director(s), employee(s), broker(s), agent(s), and representative(s) from any responsibility or liability whatsoever concerning any ~~Photograph, Photographic Content, Content Creation~~ Services or Buyer Photographs relating to the Property, or the use, distribution, or display of any ~~Photographs, Photographic 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.
- (e) (d) Seller may provide content such as photos or videos of the Property (("Seller Content")) to the Broker. 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.

**9.**

**BROKERAGE FEE: 8. BROKER C**

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:
  - (a) (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 \_\_\_\_\_ 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 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.

- (b) (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.

~~10. EARNEST MONEY & BUYER'S DEFAULT: Once a Contract is FINALIZED the Earnest Money will be promptly deposited into an escrow account. If the Contract is accepted and signed by all parties and the sale does not close, a separate mutual release signed by all parties to the Contract will be required before the Earnest Money will be disbursed. In the event either Buyer or Seller claims the escrowed funds without the agreement of the other party, any holder of the escrowed funds, as prescribed by Alabama Real Estate License Law Rule 790 X 3-.03(4), (5), must either retain the escrowed funds until there is a written mutual release among the parties or interplead the disputed portion of the funds into the appropriate court, and shall be entitled to deduct from the escrowed funds for court costs, attorney fees, and other expenses relating to the interpleader; provided, however, that any claim shall remain subject to mediation and arbitration. In the event of default by Buyer, all deposits made may be forfeited as liquidated damages at the option of Seller.~~

~~11.(iii) Seller agrees does not agree (check one) that the Broker shall pay a portion of the 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.

12.11. ATTORNEY FEES; COSTS OF LITIGATION: If suit is brought to collect the compensation provided herein, or if Broker successfully defends any action brought against Broker by Seller relating to this Agreement or under any sales agreement relating to the Property, and Broker prevails, Seller agrees to pay all costs shall be liable for any reasonable legal fees incurred by Broker in connection with such action, including reasonable attorney's fees, the event Broker is exposed to legal fees in pursuit of enforcing or defending its rights and obligations hereunder.

13. SELLER'S

**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

DRAFT

~~Seller's~~ Seller's knowledge. SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE BROKER AND ~~BROKER'S~~BROKER'S AGENTS AGAINST AND FROM ANY LOSSES, DAMAGES, CLAIMS, SUITS OF LAW (INCLUDING COURT COSTS AND ~~ATTORNEY'S~~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.

*(initials of Seller)*

**14.13. SURVEILLANCE DEVICES: WARNING** - FEDERAL AND/OR STATE LAWS GOVERN ~~SELLER'S~~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 ~~listing sales~~ associates, ~~and employees~~, ~~MLS~~, and the ~~Birmingham Association of REALTORS~~ from any liability which may result from ~~Seller's~~Seller recording or transmitting of audio, video, or images, on the Property.

\_\_\_\_\_ *(initials of Seller)*

**15.14. ~~FACSIMILE OR COUNTERPART SIGNATURE~~COUNTERPARTS:** This Agreement may be executed and delivered by any party hereto by ~~sending a facsimile of the~~counterparts or by any lawfully binding electronic signature or by a legally recognized e-signature platform. Such ~~facsimile signature or legally recognized e-signature~~counterparts and electronic signatures shall be binding ~~on the party so executing it upon receipt of the signature by the other party.~~

**16.15. AGENCY: This Agreement is not an Agency Agreement.**

**17.16. 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.

**18.17. 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, ~~is~~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. ~~The Broker has the right to rescind this Agreement by written notice given within seven (7) working days of the date of this Agreement.~~*

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

\_\_\_\_\_ *Initials, Seller acknowledges Receipt of this Agreement*

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

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



Home Phone:

Business Phone:

DRAFT