

**NON-EXCLUSIVE SELLER LISTING AGREEMENT
(ALSO REFERRED TO AS OPEN SELLER LISTING AGREEMENT)**



2008 Printing

State law prohibits Broker from representing Seller as a client without first entering into a written agreement with Seller under O.C.G.A. § 10-6A-1 et. seq.

For and in consideration of the mutual promises contained herein and other good and valuable consideration, _____ as seller (hereinafter referred to as "Seller"), and _____ as broker and its affiliated licensees (hereinafter collectively referred to as "Broker") do hereby enter into this Agreement, this date of _____.

1. Non-Exclusive Listing Agreement. Seller hereby grants to Broker the non-exclusive right and privilege as the agent of Seller to show and offer for sale the property located at _____, _____ Georgia _____ and more particularly described in the Legal Description Paragraph below (all of which is hereinafter collectively referred to as "Property") as the real estate broker for Seller. The term of this Agreement shall begin on the date of _____ and shall continue through the date of _____ (hereinafter referred to as "Listing Period"), unless otherwise terminated in accordance with this Agreement.

2. Legal Description. [Select Section A or B below. The section not marked shall not be a part of this Agreement.]

A. The legal description of the Property is attached as an exhibit hereto.

B. The full legal description of the Property is the same as is recorded in the land records of the county in which the Property is located and is incorporated herein by reference. The legal description of the Property is more specifically described below and can be found in said land records in the following deed book and/or plat book, if filled in below:

Land Lot(s) _____ of the _____ District, _____ Section/ GMD, Lot _____, Block _____, Unit _____, Phase/Section _____ of _____ Subdivision/Development, _____ County, Georgia as recorded in:

1. Plat Book _____, Page _____, et. seq.; or

2. Deed Book _____, Page _____, et. seq.

3. Independent Contractor Relationship. This Agreement shall create an independent contractor relationship between Broker and Seller. Broker shall at no time be considered an employee of Seller. Seller acknowledges that the real estate licensees affiliated with Broker are independent contractors of Broker, and are not Broker's employees.

4. Broker's Duties to Seller. Broker's sole duties to Seller shall be to:

A. Use Broker's best efforts to procure a buyer ready, willing, and able to purchase Property at a sales price of at least \$ _____ (which amount includes the commission) or any other price acceptable to Seller;

B. Comply with all applicable laws in performing its duties hereunder including the Brokerage Relationships in Real Estate Transaction Act, O.C.G.A. § 10-6A-1 et. seq.; and

C. [Select one. The box not checked shall not be a part of this Agreement.]

1. Assist to the extent requested by Seller in negotiating the terms of and filling out a pre-printed real estate purchase and sale agreement; or

2. Not assist in negotiating the terms of or filling out a pre-printed real estate purchase and sale agreement and/or counteroffer.

5. Seller's Duties. Seller represents that Seller:

A. presently has title to Property or has full authority to enter into this Agreement;

B. will cooperate with Broker to sell Property to prospective buyers;

C. will make Property available for showing at reasonable times as requested by Broker; and

D. will provide Broker with accurate information regarding Property (including information concerning all adverse material facts pertaining to the physical condition of Property); and

E. will fully comply with all state and federal laws.

6. Marketing.

A. Advertisements: Broker may advertise Property for sale in all media and may photograph and/or videotape and use the photographs and/or videotapes in connection with Broker's marketing efforts. Seller agrees not to place any advertisements on the property or to advertise Property for sale in any media except with the prior written consent of Broker. Broker is also hereby authorized to place Broker's "For Sale" sign on Property. Broker is authorized to procure buyers to purchase Property in cooperation with other real estate brokers and their affiliated licensees. Broker may distribute listing and sales information (including the sales price) to them and said cooperating brokers and their licensees may, with permission of Broker (which permission may be granted or denied in the sole discretion of Broker), republish such information on their Internet web sites. Broker and other real estate brokers and their affiliated licensees may show Property without first notifying Seller.

B. Lockboxes: A lockbox may be used in connection with the marketing of Property. There have been isolated instances of reported burglaries of homes on which lockboxes have been placed and for which the lockbox has been alleged to have been used to access the home. In order to minimize the risk of misuse of the lockbox, Broker recommends against the use of lockboxes on door handles that can be unscrewed from the outside or on other parts of the home from which the lockbox can be easily removed. Since others will have access to Property, Seller agrees to either remove all valuables or put them in a secure place.

C. Multiple Listing Service(s): Seller acknowledges that Broker is a member of the following multiple listing service(s): _____ ("Service(s)"). Broker agrees to file this listing with said Service(s) will not go into MLS due to MLS rules.

7. Commission.

- A.** Seller agrees to pay Broker at closing a commission (herein after "Commission") of _____ percent (%) of the sales price of Property or \$ _____ in the event that during the term of this Agreement Broker procures a buyer ready, willing, and able to purchase Property at the price described above.
- B.** Broker shall share this Commission with a cooperating broker, if any, who procures the buyer of Property by paying such cooperating broker _____ percent (%) of the sales price of Property **OR** \$ _____. Cooperating brokers are expressly intended to be third-party beneficiaries under this Agreement.
- C.** If Seller during the Protected Period, as that term is hereinafter defined, sells or contracts to sell Property to any buyer who makes an offer, was introduced to, visited, received information on, inquired about, or otherwise learned of the Property during the agreed upon term of this Agreement, then Seller shall pay the commission referenced above to Broker at the closing of the sale or exchange of Property to said buyer. The term "Protected Period" shall refer to the _____ day period following the earlier of either a) the expiration of this Agreement, or b) the date that the Agreement is terminated upon the mutual, written consent of the Broker and Seller. In addition, if this Agreement is terminated by Seller without the express, written consent of Broker, the Protected Period shall be the same day period referenced above as the Protected Period but running from the date this Agreement was terminated early without the express, written consent of Broker plus the number of days that remained on the term of the Agreement at the time it was terminated early without the express, written consent of Broker. Broker removing the Broker's sign from the Property, removing the listing from a multiple listing service and/or discontinuing brokerage services at the direction of Seller shall not be deemed to be consent to an early termination of this Agreement by Broker. Instead, the Broker shall be required to sign a written statement that the Broker expressly consents to the termination of this Agreement for the Broker to expressly consent in writing to said termination. For the purposes of this Agreement, the term "buyer" shall include buyer, all members of the buyer's immediate family, any legal entity in which buyer or any member of buyer's immediately family owns or controls, directly or indirectly, more than 10% of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties. Notwithstanding the above, no listing commission shall be paid to Broker if this Agreement has either expired or been terminated upon the mutual, written consent of Broker and Seller and the Property is sold or contracted to be sold to a prospective buyer by or through another licensed broker with whom Seller has signed an exclusive right to sell listing agreement. The rights of Broker to receive and the obligations of Seller to pay a commission set forth herein shall survive the termination or expiration of this Agreement.

8. Limits on Broker's Authority and Responsibility. Seller acknowledges and agrees that Broker:

- A.** may show other properties to prospective buyers who are interested in Property;
- B.** shall not be responsible to advise Seller on any matter including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of Property; the condition of Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to Property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraised or future value of Property; any condition(s) existing off Property which may affect Property; the terms, conditions and availability of financing; and the uses and zoning of Property whether permitted or proposed. Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they should seek independent expert advice relative thereto. Seller acknowledge that Brokers shall not be responsible to monitor or supervise any portion of any construction or repairs to Property and that such tasks clearly fall outside the scope of real estate brokerage services;
- C.** shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this Agreement;
- D.** may make all disclosures required by law;
- E.** may disclose all information about Property to others; and
- F.** shall, under no circumstances, have any liability greater than the amount of the real estate commission paid hereunder to Broker (excluding any commission amount paid to a cooperating real estate broker, if any).
- G.** shall be held harmless from any and all claims, causes of action, or damages arising out of or relating to:
1. inaccurate and/or incomplete information provided by Broker to a prospective buyer;
 2. earnest money handled by anyone other than Broker; or
 3. any injury to persons on Property and/or loss of or damage to Property or anything contained therein.

9. Extension. If during the term of this Agreement, Seller and a prospective buyer introduced to Property by Broker enter into a real estate sales contract which is not consummated for any reason whatsoever, then the original expiration date of this Agreement shall be extended for the number of days that Property was under contract.

10. Seller's Property Disclosure Statement and Official Georgia Wood Infestation Report. Within ____ days of the date of this Agreement, Seller agrees to provide Broker with a current, fully executed Seller's Property Disclosure Statement. Additionally, within ____ days of the date of this Agreement, Seller agrees to provide Broker with an Official Georgia Wood Infestation Report dated not more than 180 days prior to the date of this Agreement. Broker is hereby authorized to distribute the same to prospective buyers interested in Property.

11. Disclosures.

- A.** Broker agrees to keep confidential all information which Seller asks to be kept confidential by express request or instruction unless Seller permits such disclosure by subsequent word or conduct or such disclosure is required by law. Seller acknowledges, however, that Buyer and Buyer's broker may possibly not treat any offer made by Seller (including its existence, terms and conditions) as confidential unless those parties have entered into a confidentiality agreement with Seller.
- B.** Broker may not knowingly give customers false information.
- C.** In the event of a conflict between Broker's duty not to give customers false information and the duty to keep the confidences of Seller, the duty not to give customers false information shall prevail.

D. Unless specified below, Broker has no other known agency relationships with other parties that would conflict with any interests of Seller (excluding that Broker may be representing other buyers, sellers, landlords and tenants in buying, selling or leasing property).

12. Disclosure of Potentially Fraudulent Activities.

A. To help prevent fraud in real estate transactions, Seller does hereby give Broker permission to report any suspicious, unusual and/or potentially illegal or fraudulent activity (including but not limited to mortgage fraud) to:

1. Governmental officials, agencies and/or authorities and/or
2. Any mortgage lender, mortgage insurer, mortgage investor and/or title insurance company which could potentially be harmed if the activity was in fact fraudulent or illegal.

B. Seller acknowledges that Broker does not have special expertise with respect to detecting fraud in real estate transactions. Therefore, Seller acknowledges that:

1. Activities which are fraudulent or illegal may be undetected by Broker and
2. Activities which are lawful and/or routine may be reported by Broker as being suspicious, unusual or potentially illegal or fraudulent.

13. Broker's Policy on Agency. Unless Broker indicates below that Broker is not offering a specific agency relationship, the types of agency relationships offered by Broker are: seller agency, buyer agency, designated agency, dual agency, landlord agency, and tenant agency.

The agency relationship(s), if any, not offered by Broker is/are the following: _____.

14. Dual Agency Disclosure. *[Applicable only if Broker's agency policy is to practice dual agency]* If Seller and a prospective buyer are both being represented by the same Broker, Seller is aware that Broker is acting as a dual agent in this transaction and consents to the same. Seller has been advised that:

- A. In serving as a dual agent, Broker is representing two clients whose interests are or at times could be different or even adverse;
- B. Broker will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from either client which is not otherwise required to be disclosed by law;
- C. Seller does not have to consent to dual agency and, the consent of Seller to dual agency has been given voluntarily and Seller has read and understands the brokerage engagement agreement.
- D. Notwithstanding any provision to the contrary contained herein, Seller hereby directs Broker, while acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position.
- E. Broker or Broker's affiliated licensees will timely disclose to each client the nature of any material relationship with other clients other than that incidental to the transaction. A material relationship shall mean any actually known personal, familial, or business relationship between Broker and a client which would impair the ability of Broker to exercise fair and independent judgment relative to another client. The other party whom Broker may represent in the event of dual agency may or may not be identified at the time Seller enters into this Agreement. If any party is identified after the Agreement and has a material relationship with Broker, then Broker shall timely provide to Seller a disclosure of the nature of such relationship.

15. Designated Agency Disclosure. *[Applicable only if Broker's agency policy is to practice designated agency]* Seller does hereby consent to Broker acting in a designated agency capacity in transactions in which Broker is representing Seller and a prospective buyer. With designated agency, Broker assigns one or more of its affiliated licensees exclusively to represent Seller and one or more of its other affiliated licensees exclusively to represent the prospective buyer.

16. Limits on Seller's Responsibility. It is understood that this Agreement in no way prohibits Seller from selling Property directly to a buyer obtained by Seller or anyone other than Broker. Seller retains the right to sell to any party not first contacted by Broker. Seller also retains the right to list Property for sale with any other broker or brokers.

17. Receipt of Faxes and Telephone Calls. Seller's current telephone number, facsimile (FAX) number and street address are set forth below. Seller acknowledges that in buying real property there are time deadlines in which: (1) offers or counteroffers must be accepted; and (2) the various obligations set forth in the purchase and sale agreement must be fulfilled. Seller therefore agrees: (1) to be available at the below referenced numbers and street address(es) to receive time sensitive information; and (2) to immediately update Broker in writing on changes to any of the above referenced numbers and addresses. Seller acknowledges that the failure of Seller to comply with the terms set forth herein could have adverse legal and financial consequences. Seller further agrees that during the term of this Agreement, and for 18 (eighteen) months thereafter, Broker and companies and persons affiliated with Broker shall have the right, but not the obligation, to contact Seller at any of the above telephone numbers or street address (es) for marketing, advertising, and other business purposes and Seller expressly consents to the same.

18. Notices. Except as otherwise provided herein, all notices, including offers, counteroffers, acceptances, amendments and demands, required or permitted hereunder shall be in writing, signed by the party giving the notice and delivered either:

- A. in person;
- B. by an overnight delivery service, prepaid;
- C. by facsimile transmission (FAX) to the listing Broker and the Seller at their respective FAX telephone numbers identified on the signature page of this Agreement (provided that an original of the notice shall be promptly sent thereafter if so requested by the party receiving the same); or
- D. by the United States Postal Service, postage prepaid, registered or certified return receipt requested.

The parties agree that a faxed signature of a party constitutes an original signature binding upon that party. Notices shall be deemed to be given as of the date and time they are actually received, except for FAX notices which shall be deemed to have been given and received as of the date and time they are transmitted provided that the sending FAX produces a written confirmation showing the correct date and time of the transmission and the telephone number referenced herein to which the notice should have been sent. All notice requirements referenced herein shall be strictly construed. Any notice sent by FAX shall be sent to such other FAX number as the receiving party may from time to time specify by notice to the party sending the FAX.

- 19. **Seller Default.** Seller acknowledges that Broker will be damaged if Seller breaches this Agreement by terminating this Agreement early or otherwise defaulting hereunder. Such damages shall include, without limitation, the cost of advertising and marketing the Property and Broker's lost commission(s). Seller shall be responsible for paying Broker the damages it suffers as a result of Seller's breach. In addition, Seller shall also pay all costs, fees, and charges for removing the listing from any multiple listing service.
- 20. **Governing Law.** This Agreement may be signed in multiple counterparts and shall be governed by and interpreted pursuant to the laws of the State of Georgia.
- 21. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement and the terms and conditions herein may not be amended, modified or waived except by the written agreement of Seller. The failure of the parties to adhere strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such strict adherence.
- 22. **No Imputed Knowledge.** Seller acknowledges and agrees that with regard to any property in which Seller intends to sell, there shall be no knowledge imputed between Broker and Broker's licensees or between the different licensees of Broker. Broker and each of Broker's licensees shall be deemed to have only actual knowledge of such properties.

SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, shall control:

BY SIGNING THIS AGREEMENT, SELLER ACKNOWLEDGES THAT: (1) SELLER HAS READ ALL PROVISIONS AND DISCLOSURES MADE HEREIN; AND (2) SELLER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY.

RECEIPT OF A COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGED BY SELLER.

The above Agreement is hereby accepted, _____ o'clock _____m., on the date of _____.

Broker

Seller's Signature

MLS Office Code

Brokerage Firm License Number

Print or Type Name

Broker's Phone# _____ & FAX# _____

Seller's Signature

By: _____

Broker or Broker's Affiliated Licensee

Print or Type Name

Print or Type Name

Phone # _____ FAX# _____

Agent's Georgia Real Estate License Number

Address: _____

