

# NON-EXCLUSIVE LISTING AGREEMENT

1. **PARTIES:** The parties to this agreement are: \_\_\_\_\_ (Seller) and \_\_\_\_\_ (Broker). In consideration of the services to be rendered by Broker, Seller grants Broker the right to sell the Property under the following terms and conditions.
2. **PROPERTY:** Lot \_\_\_\_\_, Block \_\_\_\_\_, \_\_\_\_\_ Addition, City of \_\_\_\_\_, \_\_\_\_\_ County, Texas, known as \_\_\_\_\_ (Address), or as described on attached exhibit, together with the following items, if any: curtains and rods, draperies and rods, valances, blinds, window shades, screens, shutters, awnings, wall-to-wall carpeting, mirrors fixed in place, ceiling fans, attic fans, mail boxes, television antennae and satellite dish with controls, permanently installed heating and air conditioning units and equipment, window air conditioning units, built-in security and fire detection equipment, lighting and plumbing fixtures, water softener, built-in kitchen equipment, garage door openers with controls, built-in cleaning equipment, all swimming pool equipment, shrubbery, permanently installed outdoor cooking equipment, built-in fireplace screens and all other property owned by Seller and attached to the above described real property except the following property which is not included: \_\_\_\_\_  
All property sold by this contract is called the "Property". The Property  is  is not subject to mandatory membership in an owner's association and its assessments and requirements.
2. **LISTING PRICE:** Seller lists the Property for the gross amount of \$\_\_\_\_\_ (Listing Price) and agrees to sell the Property for the Listing Price or for any other price acceptable to Seller. A sale of the Property may be financed through any one or a combination of the following terms:  an F.H.A. insured loan;  a V.A. guaranteed loan;  a loan under the Texas Veteran's Housing Assistance Program;  a conventional loan;  an assumption of an existing note;  cash;  a note financed by Seller; or through such other terms as Seller may accept. Seller will pay all typical closing costs charged to sellers of residential real property in Texas.
3. **TERM:** This Listing will begin on \_\_\_\_\_, \_\_\_\_\_, (Commencement Date) and end on \_\_\_\_\_, \_\_\_\_\_, (Termination Date). If on the Termination Date there is a pending contract for the sale of the Property in effect between Seller and a buyer introduced to Seller by Broker and the transaction described in the pending contract has not closed, Broker's Fee is earned and will be payable according to paragraph 5. If Seller enters into a binding written contract to sell the Property to anyone other than a buyer represented by Broker, this Listing will terminate.
4. **NON-EXCLUSIVE LISTING:** This is a non-exclusive listing. No commission will be earned under this Listing Agreement unless Seller enters into an agreement to sell the Property to a buyer introduced to Seller by Broker or unless Seller breaches the terms of this agreement by refusing to sell to a buyer introduced to Seller who offers to buy the Property under the terms specified in this agreement. Seller retains the right to (a) market the Property with or without the assistance of a real estate broker; (b) sell the Property to any third party making an acceptable offer to purchase the Property; and (c) enter into listing agreements with other real estate brokers. If Seller enters into an exclusive listing agreement with a third party real estate broker, this agreement will automatically terminate; provided, however, if any buyer introduced to Seller during the term of this agreement enters into an agreement to purchase the Property within 120 days of the date of termination of this Listing Agreement, Seller will pay Broker the commission agreed upon in this agreement.
5. **BROKER'S FEE:**
  - (a) (choose (i) or (ii)):
    - (i) a flat fee of \$\_\_\_\_\_ which Broker may share with any cooperating broker; or
    - (ii) \_\_\_\_\_% of the sales price, of which Broker may share with any cooperating broker.
  - (b) **Earned:** Broker's Fee will be earned when any one of the following events occurs during the term of this Listing: (1) Broker individually or in cooperation with another broker procures a buyer who enters into a contract with Seller to buy the Property; (ii) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price and on terms stated in paragraph 5a or at any other price and on terms acceptable to Seller; (iii) Seller breaches this Listing. Broker may choose to allow other brokers to show the Property under this Listing Agreement. If Broker chooses to allow other brokers to show the Property and an acceptable offer is received, Broker may also choose to compensate the other broker out of the commission paid to Broker under this agreement.
  - (c) **Payable:** Once earned, Broker's Fee will be payable, either during the term of this Listing or after its termination, at the earlier of any one of the following events: (i) the closing and funding of any sale or exchange of the Property; (ii) Seller's refusal to sell the Property in breach of this agreement; (iii) Seller's breach of this Listing; or (iv) at such time as otherwise set forth in this Listing. Broker's Fee will not be payable if a sale of the Property does not close or fund as a result of (i) Seller's failure, without fault of Seller, to deliver a title policy to a buyer; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.
  - (d) **Protection Period:** If within 120 days after the termination of this Listing (the Protection Period) Seller enters into a contract to sell the Property or sells, exchanges or otherwise transfers a legal or equitable interest (excluding a lease with no right to purchase) of the Property to any person whose attention has been called to the Property by Broker, any other broker, or Seller during the term

of this Listing, Seller will pay Broker the Broker's Fee stated in paragraph 5(a), provided Broker, prior to or within five (5) days after the termination of this Listing, has delivered or sent by regular or certified mail to Seller written notice specifying the names of the persons to whose attention has been called to the Property during the term of this Listing. If during the term of the Protection Period such sale, exchange or transfer occurs while the Property is listed exclusively with another Texas licensed real estate broker this paragraph will not apply and Seller will not be obligated to pay Broker's Fee. The term "person" will be broadly construed to include any individual or entity in any capacity.

**6. AGENCY DISCLOSURES:**

(a) **INFORMATION ON AGENCY RELATIONSHIPS:** Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing, A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

(b) **IF THE BROKER REPRESENTS THE OWNER:** The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

(c) **IF THE BROKER REPRESENTS THE BUYER:** The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

(d) **IF THE BROKER ACTS AS AN INTERMEDIARY:** A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act.

A broker who acts as an intermediary in a transaction:

- (i) shall treat all parties honestly;
- (ii) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (iii) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (iv) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

(e) **IF YOU CHOOSE TO HAVE A BROKER REPRESENT YOU:** If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

**7. AGENCY RELATIONSHIP:**

**Broker Represents Buyers Only:** Broker represents a buyer interested in the Property. Broker shall exclusively represent buyers interested in the Property and will not represent Seller.

**Intermediary Relationship Authorized:** Broker has previously represented Seller. Seller authorizes Broker to show the Property to prospective buyers Broker has agreed to represent. If Broker represents a buyer who offers to buy the Property, Seller authorizes Broker to act as an intermediary between the buyer and Seller, to present any offer such buyer may wish to make, and to assist both Seller and buyer in negotiations for the sale of the Property. Broker's compensation shall be paid by Seller as provided in paragraph 5a. If Broker acts as an intermediary, Broker may appoint a licensed associate(s) of Broker to communicate with, carry out instructions of, and provide options and advice to Seller and appoint another licensed associate(s) for the same purposes to a buyer. If Broker is serving as an Intermediary, Broker shall not knowingly during the term of this Listing or after its termination, disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker shall not disclose to Seller any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

If Broker is representing a Buyer, Broker is obligated to disclose to the Buyer any relevant information obtained from the Seller which might influence the decision of the Buyer to offer to purchase the Property, the amount of such offer, or the terms of purchase.

8. **LIMITATION OF BROKER'S RESPONSIBILITIES:** Broker shall have no obligation to (a) list the Property with a multiple listing service; (b) place a for sale sign on the Property; (c) advertise or market the Property; or (d) disseminate information about the Property to other brokers or agents.
9. **SELLER'S DISCLOSURE NOTICE:** Section 5.008 of the Texas Property Code requires a seller of residential real property of not more than one dwelling unit to deliver a Seller's Disclosure Notice to a buyer on or before the effective date of a contract for the sale of the Property. Seller authorizes Broker and Broker's associates to furnish prospective buyers and other brokers with a copy of the attached Seller's Disclosure Notice. Seller represents that the attached Seller's Disclosure Notice was completed to the best of Seller's knowledge and belief and that Seller has disclosed all known material defects and material facts affecting the Property in the attached Seller's Disclosure Notice. Seller agrees to keep this Seller's Disclosure Notice current. Seller shall protect, defend, indemnify and hold harmless Broker, Broker's associates, and any other brokers or their associates of and from any damages, costs, attorney fees or expenses arising from Seller's failure to disclose any material or relevant information or the giving of any incorrect information to Broker, Broker's associates any other brokers or their associates, or prospective buyers.
10. **LIMITATION OF LIABILITY:** Broker and any other broker shall not be responsible in any manner for personal injury to Seller resulting from acts of third-parties or loss or damage of personal or real property due to vandalism, theft, freezing water pipes, or any other damage or loss whatsoever not caused by Broker's negligence. If the Property is or becomes vacant during the term of this Listing, Seller shall notify Seller's casualty insurance company and request a "Vacancy Clause" to cover the Property. Broker shall not be responsible for the security of the Property nor for inspecting the Property on any periodic basis. Seller shall protect, defend, indemnify, and hold harmless Broker, Broker's associates, any other brokers and their associates, of and from any damages, costs, attorneys' fees or expenses whatsoever, arising from acts of third parties or loss or damage of personal or real property due to vandalism, theft, freezing water pipes or any other damage not caused by Broker's negligence
11. **ESCROW AUTHORIZATION:** Seller authorizes any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker the Broker's Fee due under this Listing. Seller authorizes Broker to instruct any closing or escrow agent to collect and disburse all broker fees due under this Listing.
12. **SPECIAL PROVISIONS:**
13. **MEDIATION:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute shall be submitted to mediation before resorting to arbitration or litigation. If the need for mediation arises the parties to the dispute shall choose a mutually acceptable mediator and shall share the cost of mediation equally.
14. **ATTORNEYS' FEES;** If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party shall be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorneys' fees.
15. **OTHER CONTRACT TERMS:** Addenda and other related documents which are part of this Listing are: Seller's Disclosure Notice  Other \_\_\_\_\_. Seller certifies that Seller  is  is not a foreign person. This Listing contains the entire agreement between Seller and Broker and may not be changed except by written agreement. This Listing may not be assigned by either party without the written approval of the other party. This Listing is binding upon the parties, their heirs, may not be assigned by either party without the written approval o the other party. This Listing is binding upon the parties, their heirs, administrators, executors, successors, and permitted assigns. All Sellers executing this Listing shall be jointly and severally liable for the performance of all its terms. The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Listing. If any clause in this Listing is determined to be invalid or unenforceable by a court of law, the remainder of this Listing shall not be affected and all other provisions of this Listing shall remain valid and enforceable to the fullest extent permitted by law.

This agreement is signed in on \_\_\_\_\_. All parties signing acknowledge reading and understanding the agre

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AGREED BETWEEN:

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Broker

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Seller

By: -----

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Seller

Address: -----

Address: -----

Telephone: -----

Telephone: -----