

EXCLUSIVE SELLER LISTING AGREEMENT (ALSO REFERRED TO AS EXCLUSIVE SELLER BROKERAGE AGREEMENT)

2011 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, EARL PILCHER as seller (hereinafter referred to as "Seller" or "Client"), and MAXIMUM ONE GREATER ATLANTA REALTORS as broker and its affiliated licensees (hereinafter collectively referred to as "Broker") do hereby enter into this Agreement, this date of

1. Exclusive Listing Agreement. Seller hereby grants to Broker the exclusive right and privilege as the agent of the Seller to show and offer for sale the property located at Georgia TAXID/PIN # 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. The full legal description of the Property is: [Select A, B, C or D below. The sections not marked shall not be a part of this Agreement.] A. attached as an exhibit hereto; B. identical to the legal description for the property contained in the deed recorded in Deed Book, Page et. seq., County, Georgia records; C. described below: Land Lot(s) of the District, Section/ GMD, Lot, Block, Unit, Phase/Section of Subdivision/Development, Plat Book, Page, et. seq., County, Georgia records. D. described below if Property is a condominium unit and a full unit legal description is to be used: Unit of Condominium ("Condominium"), located in Land Lot of the District of County, Georgia, together with its percentage of undivided interest in the common elements of the Condominium, and its interest in the limited common elements assigned to the unit ("Unit"). The Condominium was created pursuant to the Declaration of Condominium for any Condominium ("Declaration"), recorded in Deed Book, Page, et seq., County, Georgia records ("Declaration"), and shown and delineated on the plat of survey filed in Condominium Plat Book, Page, County, Georgia records, and on the floor plans filed in Condominium Floor Plan Book, Page, County, Georgia records.

3. Broker's Duties to Seller. Broker's sole duties to Seller shall be to: A. make all disclosures required by law; B. 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; C. 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 D. [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.

4. 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 and will refer all inquiries concerning the sale of Property to the Broker during the term of this agreement; C. will make Property available for showing at reasonable times as requested by Broker; 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. must fully comply with all state and federal laws.

5. Marketing.

A. Generally: If Seller desires to limit the manner or scope in which the Property is marketed Seller should check the appropriate box or boxes below. Any box not selected shall not be a part of this Agreement.

- Seller does not wish to have information about the Property displayed on the Internet.
- Seller does not wish to have the address of the Property identified on the Internet, but does wish to have all other information about the Property displayed on the Internet.
- Seller does not wish for third parties to be able to write comments or reviews regarding the listing or display a hyperlink to such reviews on an Internet web site of a broker or affiliated licensee of a broker.

Other than the restrictions referenced above, Broker is authorized to market and advertise Property for sale in any media of Broker's choosing, including the Internet and multiple listing services, and attempt to procure buyers for the Property in cooperation with other real estate brokers and their affiliated licensees. Seller acknowledges that in listing the Property in a multiple listing service, all members of multiple listing services and real estate related third parties will have access to Seller's listing information including images and recordings and the right to use all available technology to create, download, store, supplement and manipulate such listing information to assist Seller in the sale of the Property and for tracking and analyzing real estate transactions. Such images and recordings shall not belong to or be the property of Seller and may not be copied, reproduced or used by Seller or other third parties without the express written permission of the Broker or owner thereof. Seller agrees not to place any advertisements on the Property or to advertise the 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. If the Property is sold or a contract for the sale or exchange of the Property is entered into during the term of this Agreement, the Broker may advertise the Property (including images thereof) in any media of Broker's choosing as being "under contract" while a sale is pending and as being "sold" upon the closing of the Property.

B. Multiple Listing Service(s): Broker agrees to file this listing with the following multiple listing service(s) _____
FMLS AND GAMLS _____ Broker agrees to file this

listing with said Service(s) within 48 hours after Seller signs the same (excepting weekends, federal holidays and postal holidays). Seller acknowledges that the MLS(s) is/are not a party to this Agreement and is/are not responsible for errors or omissions on the part of Seller or Broker. Seller agrees to indemnify Service(s) from and against any and all claims, liabilities, damages or losses arising out of or related to the listing and sale of Property. Seller acknowledges that by virtue of listing the Property in MLS(s), all MLS(s) members and their affiliated licensees, will have access to Seller's listing information for the purpose of assisting Seller in the sale of the Property.

C. Consent of Seller to be Called: If Seller is on a "Do Not Call List," Seller expressly consents to any of the above parties calling Seller for any purpose related to the sale of the Property. Seller further acknowledges and agrees that no MLS(s) member or any affiliated licensee of the MLS(s) member shall have any liability for calling the Seller after the expiration or termination of this Agreement. Such calls are hereby expressly consented to by Seller. This paragraph shall survive past the term of this Agreement.

D. 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.

6. Retainer Fee. In entering into this Agreement Seller has paid Broker a Retainer Fee of \$ _____ which shall be non-refundable except as follows. In the event Seller sells the Property in a transaction in which Broker is paid the full commission referenced herein, the Retainer Fee shall be refunded to Seller by Broker at the closing of the transaction. Otherwise, the retainer fee shall be retained by Broker to partially offset Broker's costs and compensate Broker for Broker's time in providing real estate brokerage services to Seller.

7. Commission.

A. In the event that during the term of this Agreement Seller enters into a contract (including an option contract) for the sale or exchange of the Property, or any portion thereof, with any buyer, Seller agrees to pay Broker at closing (and regardless of whether the closing is during or after the term of this Agreement), the following commission: *[Select one or more of the following sections below. The sections not marked shall not be a part of this Agreement]:*

- FOUR (4)** _____ percent (%) of the sales price;
- \$ **NA** _____;
- (Other) **NA** _____.

In addition, Seller agrees to immediately pay Broker the commission referenced above if during the term of this Agreement any of the following events occur:

1. Seller defaults under any contract to sell or exchange the Property (including an option contract);
2. Without the consent of Broker, Seller and a buyer mutually agree to terminate a contract for the purchase and sale or exchange of the Property (including an option contract); or
3. Seller refuses to accept a lawful, bona fide, written offer to purchase the Property meeting the following terms and conditions at a time when the Property is not otherwise under contract:
 - (a) The purchase price in the offer, after deducting all fees, costs and contributions to be paid by the Seller (other than the real estate brokerage commission to be paid by Seller and the Seller's payment of ad valorem property taxes through the date of closing) is for at least the full listing price set forth herein and is to be paid in cash or cash equivalent at the closing.
 - (b) The offer is not subject to contingencies, conditions precedent, due diligence periods, or required terms other than those set forth herein;

(c) The offer is not subject to Seller warranties or representations other than: (1) those warranties the Seller agrees to provide in any Seller's Property Disclosure Statement the Seller has filled out and made available to prospective buyers for inclusion in any offer, and (2) the Seller warranting to convey good and marketable title (which for all purposes herein shall have the same meaning as set forth in the GAR Purchase and Sale Agreement, Form F20) to the Property at closing by general warranty deed; and

(d) The date of closing in the offer is not less than thirty (30) days nor more than forty-five (45) days from the offer date.

Notwithstanding the above, in the event there are multiple offers to purchase the Property, Seller shall not be in breach of this Agreement if the Seller first gives the prospective buyers a reasonable opportunity (not exceeding 10 days from the date of the first offer) to make their best offer to purchase the Property.

- B. Broker shall share this commission with a cooperating broker, if any, who procures the buyer of Property by paying such cooperating broker at closing THREE (3) percent (%) of the sales price of Property OR \$ NA. In addition, 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 or exchange Property to any buyer who made an offer on, was introduced to, visited, received information on, inquired about, or otherwise learned of the Property during the term of this Agreement, as a result of the efforts of the Broker, 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 90 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. If this Agreement is terminated by Seller without the express, written consent of Broker, the Protected Period shall be the time period referenced above plus the number of days that remained on the term of this Agreement at the time it was terminated early without the express, written consent of Broker. In such event, the Protected Period shall commence on the date this Agreement was terminated early without the express written consent of Broker. 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 immediate family owns or controls, directly or indirectly, more than ten percent (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 commission rights and obligations set forth herein shall survive the termination or expiration of this Agreement.
8. **Seller Default.** In the event Seller defaults under this Agreement, Seller shall, in addition to its other obligations set forth elsewhere herein, reimburse Broker for the out-of-pocket costs and expenses incurred by Broker and Broker's affiliated Licensees in seeking to market and sell the Property. Such costs and expenses shall include without limitation printing and copying charges, mileage at the highest rate allowed by the IRS as a business deduction and expenses to advertise the Property in various media. Seller shall also pay all costs, fees and charges for removing the listing from any multiple listing service. The payment of these costs, fees, charges and expenses by Seller shall not waive or limit Broker's right to assert any other claim, cause of action or suit (hereinafter collectively "Claims") against Seller for a real estate commission(s) and/or other damages and shall not release Seller from such Claims. Notwithstanding the above, the amount of such fees, charges, costs and expenses paid by Seller to Broker hereunder shall be an offset against any Claim of Broker for a real estate commission(s).
9. **Seller's Property Disclosure Statement.** Within 2 days of the date of this Agreement, Seller agrees to provide Broker with a current, fully executed Seller's Property Disclosure Statement. Broker is hereby authorized to distribute the same to prospective buyers interested in Property.
10. **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 the property; the condition of the property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to the 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 the property; any condition(s) existing off the property which may affect the property; the terms, conditions and availability of financing; and the uses and zoning of the 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 acknowledges that Broker 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 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;
 - F. shall not be responsible for insuring that Seller complies with the duties and deadlines contained in any purchase agreement entered into by Seller and that Seller shall be solely responsible for the same; and
 - G. 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) or, if no real estate commission is paid to Broker, than a sum not to exceed one hundred dollars;
 - H. shall be held harmless by Seller from any and all claims, causes of action, or damages arising out of or relating to:
 - 1. inaccurate and/or incomplete information provided by Seller to Broker;
 - 2. earnest money handled by anyone other than Broker; or
 - 3. any injury to persons and/or loss of or damage to property.
 - I. shall have no authority to bind Seller to any contract or agreement.

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 which would conflict with any interests of Seller (except that Broker may represent other buyers, sellers, landlords, and tenants in buying, selling or leasing property).
- E. In the event Seller has unilaterally terminated a Listing Agreement on the Property with a different broker, Seller acknowledges that in addition to Seller's commission obligations to Broker set forth herein, Seller may also owe a real estate commission to the previous broker in certain circumstances.

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, sub-agency, landlord agency, and tenant agency. The agency relationship(s), if any, not offered by Broker is/are the following: DUAL AGENCY

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 the Seller to dual agency has been given voluntarily and the 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 the Seller and one or more of its other affiliated licensees exclusively to represent the prospective buyer.

16. 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. If there is an affiliated licensee of Broker directly assisting Broker in marketing and selling the Property, said licensee shall be an:

[Select all which apply. Any section not selected shall not be a part of this Agreement.]

- Independent contractor of Broker
- Employee of Broker

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

18. **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.
19. **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.
20. **Survival.** The commission rights of Broker and the commission obligations of Seller set forth herein shall survive termination or expiration of this Agreement.
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. **GAR Forms.** The Georgia Association of REALTORS®, Inc. ("GAR") makes certain standard real estate forms available to its members. These GAR forms are frequently provided to the parties in real estate transactions by the REALTORS® with whom they are working. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.
23. **Notices.**
- A. **Communications Regarding Real Estate Transactions.** Client acknowledges that many communications and notices in real estate transactions are of a time sensitive nature and that the failure to be available to receive such notices and communications can have adverse legal, business and financial consequences. During the term of this Agreement, Client agrees to remain reasonably available to receive communications from Broker.
- B. **Notices between Broker and Client Regarding this Agreement.** Client and Broker agree that communications and notices between them regarding the terms of this Agreement shall be in writing, signed by the party giving the notice, and may be delivered in person or to any address, e-mail address and/or facsimile number to the person to whom the communication or notice is being given specifically set forth in this Agreement. It is the intent of the parties that those means of transmitting notices for which a party has not provided an address or number shall not be used for receiving notices and communications. For example, if a party has not provided an e-mail address in this Agreement, it shall mean that the party is not accepting notices or communications sent by this means.
- C. **Client Contact Information.**

The contact information of Client(s) is set forth below:

_____	Business Telephone: _____
Client Name	
_____	Home Telephone: _____
Address for Receiving Notice	
_____	Cell Phone: _____
_____	Facsimile Number: _____
_____	E-mail Address: _____

Client Name	Business Telephone: _____
_____	Home Telephone: _____
Address for Receiving Notice	
_____	Cell Phone: _____
_____	Facsimile Number: _____
_____	E-mail Address: _____

Client agrees to immediately update Broker of any changes to the above referenced information.

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

Additional Special Stipulations are or are not attached.

BY SIGNING THIS AGREEMENT, SELLER ACKNOWLEDGES THAT: (1) SELLER HAS READ ALL PROVISIONS AND DISCLOSURES MADE HEREIN; (2) SELLER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY; AND (3) SELLER IS NOT SUBJECT TO A CURRENT LISTING AGREEMENT WITH ANY OTHER BROKER.

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 _____.

MAXIMUM ONE GREATER ATLANTA REALTORS

Broker

Seller's Signature

Address: **4451 S ATLANTA RD STE 102**

Print or Type Name

ATLANTA, GA 30080

Seller's Signature

MXGR01

H-62825

MLS Office Code

Brokerage Firm License Number

Print or Type Name

Broker's Phone# **404-693-1255** & FAX# **1-888-434-6109**

By: _____

Broker or Broker's Affiliated Licensee

EARL PILCHER

Print or Type Name

142664

Agent's Georgia Real Estate License Number

Email Address: **earl@earlpilcher.com**

Member of: **CHEROKEE ASSOCIATION** of REALTORS®