

EXCLUSIVE LISTING AGREEMENT FOR SALE OR LEASE OF REAL PROPERTY

THIS EXCLUSIVE LISTING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 20____. (the "Effective Date"), by and between _____, a(n) Alabama general partnership (the "Owner"), and netUSrealestate, Inc., an Alabama Corporation (the "Broker").

- 1) **Engagement.** Owner appoints Broker as Owner's exclusive real estate broker and agent and grants to Broker the sole, exclusive, and irrevocable right and privilege to procure purchasers and tenants for and on behalf of Owner for the sale or lease of the real property described in Paragraph 2 (the "Property"). As used in this Agreement, the word "purchaser" means any person or entity who is a potential transferee of the Property; the word "tenant" means any potential occupant for the Property; the words "sale," "sell," "sold," or "purchase" include a sale, exchange or other transfer, conveyance or acquisition of the Property of any kind; and the words "lease" or "leased" include a lease or any other occupancy arrangement of the Property.
- 2) **Property.** The Property is the real property located at _____ (the "Property") and consisting of _____. A legal description of the Property may be attached as "Exhibit A" to this Agreement. As used in this Agreement, the word "Property" means all of the Property, any portion, part, unit, or parcel of the Property, or any interest of Owner in the Property.
- 3) **Term of Agreement.** The term of this Agreement is a period of ____ () year(s) (the "Term"), beginning on the Effective Date and ending on the date being ____ () years from the Effective Date (the "Expiration Date").
- 4) **Listing Terms.** (a) **Sale Listing Terms.** The initial price at which the Property will be listed for sale is _____ (the "Listing Price"). All other terms and conditions that will apply to the sale of the property, if any, are set forth on "Exhibit B" attached hereto. The Listing Price and all other terms and conditions applicable to a sale of the Property are collectively referred to in this Agreement as the "Sale Listing Terms". The Owner may change the Sale Listing Terms at any time by giving written notice to Broker. (b) **Lease Listing Terms.** The initial rental at which the Property shall be listed for lease is _____. All other terms and conditions that will apply to the lease of the Property, if any, are set forth on "Exhibit C" attached hereto. The Listing Rental and all other terms and conditions applicable to a lease of the Property are collectively referred to in this Agreement as the "Lease Listing Terms". The Owner may change the Lease Listing Terms at any time by giving written notice to Broker.
- 5) **Commission.** In consideration of the services to be rendered by Broker, Owner will pay to Broker a real estate commission (the "Commission") as follows:
 - (a) **Sale.** For each sale of the Property: (i) _____ percent () of the gross rents to be paid under the lease during the initial term if there is no Cooperating Broker involved in the transaction; or (B) _____ percent () of the gross consideration paid or transferred in connection with a sale of the Property if there is one or more Cooperating Brokers involved in the transaction (the "Sale Commission"). Owner will pay the Commission to Broker in cash or by cashier's check at the closing of the sale of the Property. As used in this Agreement, the word "consideration" includes cash, cash equivalents, the fair market value of any property, whether tangible or intangible, and any indebtedness assumed with respect to the Property or subject to which the Property is transferred.
 - (b) **Lease.** (i) **Initial Term.** For each lease of the Property: (A) _____ percent () of the gross rents to be paid under the lease during the initial term if there is no Cooperating Broker involved in the transaction; or (B) _____ percent () of the gross rents to be paid under the lease during the initial term if there is one or more Cooperating Brokers involved in the transaction (the "Leasing Commission"). Owner will pay the Leasing Commission to Broker in cash or by cashier's check within five (5) calendar days following the date of commencement of the initial lease term.

(ii) **Renewal, Extension, Expansion.** For each renewal, extension, or expansion of a lease of the Property, Owner will pay to Broker: (A) _____ percent () of the gross rents to be paid under the renewed, extended, or expanded lease if there is no Cooperating Broker involved in the transaction; or (B) _____ percent () of the gross rents to be paid

under the renewed, extended, or expanded lease if there is one or more Cooperating Brokers involved in the transaction (the "Renewal Commission"). Owner will pay the Renewal Commission to Broker not later than five (5) days following the date of commencement of any renewal or extension term or the effective date of any expansion under the lease.

(iii) Sale to Tenant. In the event of a sale of the Property to a tenant under any lease of the Property for which Owner was obligated to pay a Leasing Commission to Broker hereunder, Owner shall pay the Sale Commission to Broker as provided in Part (a) of this Paragraph.

6) Right to Receive Compensation.

(a) Owner will be obligated to pay the Commission to Broker in the event of any of the following, notwithstanding anything to the contrary in this Agreement: (i) the Property is sold or leased during the Term or an agreement to sell the Property is entered into during the Term and the sale is completed following the Term; or (ii) within one (1) year after the Expiration Date or date of earlier termination of this Agreement the Property is sold or leased to any Registered Party or an agreement to sell the Property is entered into with any Registered Party during such one (1) year period and the sale is completed following such period or (iii) any lease for which Owner was obligated to pay a Leasing Commission to Broker hereunder is renewed, extended, or expanded at any time, whether during or following the Term; or (iv) a tenant under any lease of the property for which Owner was obligated to pay a Leasing Commission to Broker hereunder subsequently purchases the Property at anytime, whether during or following the Term; or (v) an agreement to sell the Property is entered into during the Term and the seller there under subsequently refuses to consummate the sale of the Property pursuant to the terms of the agreement without any material default on the part of the purchaser there under; or (vi) Broker procures a purchaser or tenant during the Term who is ready, willing and able to purchase or lease the Property upon the Sale Listing Terms or the Lease Listing Terms; or (vii) the Property is withdrawn from the market or made unmarketable during the Term, or Broker is otherwise prevented or precluded from performing under this Agreement.

(b) If Broker is entitled to a Commission pursuant to Paragraph 6(a)(v) even though no sale of the Property is consummated, the Commission will be calculated based upon the gross consideration that Owner would have received if the sale of the Property had been consummated. If Broker is entitled to a Commission pursuant to Paragraphs 6(a)(vi) the Commission will be calculated based upon the Listing Price or the Listing Rental, as the case may be. If Broker is entitled to a Commission pursuant to Paragraph 6(a)(vii) the Commission will be calculated based upon the Listing Price. In either case, Owner shall pay such Commission to Broker in cash or by cashier's check within ten (10) calendar days following delivery of written notice by Broker to Owner requesting payment thereof.

(c) If the completion of a sale of the Property pursuant to a duly executed agreement with a purchaser is prevented by a default of the purchaser there under, Owner will pay to Broker an amount equal to one-half (1/2) of any damages or other monetary compensation collected from the purchaser by suit or otherwise as a consequence of the purchaser's default, including liquidated damages provided for under the purchase agreement, if and when such damages or other monetary compensation are collected; provided, however, that the amount due Broker under this Paragraph 6(c) will not exceed the Commission set forth in this Agreement plus all pre-approved expenses incurred by Broker on Owner's behalf. In the event specific performance of the purchase agreement is subsequently obtained either during or after the Term of this Agreement, Owner will pay to Broker the Commission as provided in this Agreement.

7) Broker's Obligations. Broker will use its efforts to solicit, seek, and obtain offers to purchase or lease the Property from bonafide, qualified, responsible parties. Broker, at Broker's sole cost and expense, will (a) display "For Sale" and "For Lease" signs on the Property; (b) disseminate information regarding the property to other brokers and to potential purchasers and tenants; (c) list the Property in any multiple listing service in which Broker participates; and (d) advertise and market the Property by all such means as Broker deems reasonable and appropriate. Upon Owner's written request, Broker will provide to Owner a description of Broker's advertising and marketing efforts and copies of all advertising and marketing materials. Broker will present all written offers to purchase or lease the Property to Owner, and will provide Owner with such other information concerning a potential purchaser or tenant which Owner reasonably requests, to the extent such information is reasonably available to Broker and to the extent Broker is not prevented from disclosing such information by reason of an obligation of confidentiality to the prospective purchaser or tenant. Following the sale or lease of the Property, Broker will have the authority to install "Sold" or "Leased" signs on the Property for a period of up to ninety (90) days. A provision granting this authority to Broker will be inserted into any purchase agreement for the Property and will provide that the provision will survive the closing.

8) Owner's Obligations. Owner will cooperate with Broker in successfully marketing the Property, including, without limitation, consulting with Broker from time to time regarding marketing matters and supplying such information to Broker regarding the Property as Broker may reasonably request from time to time.

9) Entry Upon Property. Owner authorizes Broker to enter the Property at any reasonable time for the purpose of showing the Property to prospective purchasers and tenants; provided, however, that, if Owner requests, Broker will make best efforts to give Owner twenty-four (24) hours notice prior to entering the Property to prospective purchasers and tenants.

- 10) Reimbursement of Expenses. Owner will reimburse Broker for all customary and pre-approved expenses incurred by Broker on behalf of Owner in connection with Broker's services rendered hereunder within ten (10) calendar days following Broker's delivery of an itemized statement of such expenses to Owner.
- 11) Deposits. Owner and Broker agree that any and all deposits, earnest money, or other sums (a "Deposit") tendered in connection with a potential sale or lease of the Property will be deposited with a third party escrow agent selected by Broker unless Owner and Broker agree otherwise. In the event of a forfeiture of any Deposit or any portion thereof to Owner by a potential purchaser or tenant or in the event that any Deposit or any portion thereof becomes nonrefundable to a potential purchaser or tenant for any reason (the "Forfeited Deposit"), the Forfeited Deposit will first be applied toward payment of Broker's expenses incurred in connection with the transaction, an itemized statement of which will be provided to Owner. The remainder of the Forfeited Deposit, if any, shall be equally divided between Broker and Owner with Broker's share not to exceed the Commission that Broker would otherwise have been entitled to had the proposed sale or lease of the Property been completed.
- 12) Registered Party. The term "Registered Party" means any person, corporation, partnership, limited partnership, limited liability company, estate, trust, or other entity which has been identified by Broker as a potential purchaser or tenant of the Property and who Broker has contacted, either verbally or in writing, in its efforts to solicit the Property for sale or lease prior to the Expiration Date or date of earlier termination of this Agreement, and also includes, if the Registered Party is an individual, any family-member or legal representative of such Registered Party or any entity in which the Registered Party is an officer, director, stockholder, partner, manager, member, or employee or owns any beneficial interest, and, if the Registered Party is an entity, any officer, director, stockholder, partner, manager, member, or other beneficial owner of such Registered Party; any person or entity that controls, is controlled by, or is under common control with such Registered Party; any successor, assign, or legal representative of such Registered Party; or any other entity in which such Registered Party or any officer, director, stockholder, partner, manager, member, or other beneficial owner of such Registered Party owns a beneficial interest. Prior to the Expiration Date or date of earlier termination of this Agreement, and such other times as may be agreed upon by Owner and Broker, Broker will give written notice to Owner setting forth each Registered Party.
- 13) Broker's Rights Exclusive. This Agreement is an exclusive listing of the Property with Broker. While this Agreement is in force and effect, Owner (a) will not list the Property with, or grant any right to seek and solicit offers to purchase or lease the Property to any other broker, realtor, or agent; and (b) will inform Broker of all oral or written contacts or inquiries regarding the Property received by Owner from any other broker, realtor, or agent, or from any prospective purchaser or tenant, and will direct all such inquiries to Broker.
- 14) Cooperating Brokers. Broker shall have the right to engage any other realtor, broker, or agent under or in connection with this Agreement (a "Cooperating Broker") without the prior consent of Owner. In any event, however, the amount of Commission to be paid hereunder shall constitute the entire amount which, in the absence of an express written agreement of Owner to the contrary, Owner shall be obligated to pay in connection with the sale of the Property. Absent any such written agreement, Broker agrees to indemnify and hold Owner harmless from any liability to any Cooperating Broker claiming compensation by, through, or under Broker.
- 15) Participation by Broker or Affiliates. Broker and/or one or more of its managers, members, employees, or agents and/or one or more corporations, limited liability companies, or partnerships in which a manager, member, employee, or agent of Broker is a shareholder, director, officer, manager, member, partner, agent, or employee (a "Broker Affiliate") may become a participant in a transaction involving the Property as a purchaser, developer, or otherwise. The occurrence of such an event will not preclude Broker from receiving its full Commission and all other amounts due Broker under this Agreement and will not preclude the Broker Affiliate from receiving its full compensation, if any, by reason of its participation in the transaction. By executing this Agreement, Owner consents to the participation of any one or more Broker Affiliates in any transaction involving the Property and waives any objection to participation by any Broker Affiliate in a transaction involving the Property and waives any objection to participation by any Broker Affiliate in a transaction involving the Property.
- 16) Owner's Representations.
 - (a) Ownership and Authorization. Owner represents, warrants, and covenants to Broker: (i) that Owner is the sole owner of fee simple title to the Property and that no party other than Owner owns any beneficial interest in the Property; (ii) that Owner is fully authorized to enter into this Agreement and any purchase or lease agreement for the Property, to convey or lease the Property, and to otherwise perform its obligations hereunder and there under; (iii) that the person(s) executing this Agreement on behalf of Owner are duly authorized by Owner to enter into, execute, deliver, perform, and consummate this Agreement on behalf of Owner; (iv) that this Agreement and any purchase or lease agreement for the Property, when executed, will constitute a valid and binding obligation of Owner, enforceable in accordance with its terms; and (v) that neither the execution of this Agreement nor any purchase or lease agreement for the Property will result in a breach of or constitute a default under any contract or other agreement to which Owner is a party.

(b) Conveyance. Owner represents, warrants, and covenants to Broker that, if the Property is sold, merchantable title to the Property will be conveyed by warranty deed, that taxes and rents (if any) will be prorated through the date of conveyance of title, and that all public improvements assessments, mortgages, liens, and any other encumbrances against the Property will be paid in full prior to the conveyance unless otherwise agreed in writing.

(c) Outstanding Contracts. Owner represents, warrants and covenants to Broker that, except as described on 'Exhibit D' attached hereto, there are no outstanding contracts with respect to the Property (including, without limitation, options, rights of first refusal, leases, timber deed, etc.) affecting Owner's ability to convey or lease the Property or the interest to be conveyed.

(d) Defects. Owner represents, warrants and covenants to Broker that, except as disclosed on "Exhibit E" attached hereto, to the best of Owner's knowledge and belief there are no material defects in the Property; there are no hazardous materials or substances or underground storage tanks in, on, or under the Property; the Property and all improvements thereon are in compliance with all applicable federal, state, and local laws statutes, codes, regulations, rules, ordinances and other governmental standards and all restrictive covenants and other requirements applicable to the Property; and no improvements or alterations to the Property have been made without appropriate permits.

(e) Actions. Owner represents, warrants and covenants to Broker that, except as disclosed on "Exhibit F" attached hereto, there are no actions, suits, claims, or proceedings, including, without limitation, bankruptcy or condemnation proceedings, pending or threatened against the Property or Owner which would adversely affect Owner's title to the Property or otherwise impair, hinder, defeat, or prevent Owner from consummating a sale or lease of the Property, or impair, hinder, defeat, or prevent Owner's payment of the Commission to Broker in connection therewith.

The accuracy and truthfulness of the foregoing representations, warranties, and covenants of Owner and of any other information regarding the Property or Owner supplied by Owner to broker in any manner constitute a material inducement to Broker to enter into this Agreement. Owner agrees to indemnify Broker and hold Broker harmless from and against any and all claims, actions, suits, liabilities, damages, losses, costs, expenses, and judgments, including, without limitation, attorney's fees and costs of litigation, and will promptly reimburse Broker for any all costs, damages, losses, or expenses incurred or suffered by Broker, arising from or directly or indirectly relating to Owner's representations, warranties, and covenants contained in this Agreement, any inaccurate or incomplete information provided by Owner to Broker in this Agreement or in any other manner, or any material information that Owner fails disclose to Broker.

- 17) Scope of Broker's Authority and Responsibility. Broker will assist Owner in marketing the Property as provided in this Agreement and in negotiation the terms and conditions of sale with potential purchasers. Broker will not have the authority to bind Owner to any contract or purchase agreement. Broker will not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax engineering, construction, hazardous materials, development, or other issues. Except for confidential information regarding Owner's business or financial condition, any property coming into Broker's possession which belongs to Owner, and the negotiation of the terms of a purchase agreement between Owner and a prospective purchaser, Owner and Broker agree that their relationship is arms' length and is neither confidential nor fiduciary in nature.
- 18) Limitation of Liability. Broker's total liability for any act or omission whatsoever relating to this Agreement or the performance of its obligations under this Agreement shall be limited in all events to the greater of \$10,000 or the amount of compensation actually received by Broker pursuant to this Agreement.
- 19) Lien for Compensation. Owner hereby acknowledges that Alabama law grants to Broker the right to impose and enforce a lien on the Property in the event that Owner fails to pay to Broker compensation earned by the Broker hereunder.
- 20) Attorney's Fees. In the event that Broker takes action to collect the compensation provided for in this Agreement or to otherwise enforce any of this rights under this Agreement, or if Broker successfully defends any action brought by Owner against Broker relating to this Agreement, Owner shall pay all costs and expenses of such action or such defense, including, without limitation, attorney's fees and costs of litigation.
- 21) Limited Consensual Dual Agency. Owner acknowledges and agrees that under certain circumstances, it may be necessary and appropriate for Broker to represent buyers or tenants, such as, for example, when a buyer or tenant with whom Broker has a buyer or tenant representation agreement indicates an interest in the Property. Owner authorizes Broker to act as a limited consensual dual agent after obtaining the prior written, informed consent of Owner and of the buyer or tenant Broker represents, and acknowledges and agrees that limitations will arise on Broker's ability to represent either party fully or exclusively.

22) General Provisions.

- (a) Exhibits. Each and every Exhibit referred to or otherwise mentioned in this Agreement is and shall be construed to be incorporated in and made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.
- (b) Benefit. This Agreement shall insure to the benefit of and be binding upon and enforceable by Owner and Broker, and their respective successors, assigns, heirs, and legal representatives.
- (c) Notice. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed to have been delivered when actually received by Owner or Broker, or when (i) personally delivered, (ii) delivered to a nationally recognized overnight delivery service for next day deliver, (iii) deposited in good faith in the United States certified mail, return receipt requested and postage prepaid, or (iv) transmitted by facsimile, with receipt confirmed, Owner or to Broker as follows:

Owner:

Phone:
Facsimile:

Broker:

netUSrealestate, Inc..
Attn: Joseph W. Mishkin
105 North Conception Street
Mobile, AL 36602
Phone: (251) 344-2000
Facsimile: (251) 344-4144

- (d) Governing Law; Venue. This Agreement shall be interpreted, construed and governed according to the laws of the State of Alabama. Any proceedings brought hereon shall be brought in the federal or state courts located in Mobile County, Alabama.
- (e) Counterparts. This Agreement may be executed in any number of counterparts, which together shall constitute a single fully executed Agreement. A facsimile signature of any party shall be considered to have the same binding legal effect as an original signature.
- (f) Entire Agreement. This Agreement contains the sole and entire agreement and understanding between Owner and Broker with respect to the matters addressed herein and supersedes any and all prior and contemporaneous discussions and agreements between Owner and Broker, whether oral or written, with respect to such matters. This Agreement may not be amended, modified, or expanded except by a writing executed by Owner and Broker.
- (g) Survival. All obligations of Owner to pay any compensation or other amounts to Broker and all indemnity obligations of Owner under this Agreement shall survive the expiration of earlier termination of this Agreement.
- (h) Time of Performance. Time is of the essence in the performance of all obligations under this Agreement.
 - (i) Captions; Construction. The captions and headings used in this Agreement are inserted only for convenience and in no way define, describe, extend, or limit the scope of the particular provisions to which they refer, or the meaning or intent of this Agreement. The words "herein," "hereof," "hereunder," and other similar compounds of the word "here" as used in this Agreement shall refer to the entire Agreement and not to any particular provision or paragraph.
- (j) Severability. If any term or provision contained in this Agreement shall be invalid or unenforceable to any extent, such term or provision shall be modified to the least extent possible to cause it to be valid and enforceable, and the remainder of the terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- (k) In connection with this agreement, it is understood, acknowledged, and agreed by (Client, Purchaser, etc.) that (Broker) is providing only the real estate services hereinabove described. The decision by (Client, Purchaser, etc.) to enter into a transaction is necessarily a business judgment of the (Client, Purchaser, etc.) to be based upon information supplied by others and not by the (Broker). To assist the (Client, Purchaser, etc.) in making its business decision, at the request of (Client, Purchaser, etc.) the (Broker) may arrange for the gathering of information and the providing of professional services to (Client, Purchaser, etc.), including, but not limited to, title search, legal, surveying, environmental, engineering, structural, architectural, and financing services, but (Broker) shall in no way be considered a guarantor of the competency or efficiency of such professional services for their accuracy or competent performance, and (Broker)

shall have no liability to (Client, Purchaser, etc.) or any other party for any inaccuracies in information or deficiencies in performance of services.

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. PLEASE REVIEW THIS AGREEMENT CAREFULLY. IF YOU DO NOT UNDERSTAND THIS AGREEMENT PLEASE CONSULT AN ATTORNEY.

Owner hereby acknowledges that is has read this Agreement, that it understands and agrees to comply with all of the terms and provisions of this Agreement, and that it has received and executed copy of this Agreement.

OWNER:

By: _____

Printed Name: _____

As its _____

BROKER:

netUSrealestate, Inc.

Agent: _____

Printed Name: _____

By: _____

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

Owner's Initials _____

Broker's Initials _____

Exhibit B

SALE LISTING TERMS

1. Deposit. Earnest money deposit required \$ _____

2. Owner Financing. No. All Cash Yes.

If Yes: Down Payment _____
 Interest Rate _____
 Number of Years _____

3. Other Listing Terms. [Please list below or state "None", if none]

Owner's Initials _____

Broker's Initials _____

Exhibit C

LEASE LISTING TERMS

Lease pricing and terms to be determined by Owner.

Owner's Initials _____

Broker's Initials _____

Exhibit D

OUTSTANDING CONTRACTS

Owner's Initials _____

Broker's Initials _____

Exhibit E

DEFECTS IN PROPERTY

Owner's Initials _____

Broker's Initials _____

105 North Conception Street • Mobile, AL 36602
Phone: 251-344-2000 • Fax: 251-344-4144
www.netusrealestate.com

Exhibit F

ACTIONS

Owner's Initials _____

Broker's Initials _____