

**EXCLUSIVE LISTING AGREEMENT TO MARKET
RESIDENTIAL PROPERTY**

Fax to 214-570-8864

This Listing Agreement (**Contract**) is between _____
(**Seller**) and ListSmartTexas, Inc., a Texas corporation (**Broker**) and provides that, in
consideration for the covenants contained herein, Seller hereby appoints Broker as
Seller's exclusive real estate broker limited to those obligations described below.

1. **PROPERTY**: Seller appoints Broker as Seller's exclusive real estate broker for the
price described below, for a term (**Term**) beginning the _____ day of _____,
200__ and terminating at 11:59 P.M. the _____ day of _____, 200__
(**Termination Date**). Subject to the following provisions, the Term shall not exceed 180
days.

Upon full execution of a contract for sale and purchase of the Property (**Sales
Agreement**), all rights and obligations of this Contract will automatically extend through
the date of the actual closing and funding of the Sales Agreement. Seller certifies and
represents that Seller is the legal and equitable title holder and entitled to convey the
Property and all improvements, and that unless otherwise provided herein, Seller has
received no notices of foreclosure, Seller has not filed and is not contemplating
bankruptcy, Seller shall continue to timely pay all debts relating to the Property during
the Term, and there are no material conditions or Property defects.

PROPERTY ADDRESS:

_____ CITY _____
COUNTY _____ STATE _____

FINANCING TERMS: NEW MORTGAGE _____ SELLER FINANCING
OFFERED _____ FHA _____ VA _____ OTHER FINANCING _____

LEGAL DESCRIPTION OF
PROPERTY: _____

The full legal description of the Property is the same as recorded with the Clerk of the
County in which the property is located and is made a part of this Contract by reference.

2. **PERSONAL PROPERTY**: Seller agrees to offer for sale through the services
provided by Broker the Property, fixtures and all improvements thereon. All personal
property to be conveyed at the time of sale shall be listed by Seller in the Sales
Agreement entered into between Seller and Buyer and shall be transferred free of any
liens.

3. **LISTING PRICE:** The Property and all improvements are offered for sale at a selling price of \$ _____. Seller is solely responsible for determining the appropriate listing price.

4. **SELLER'S OBLIGATIONS & BROKER COMPENSATION:** The Property and all improvements thereon are offered for sale at the listing price. Seller reserves the right to amend the Listing Price. Any changes to the listing price will not be effective until submitted to Broker in writing, signed by Seller, and submitted to the MLS by Broker. Broker shall make modifications and changes in the MLS only pursuant to the MLS rules. Seller agrees to make the Property available to prospective Buyer and MLS Members as well as such parties' lenders, appraisers, surveyors, decorators, contractors and agents, at all reasonable hours during the term of this Contract. Seller authorizes the use of a lock-box or key-box, as well as showing and appointment third-party service providers.

4A. Seller authorizes Broker to make an offer of cooperation to all participating brokers in the MLS. Seller authorizes Broker to make an offer of compensation equal to the cooperating commission to all participating Brokers in the MLS who are acting solely as a Buyer's Broker or Transaction Broker (**Cooperating Broker**). Any changes to the cooperating commission will not be effective until submitted to Broker in writing, signed by Seller, and submitted to the MLS by Broker.

4B. Other than the non-refundable \$499.00 fee (**Listing Fee**) Seller agrees to pay Broker upon execution of this Contract, Seller is only required to pay a commission of _____(%) percent [(3%) if left blank] (**Cooperating Commission**) to a licensed Cooperating Broker. Seller must pay the Cooperating Commission if, during the term of this Contract (as same may be automatically extended as provided in Section 1) or the protection period, or within 60 days after this Contract expires, Seller transfers the Property to a buyer introduced to the Property by a Cooperating Broker. The term "*buyer*" is broadly construed to include any individual or entity in any capacity affiliated with the original buyer, and the term "*transfer*" means any type (or portion) of transfer or conveyance of a legal or equitable interest in the Property, including a lease and / or an option to purchase. Upon the closing and funding of the transfer of the Property the Cooperating Commission will be paid to Cooperating Broker.

4C. Seller must pay the Cooperating Commission if, within 60 days after this Contract expires, Seller 1) enters into a Sales Agreement, or 2) transfers a legal or equitable interest (including a lease) in the Property, to any buyer shown the Property by Cooperating Broker during the term of the Contract. If such agreement or transfer occurs while the Property is listed exclusively with another licensed real estate broker, the provision of this sub-paragraph will not apply. Should Seller default in the performance of a Sales Agreement signed by Seller and a prospective buyer, Seller must pay the Cooperating Commission as if the sale of the Property had been consummated, and Seller shall pay all expenses,

including reasonable attorneys fees, incurred in connection with such default or the enforcement of this Contract. Broker will retain the Listing Fee in all circumstances, as consideration for marketing the Property through the MLS.

Under this Contract, the Seller can sell the Property to any buyer not procured, represented or referred by a Cooperating Broker, in which case no Cooperating Commission is due.

Notice: The amount or rate of the real estate commission is not fixed by law. They are set by each Broker/REALTOR® individually and may be negotiable between the Seller and Broker/REALTOR®.

5. SELLER'S REQUIREMENTS: Seller shall provide Broker with all the Property information requested and represents that the information is true and accurate to the best of Seller's knowledge, after diligent inquiry. Seller is responsible for all inaccuracies contained in the information provided to Broker and is responsible for any fines assessed by the MLS against Broker for any MLS infractions caused by Seller as stated below. Seller understands that Broker does not conduct any investigation of the Property to verify the information provided by Seller and is not responsible for the accuracy of the information. Broker shall input the Property information with the local MLS in accordance with local MLS rules and regulations. Broker shall complete a verification form setting forth all of the information provided by Seller and as input in the MLS. Seller agrees to promptly review, verify, sign and return the form.

5A. Seller agrees to notify Broker in writing within 48 hours in the event of any of the following:

- Seller enters into a Sales Agreement
- Seller wishes to change the Listing Price or Cooperating Commission.
- Seller decides not to sell the Property
- Closing date or settlement

5B. Seller, upon entering into a Sales Agreement with a buyer, agrees to notify Broker, within 48 hours, of the fact that Property is under contract, and will advise Broker of the name and phone number of the settlement agent or attorney and provide a complete fully executed copy of the Sales Agreement and all addenda thereto and modifications thereof. Failure to do so may result in a fine by the MLS to Broker, which will be charged to the Seller collectable at closing and/or through judicial action at the option of Broker.

· Upon the sale of the Property, Seller agrees to deliver to Broker, the following documents or information:

- Copy of signed HUD-1 settlement statement or closing statement
- Copy of signed Sales Agreement including all addenda and amendments, if any, and written verification by the escrow agent that all require deposit(s) have been paid.
- Seller's new address

Seller may not terminate this Contract while the Property is under contract. If this Contract expires while the property is under contract Seller must comply with the above.

5C. Seller may not: Advertise the Property at a price that is lower than the Listing Price; or use the Broker's name or logo in any advertisement placed independently by Seller.

6. **LISTING FEE:** Seller agrees to pay at the time of entering into this Contract and in the manner provided herein a non-refundable listing fee of \$499.00 for the initial term of this Contract. Should a Cooperating Broker procure a buyer who is ready, able and willing to purchase the Property for the Listing Price identified in paragraph #3 of this Contract, then a sale and transfer to such buyer must occur. The listing fee charged is for placing the initial information into the MLS. Subject to Section 5 there are no other fees charged for subsequent changes made to the information provided to the MLS or cancellation of the listing. Once this Contract is signed the listing fee is non-refundable, however if MLS service is cancelled by Seller prior to the listing being activated in the MLS a \$75.00 administration charge will apply and the balance of the listing fee will be refunded to Seller.

7. **BROKER'S SERVICES:** The Broker's services are strictly limited to the following:

- List the Property on the Multiple Listing Service (MLS), pursuant to the terms of this Agreement, up to a maximum of 6 months.
- Adhere to the provisions of Federal laws, Texas statutes and regulations, including the Texas Real Estate License Act and the Rules of the Texas Real Estate Commission.

8. **BROKER SHALL NOT BE AN ESCROWEE:** Other than the listing fee paid by Seller for the Broker's services, Seller shall not tender to Broker or any agent employed by Broker, at any time, any money for deposit or documents to hold on Seller's or Buyer's behalf. Broker's employees are expressly prohibited from accepting any money or documents from Seller. Seller shall not execute a Sales Agreement that stipulates or requires Broker to hold earnest money or a documentary possession escrow.

9. **SELLER'S MANDATORY DISCLOSURES AND ADDITIONAL NOTICES:** Seller understands and agrees that this Contract will not be a binding agreement until Broker accepts it by signing below. Broker reserves the right to refuse to accept any listing contract submitted in Broker's sole discretion by returning the Contract and the Seller's check or crediting Seller's credit card within 48 hours of receipt of the signed Contract by Broker.

- A. Owner acknowledges receipt of the TREC Information about Broker's Services Form prior to signing this Contract.
- B. If the Property was built before 1978, federal law requires that before a buyer is obligated under a Sales Agreement, the Seller shall:

1. provide the buyer with a lead hazard information pamphlet (as prescribed by EPA);
2. disclose the presence of any known lead base paint or hazards (including providing the buyer with any lead hazard evaluation report available to Seller);
3. permit the buyer to conduct a risk assessment or inspection for the presence of lead base paint hazards. A contract for the sale of Property built before 1978 must contain a statutorily prescribed Lead Warning Statement to the buyer.

C. **SELLER'S PROPERTY DISCLOSURE STATEMENT:** Before Broker lists the Property, Seller will provide Broker with a current, fully executed Seller's Property Disclosure Statement. Seller is solely responsible for providing copies of this form to prospective buyers but a copy will be available on MLS for agents to retrieve when necessary. This also includes Sellers who may be exempt from the Real Estate Disclosure Law. Seller will note on these forms all material defects. A material defect is a problem or condition that:

- Is a possible danger to those living on the Property, or
- Has a significant, adverse effect on the value of the Property, or
- Is hidden, or otherwise not easily discoverable

If the Seller fails to provide these reports and disclose known material defects and/or environmental hazards:

- Seller will not hold Broker responsible in any way
- Seller will protect Broker from any claims, lawsuits, and actions that result
- Seller will pay all of Broker's costs that result. This includes attorney's fees and court ordered payments or settlements
- Broker may cancel the listing with no refund due Seller

The Residential Lead-Based Paint Hazard Reduction Act says that any seller of property built before 1978 must give buyer and EPA pamphlet entitled PROTECT YOUR FAMILY FROM LEAD IN THE HOME. Seller assumes full responsibility for providing this to buyers. A copy is available for download under seller's tools.

- D. Fair Housing Laws require the Property to be shown and made available for sale to all persons without regard to race, color, religion, national origin, sex, disability or familial status. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, sexual orientation or age).
- E. Broker cannot give legal advice. **READ THIS CONTRACT CAREFULLY.** If you do not understand the effect of this Contract, consult an attorney **BEFORE** signing.

10. REPRESENTATIONS: Seller represents, warrants and agrees as follows: Seller understands that Seller must comply with all federal, state and local laws concerning fair housing. Seller acknowledges that federal, state, and local laws prohibit discrimination in the sale of property based on race, color, religion, sex, disability, familial status, or national origin. Seller cannot instruct Broker or any person acting as Seller's agent to convey on behalf of Seller any limitations in the sale of the Property based upon any of the foregoing as Broker is also bound by the law not to discriminate.

All persons and/or entities authorized to sell the Property have signed this Contract, and the undersigned signature(s) include all person(s) and/or entities, or their duly authorized representatives, who have an ownership interest in the Property. If the individual signing this Contract is acting in a representative capacity, such individual certifies that s/he is legally authorized to enter into this Contract.

Seller has given Broker the information regarding the Property to appear in the MLS. Seller understands that the Property information will be included in the MLS. Such information is accurate and complete and does not omit or fail to disclose any material defects regarding the Property known to Seller, after diligent inquiry by Seller.

Seller shall indemnify, defend and hold Broker and Broker's shareholders, directors, officers, employees, contractors and agents (**Broker Parties**) harmless from and against all claims, demands, suits, damages, liability, losses or expenses (including reasonable attorneys fees) arising out of any misrepresentation, nondisclosure, concealment, nonperformance of any Sales Agreement, or payment or non-payment of any commissions owed by Seller in connection with the sale of the Property, including without limitation, the inaccuracy or incompleteness of any information provided by Seller for listing in the MLS and the non-payment of the Cooperating Commission. Seller is solely responsible for any complaints made by a buyer or prospective buyer before or after possession of the Property with respect to any defects in and material conditions at the Property.

11. LOCK BOX: At Seller's option or at Broker's request, Seller may purchase a combination lock box or key box system from a retail outlet. Seller shall hold Broker and Broker Parties harmless from all liability, claims, judgments, obligations or demands, including reasonable attorney's fees, arising as a result of the lock box or key box. Seller should remove or safeguard personal valuables while the box is being used. If the Property is currently being leased, Seller must comply with local laws and the Lease regarding access to the Property and, in most states, advise tenants of the foregoing and obtain tenant's authorization consenting to the use of a box for access to the Property.

12. OWNERS OF MULTIPLE PROPERTIES: An owner selling multiple Properties must list each Property individually with Broker and execute separate Contracts.

13. ENTIRE AGREEMENT: This Contract contains all covenants between the parties and may only be modified by writing signed by all parties hereto. There are no oral

representations made that are not contained herein and no oral modifications of this Contract are allowed.

14. **ASSIGNMENT:** This Contract may not be assigned by the Seller without the express written consent of Broker.

15. **BINDING:** Subject to Section 14, this Contract shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

16. **PRIOR AGREEMENTS:** This Contract supersedes all other agreements entered into between the parties and in the event there is a conflict between this Contract and any other agreement between the parties hereto the terms and provisions of this Contract shall control and be binding upon the parties.

17. **NO GUARANTEE OF SALE OF PROPERTY:** Seller understands that this Contract does not guarantee the sale of the Property.

18. **LIMITATION OF BROKER'S LIABILITY:** Seller agrees that the limit of Broker's and Broker Party's liability under this Contract and/or related to Broker's or Broker Party's performance of the services mentioned herein is strictly limited to the Listing Fee paid to Broker by Seller and no more.

19. **TERMINATION OF CONTRACT:** There is no termination fee in the event the Seller decides to withdraw the Property from the market by giving written notice to Broker at any time while there is not then a contract pending on the Property involving a buyer who was procured by a Cooperating Broker. A refund, minus a \$75.00 administrative charge, will only be provided if the Contract is cancelled before the Property is entered into the Multiple Listing Service (MLS) or in the event that Broker does not accept this Contract. Seller will be provided a copy of the MLS Listing. Once the Property is listed on the MLS, the Listing Fee has been earned by Broker and there will be no refund available.

20. **ATTORNEYS FEES & COSTS:** If a dispute arises between the parties or involving the subject matter of this Contract and litigation is commenced to enforce the provisions herein or interpret the provisions herein, the prevailing party shall be due its reasonable attorney's fees and litigation costs, including appellate attorney's fees & costs by the non prevailing party.

21. **SELLER'S ACKNOWLEDGMENT OF BROKER'S LIMITED DUTIES:** This Agreement creates an exclusive agreement to market the Property and limits the performance requirements of Broker as set forth herein. Seller acknowledges that selling the Property may be complicated and may require professional legal assistance. Seller agrees to obtain such assistance from parties other than Broker, as Seller deems necessary. No other agreement, expressed or implied, shall be held to impose any greater relationship than that set forth herein. Seller waives all claims and causes of action Seller may have against Broker and Broker Parties arising as a result of any act or omission

of Broker or Broker Parties. Seller accepts the responsibility to comply with all laws, ordinances, regulations and statutes pertaining to Seller's offer for sale and sale of the Property. Seller does not waive any rights guaranteed by the regulations and statutes of the State of Texas which cannot be voluntarily waived.

Broker is not charged with any responsibility or custody of the Property, its management, maintenance, upkeep or repair. If permitted or unless otherwise directed by Seller, Broker may provide Seller's address and telephone number in the MLS and all affiliated web sites, as well as sales data. Local laws govern the use of lawn signs. Seller should be aware of local regulations or should consult with local authorities prior to placing a sign.

LIMITED SERVICE NOTICE

YOU MUST AGREE TO THE FOLLOWING TERMS AND CONDITIONS IN ORDER TO PURCHASE THIS FLAT FEE LISTING PRODUCT

Broker is a licensed real estate brokerage in the state of Texas. It is a flat-fee limited service company. It does not provide the same services as a "traditional" brokerage. Correspondingly, you are paying a reduced flat fee rather than the more common percentage fee typically charged by full-service brokerages.

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 the Property you should remove all valuables or put them in a secure place.

Broker works to maintain its web site and services, but is not responsible for defects that may exist within its web site or any resulting loss of profits or other damages. Broker attempts to accurately enter the information you provide into the multiple listing service. However, Broker does not guarantee error-free service. If you discover any error you must promptly notify Broker so the error can be remedied. Broker is not responsible for any loss or damage suffered by the error.

Broker shall under no circumstances have any liability greater than the amount it received from you for its services. You agree to hold Broker and Broker Parties harmless from all claims, causes of action, or damages arising out of or relating to your providing incomplete and/or inaccurate information to Broker.

BY SIGNING THE FLAT FEE LISTING CONTRACT YOU HAVE AGREED TO THE TERMS AND CONDITIONS STATED ABOVE. IF YOU HAVE NOT READ THESE TERMS AND CONDITIONS OR DO NOT AGREE WITH THEM, THEN YOU SHOULD NOT ORDER THIS FLAT FEE LISTING SERVICE.

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

PLEASE SIGN BELOW TO ACKNOWLEDGE THE AGREEMENT AND ABOVE LIMITED SERVICE NOTICE.

AGREED, UNDERSTOOD AND ACCEPTED AS TO ALL TERMS OF THIS CONTRACT.

Signature

Signature

Date

Date

BROKER SIGNATURE _____ LISTING ACCEPTED
ON: _____

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