



Alabama REALTORS®
EXCLUSIVE RIGHT TO SELL PROPERTY LISTING AGREEMENT

Calhoun County, Alabama 2/13/2024, 20

Ember Capital Group (hereafter referred to as Seller) does hereby grant to TOP Brokerage, LLC - Anthony Giglio (hereafter referred to as Broker), and Broker does hereby accept, as agent for the Seller, the sole and exclusive right to sell, trade, convey, or exchange the below described property (hereafter referred to as the Property), upon the terms and conditions set forth below.

Street Address 209 S 5th Ave

City Piedmont, County Calhoun, Alabama Zip 36272

Legal Description SEC 5 TSP 13S RNG 10E PIEDMONT LAND & IMPROVEMENT CO BLK 49LOT 6 PIEDMONT
 BLK 49LOT 6 PIEDMONT DB/PB# PG#

1. RECAD Written Disclosure of Brokerage Services

Seller acknowledges that Broker has provided to Seller written disclosure forms for signature describing the alternative types of brokerage services that are available, and the specific types of brokerage services that are provided by Broker.

2. Dual Agency and Conflict of Interest:

Seller acknowledges that from time to time the company of the Broker/Agent may represent both the Seller and Buyer in the same transaction. This is called Limited Consensual Dual Agency and can only occur with the written consent of both the Buyer and Seller. This means that since the Company has two clients in the same transaction, there may be a limitation on the company's ability to represent either party fully and exclusively.

Seller will consider will not consider a Limited Consensual Dual Agency. Should Buyer and Seller authorize the Company to act as a "Limited Consensual Dual Agent", Seller agrees that the Limited Consensual Dual Agency Agreement shall be executed by Seller and made an integral part of the Purchase Agreement.

3. Seller's Warranty of Authority, Accuracy and Completeness of Information

Seller specifically represents and warrants that Seller has complete authority to sell property and convey title by deed. Seller agrees to convey a merchantable title; to prorate taxes, leases and/or association fees through the date of conveyance of title; to pay off and/or satisfy and resolve all public improvements, assessments, or any other encumbrances against the property unless otherwise agreed upon in writing. Seller has personally reviewed this Agreement and acknowledges that all the information in this Agreement relating to the description and physical condition of the Property were provided by Seller and are accurate and complete to the best of Seller's knowledge. Seller agrees that if title to the property is not merchantable, Broker has the right to terminate this Agreement.

If Seller has an executed purchase agreement for the Property but has not closed with the owner of title (i.e., preconstruction contracts), Seller declares that this assignment of equitable title has been approved by the holder of legal title to the Property, and any legal documents attached to the Property (covenants, HOA documents, etc.) shall not prevent transfer of title to another buyer.

Property is is not subject to Homeowner Association (HOA) fees. Seller agrees that any outstanding fees will be paid prior to or at closing.

4. Period of Agreement; Termination

This Agreement shall be effective for a period of time beginning on 2/13/2024, 20, and ending on March 13th, 20 24, at 12:00 a.m., unless the expiration date is extended in writing. Either party may terminate this Agreement without cause upon seven (7) days written notice to the other party. Parties agree to extend this Agreement in writing if the Property is under contract but not closed on the expiration date.

5. Terms/Conditions on which Property is to be Offered for Sale

Seller and Broker agree that the Property shall be offered for sale on the following terms and conditions, or on such terms and conditions that Seller and Broker may subsequently agree to in writing.

(a) The price of the Property shall be \$ 84,900 or any other price or terms acceptable to Seller.

If the Sales Price is over \$300,000 and the seller is a non-resident of Alabama as defined by law and not otherwise exempt, current Alabama law requires that a buyer withhold a certain percentage of the sale proceeds and pay those withheld funds to the Alabama Department of Revenue.

Seller is is not a non-resident of Alabama as defined in section 40-18-86 of the Code of Alabama (1975).

(b) Seller agrees to maintain the Property, to be responsible for any repair debts incurred for the purpose of maintaining the Property, and to pay the mortgage and/or association dues throughout the listing period.

(c) Seller agrees to keep in force sufficient hazard insurance until Property is sold and closed.

(d) This Property may be sold on the following terms. (check terms applicable) VA, Conventional, Equity, Cash, FHA, Owner Finance, or Other with terms of _____.

(e) Heating, cooling, plumbing and electrical systems and all included appliances shall be in working order at the time of conveyance; or Property to be sold AS IS.

6. Improvements & Appurtenances: All dwellings, improvements, storage buildings, and appurtenances presently situated in and on the Property, are included in the purchase price such as: ceiling fans, attached light fixtures and their shades, blinds, traverse rods, curtain rods, cornice boards, remote control garage door openers, television antennas and rotor equipment, exterior lights, doorbells, attached mantels, water heaters, plumbing fixtures, attic fans, installed carpeting, attached fireplace screens, gas logs, built-in kitchen appliances, door and window screens, stationary laundry tubs, heating and air conditioning equipment, smoke detectors, water pump and pressure tank, awning, pier (floating and stationary), fences, trees, shrubbery, all plantings, mail box, garbage carts and all other items which are permanently attached to the property, buildings, or appurtenances, unless otherwise specifically excluded in this Agreement.

Additional items to remain:

These items are excluded from sale:

7. Seller's Hold Harmless: Seller agrees that Broker shall not be responsible in any manner for loss or damage of personal or real property due to vandalism, theft, freezing water pipes, or any other damages or loss whatsoever including but not limited to death or personal injuries sustained on the Property, attorney fees and court costs. Seller agrees to obtain "vacancy coverage" from Seller's insurer in the event the Property is to be vacant.

8. Lead-based Paint: If Property is a residential dwelling, was it constructed prior to 1978?

Yes

No

If no, a lead-based paint disclosure is not required. If yes, federal law requires a lead-based paint disclosure statement to be executed and provided to prospective Buyers.

9. **Wood Infestation Report:** Seller agrees to furnish to Buyer a written official Alabama Wood Infestation Report, issued by a licensed pest control company, stating that accessible areas of the property were properly inspected and showed no evidence of any active or previous signs of subterranean or dry wood termites, powder post or wood boring beetles, or wood decaying fungus, except if indicated below. Seller acknowledges that the Wood Infestation Report must be dated within 45 days of closing. The current termite contract, if any, is to be transferred to Buyer, if transferable, and the transfer fee, if any, is to be paid by Seller.

I am am not aware of any previous termite infestation or damage. DS (Seller' s Initials)

10. Brokerage Fee to Broker

The brokerage fee payable to the Broker in this sale is negotiable between the Broker and the Seller.

A. Seller agrees to pay Broker a brokerage fee of \$ _____ or 3.32% of the gross sales price under the following terms and conditions:

- (a) For finding a Buyer, ready, willing and able to purchase the Property upon the terms herein mentioned or at any price or terms acceptable to Seller, Seller agrees to pay Broker, whether Buyer is secured by Broker or Seller, or by another person; or
- (b) If the Property is sold within 90 days after the termination of this Agreement or extension(s) thereof, to any person to whom the Property has been shown by anyone including the Seller during the listing period; or
- (c) If the Seller defaults and fails to close or consummate the sale through no fault of the Buyer; or
- (d) Other reason (if written): If property is listed and seller is a TOP Brokerage subscriber commission is to be paid to TOP brokerage even if sold to an off market buyer within the 90 day protection period

B. No Commission shall be due Broker if, after this listing is expired or withdrawn, the Property is relisted with another licensed real estate broker and sold through his or her exclusive right of sale.

C. Seller agrees that the listing agency may engage any and all cooperating Brokers to assist in marketing the property and share its commission with such Brokers. Seller also agrees that the Broker may (but shall not be required to under this Agreement) share its commission with any and all cooperating Brokers. In either event, Seller will pay the full commission as directed by the listing agency.

11. DISCLOSURE

Seller hereby specifically authorizes Broker and any and all cooperating Brokers to disclose to prospective buyers, to the extent required by law, any defects, latent or otherwise, including, but not limited to, existing or previous environmental concerns, known to the Seller and communicated to Broker. Seller acknowledges Broker/Agent does not have the responsibility to discover latent defects in the Property or to advise on matters outside the scope of his/her license.

Known Defects: _____

Property Disclosure - Seller agrees does not agree to provide a Property Condition Disclosure Statement.

Flood Plain - Seller is is not aware that the Property lies in a flood plain. Seller does does not presently have a flood insurance policy.

12. Marketing the Property

Federal law prohibits discrimination in the sale or lease of real property on the basis of race, color, sex, religion, familial status, handicap, or national origin.

A. BROKER AGREES to use reasonable efforts in marketing the Property in accordance with the terms of this Agreement. Seller gives Broker the exclusive right to:

- a. Place a "For Sale" or other appropriate sign(s) on the Property Yes No
- b. To advertise as Broker deems best Yes No

- c. Publish the property information in the Multiple Listing Service, including Internet, social media and Intranet exposure, where applicable Yes No

B. SELLER FURTHER AGREES TO:

- a. Refer all inquiries regarding the Property to Broker promptly Yes No
- b. Furnish Broker with keys to the Property Yes No
- c. Allow the use of Property information when necessary or desirable in marketing the Property Yes No
- d. Make the Property available for showing during reasonable hours to prospective Buyers with reasonable notice Yes No
- e. For a lock box to be placed on the property Yes No

Lockboxes - If Seller permits a lock box to be used, Seller hereby releases and holds harmless the MLS and all agents and Brokers from all responsibility of situations beyond their control including loss, damage and theft. A lock box is not intended or designed as a security device.

MLS Disclaimer - If the Property Listing is filed with the MLS, Seller and Broker acknowledge that the MLS is not obligated to, cannot reasonably and **does not** review this Agreement, the MLS Information Sheet, or other such information or data provided by Seller and Broker for MLS publication for accuracy or completeness. Seller authorizes and instructs Broker to abide by all rules and regulations of the local and state Association or Board of REALTORS® and the Baldwin MLS, GCMLS (insert name of MLS).

13. Earnest Money

Seller authorizes Broker to accept and hold all earnest money. If such deposit is forfeited by the prospective Buyer, a written agreement must be signed by both Buyer and Seller, and any costs incurred by Broker in disbursing the earnest money shall be paid from the earnest money deposit. If Seller is entitled under a terminated purchase agreement to retain earnest money, Seller shall retain as liquidated damages one half of the net earnest money; the remaining one half of net earnest money, not to exceed the total amount of commission, shall be paid to Broker as compensation. In the event both Buyer and Seller claim the earnest money, Broker holding the earnest money may interplead the disputed portion of the earnest money in court and shall be entitled to deduct from the earnest money for court costs, attorney's fees and other expenses relating to the interpleader.

14. Attorney Fees; Costs of Litigation

If suit is brought to collect the compensation provided herein, or if Broker successfully defends any action brought against Broker by Seller relating to this Agreement or under any purchase agreement relating to the property, and Broker prevails, Seller agrees to pay all costs incurred by Broker in connection with such action, including reasonable attorney's fees and court costs.

15. Controversies, Claims, Complaints, or Disputes – Binding Arbitration Agreement:

The parties hereto agree that the real property to be sold has been involved in and necessarily involves, interstate commerce and that any controversy, claim, complaint, or dispute arising between the parties, or between the parties and the real estate licensees involved in this transaction, arising out of this agreement, is to be settled exclusively by binding arbitration. All parties specifically waive any rights they have to commence an action other than arbitration against each other or against the real estate licensees. Any controversies, claims, complaints, or disputes arising or evolving out of or relating to this Agreement, or breach thereof, shall be settled under the Commercial Arbitration Rules then in force of the American Arbitration Association, and all parties agree to be bound by the decision of this arbitration. The decision of the arbitrator shall be a final and binding resolution, which may be entered as a judgment by a court of competent jurisdiction, and may then be enforced by use of legal remedies.

16. Sole Agreement Between Parties; No Other Agreement

Broker and Seller acknowledge that this represents the sole agreement between the parties, and no other agreements or conditions exist except as set forth herein and any attachment. No oral statements, representations, promises or inducements shall have any validity or effect nor shall be a part of this Agreement. Any amendments, changes, additions, or deletions must be in writing signed by all parties.

Seller acknowledges and warrants that no prior agreement exists on the Property, whether a listing agreement, purchase or sale agreement, or otherwise, that have not been terminated in writing.

If this Listing Agreement is not fully understood, Seller should seek professional, legal, and/or tax advice at his or her expense.

17. Seller(s) Indemnification Against Misrepresentation

Seller agrees to defend, indemnify and hold harmless Broker, the Broker’s agent, and the MLS named above, against and from any losses and damages, claims, suits of law (including court costs and attorney’s fees) or other cost or expense relating to or resulting from an actual or alleged inaccuracy or incompleteness of the property information contained herein or any other information, provided by the Seller.

18. Additional provisions:

Seller is responsible for paying listing broker .3% commission at the gross selling price when the property closes as commission paid to TOP Brokerage. Any withdrawal or closing fees along with any fees, penalties, violations associated with any multiple listing service (MLS) the property is listed in will be paid by Seller also. The Seller is responsible for paying the Buyer's Broker Commission at the sales price. TOP Brokerage Subscriber Commission is to be paid to TOP Brokerage even if sold to an off market buyer within the 90 day protection period.

Signatures

In witness thereof, the parties have hereto set their hands on the date provided below:

_____	_____
Listing Agent	Date
TOP Brokerage, LLC - Anthony Giglio	2/14/2024
_____	_____
Broker	Date
Dillon Dupree as POA for Two Moons Capital LLC	2/13/2024
_____	_____
Seller	Date
_____	_____
Seller	Date