

**WRITTEN AGREEMENT WITH BUYER BEFORE TOURING A
HOME
(with option to create non-exclusive agency)**

Broker/Firm: _____

Address of Firm: _____

Buyer: _____

1. TERM.

For and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Agreement is entered into on this _____ day of _____, 20__ (“Effective Date”) by and between the undersigned

_____, (“Buyer”) and Firm/Broker of _____ (“Broker”), Broker shall locate property for Buyer’s purchase, lease, exchange or option (collectively “Purchase”) during the term of this agreement. This Written Agreement with Buyer Before Touring a Home (“Agreement”) begins on the Effective Date and terminates at 11:59 p.m., local time, on _____, _____, or at the closing (or in the case of a lease, the date of possession) of any Purchase under this Agreement, if such occurs earlier.

2. TYPE OF PROPERTY SOUGHT BY BUYER.

A. General Description, Size and Location: _____

B. Price Range & Terms: _____

C. Sources to be Searched for Property: _____

D. Other Terms/Conditions: _____

E. Properties Specifically Exempted from this Agreement: _____

3. BUYER DUTIES.

Buyer agrees:

A. To furnish Broker on a timely basis with any necessary personal and/or financial information to ensure Buyer’s ability to Purchase.

B. That Buyer is not under an exclusive right to buy contract or exclusive buyer’s representation agreement with any other agent at this time.

C. Carry-Over Clause. Should the Buyer contract to buy or exchange, or contract to lease a property within _____ days after the expiration of this Agreement with any Seller/Landlord (or anyone acting on Seller’s/Landlord’s behalf) who has been introduced to the Buyer, directly or indirectly by the Broker, during the term hereof, as extended, the Buyer agrees to pay the compensation as set forth below. This carry-over clause shall not apply if the Buyer is subject to a buyer’s representation agreement with another licensed real estate broker at the time of such contract.

D. That Buyer has reviewed this Agreement and agrees with the terms herein.

4. COMPENSATION.

BROKER COMPENSATION IS NOT SET BY LAW AND COMPENSATION RATES ARE FULLY NEGOTIABLE.

A. Compensation for Broker’s Services: Broker shall be compensated an amount of \$ _____ or _____ % based on the total sale price in consideration of Broker’s services as described herein.

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- B. Compensation from Seller:** Buyer authorizes Broker to negotiate with the Seller and/or the Seller's agent for this fee, the payment of which shall be fully disclosed to Buyer.
- C. Difference:** In the event that the amount of any cooperating compensation paid by Seller or Seller's broker is less than the amount listed herein, Buyer agrees to pay Broker the difference at closing.
- D. Compensation if Buyer Leases:** In the event that Buyer leases a property in lieu of purchase, the Buyer agrees to pay Broker a total of \$_____ in compensation unless otherwise stated herein.
- E. Cap on Compensation:** If Broker is an MLS participant, Broker shall not receive compensation from any source that exceeds the amount listed herein.
- F. VA Buyer:** In the event the buyer broker compensation herein is considered a non-allowable pursuant to VA guidelines and thus cannot be paid by Buyer, this obligation is waived by Broker.
- G.** Broker's fee is earned at the signing by both parties of an agreement to purchase, lease, exchange or the exercise of an option for any property(ies) as described above and is due at the closing of any such transaction or upon possession of property unless otherwise stated herein. In the event that Buyer defaults on performance of a valid contract for sale, lease, exchange or exercised option, Broker's fee shall be due on the date of default. Buyer agrees to pay all reasonable attorney's fees together with any court costs and expenses which real estate firm incurs in enforcing any of Buyer's obligations to pay compensation under this Agreement. The parties hereby agree that all remedies are fair and equitable and neither party shall assert the lack of mutuality of remedies as a defense in the event of a dispute.
- H.** The payment of any fee by Seller shall not make Broker either the Agent or Subagent of the Seller.
- I.** If Client utilizes the services of another real estate broker or deals solely with a Seller's Agent or the Seller directly at any time during the effective period of this Agreement and/or any extensions thereof and then enters into an agreement with a seller/owner to Purchase any property(ies) described above and introduced by Broker, the Buyer still owes a commission to the Broker provided herein.

5. AGENCY

A. Definitions

- 1. Broker.** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage firm and where the context would indicate, the Broker's affiliated licensees, including but not limited to the Designated Agent.
- 2. Designated Agent for the Buyer.** The individual licensee that has been assigned by the Managing Broker and is working as an agent for the Buyer in this consumer's prospective transaction, to the exclusion of all other licensees in the company. Even if someone else in the licensee's company represents a Seller of a prospective property, the Designated Agent for the Buyer shall continue to work as an advocate for the best interests of the Buyer. An agency relationship, by law, can only be established by a written agency agreement.
- 3. Facilitator/Transaction Broker (not an agent for either party).** The licensee is not working as an agent for either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. By law, any licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.
- 4. Dual agency.** The licensee has agreements to provide services as an agent to more than one (1) party in a specific transaction and in which the interests of such parties are adverse. This agency status may only be employed upon full disclosure to each party and with each party's informed consent.
- 5. Adverse Facts.** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees that have a negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.
- 6. Confidentiality.** By law, every licensee is obligated to protect some information as confidential. This includes any information revealed by a consumer which may be helpful to the other party IF it was revealed by the consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee discloses that licensee has an agency relationship with another party, any such information which the consumer THEN reveals must be passed on by the licensee to that other party. Buyer understands that there is a possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

B. Duties owed to all Parties to a Transaction.

Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”) unless otherwise provided by law:

1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. To disclose to each party to the transaction any Adverse Facts of which Licensee has actual notice or knowledge;
3. To maintain for each party in a transaction the confidentiality of any information obtained by a Licensee prior to disclosure to all parties of a written agency agreement entered into by the Licensee to represent either or both parties in the transaction. This duty of confidentiality extends to any information that the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure or information required by law to be disclosed;
4. To provide services to each party to the transaction with honesty and good faith;
5. To disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. To give timely account for earnest money deposits and all other property received from any party to a transaction; and
7. (A) To refrain from engaging in self-dealing or acting on behalf of Licensee’s immediate family, or on behalf of any other individual, organization or business entity in which Licensee has a personal interest without prior disclosure of such personal interest and the timely written consent of all parties to the transaction; and
(B) To refrain from recommending to any party to the transaction the use of services of another individual, organization or business entity in which the Licensee has an interest or from whom the Licensee may receive a referral fee or other compensation for the referrals, other than referrals to other Licensees to provide real estate services, without timely disclosing to the party who receives the referral, the Licensee’s interest in such referral or the fact that a referral fee may be received.

C. Duties Owed to Client.

In addition to the above, the Licensee has the following duties to Client if the Licensee has become an agent or Designated Agent in a transaction:

1. Obey all lawful instructions of the Client when such instructions are within the scope of this agency agreement between the Licensee and the Buyer/Client;
2. Be loyal to the interests of the Client. A Licensee must place the interests of the Client before all others in negotiation of a transaction and in other activities, except where such loyalty duty would violate Licensee’s duties to a customer in the transaction; and
3. Unless the following duties are specifically and individually waived in writing by a Client, Licensee shall assist the Client by:
 - A. Scheduling all property showings on behalf of the Client;
 - B. Receiving all offers and counter offers and forwarding them promptly to the Client;
 - C. Answering any questions that the Client may have in negotiation of a successful purchase within the scope of the Licensee’s expertise; and
 - D. Advising the Client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

Upon Waiver of any of the above duties listed under subparagraph 4.C.3., the Client may not expect or seek assistance from any other licensees in the transaction for the performance of said duties.

D. Relationship.

At this time, Buyer wishes to retain Broker in the following capacity (if no box is checked, a Facilitator relationship will be created with this Agreement):

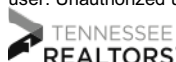
☐ **Non-Exclusive Designated Agency**

☐ **Facilitator**

E. Agency Authorizations.

1. **Appointment of Designated Agent.** Buyer hereby authorizes Managing Broker to appoint the Selling Licensee as Designated Agent for the Buyer, to the exclusion of any other licensees associated with Broker. A Designated

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Agent for the Buyer can and shall continue to advocate Buyer's interests in a transaction even if a Designated Agent for the Seller (other than the Licensee listed below) is also associated with Broker. The Managing Broker hereby appoints _____ to be the Designated Agent for the Buyer in this transaction.

2. **Appointment of Subsequent Designated Agent.** Buyer hereby authorizes the Managing Broker, if necessary, to appoint a licensee, other than the Licensee named above, as Designated Agent for the Buyer, to the exclusion of any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement, if necessary.
3. **Default to Facilitator in the event that both parties are represented by the same Designated Agent.** The Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated Agent for both the Buyer and a prospective Seller*, immediately notifying (verbally) the Buyer and the Seller of the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon any default to Facilitator status, the former Designated Agent must assume a neutral position and shall not be an advocate for either the Buyer or any prospective Sellers.
4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this Facilitator status shall only be temporary. The Facilitator status shall only last until any transaction or contemplated transaction in which the parties are all represented by the same Facilitator is resolved (either because the transaction is closed or the transaction or contemplated transaction is terminated or not accepted and no further negotiations occur between the parties). At that time, the Agent shall immediately revert back to Designated Agency status for the Buyer.

- F. **Facilitator Status.** Pursuant to Tenn. Code Ann. §62-13-401, a real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, the licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of the agency or subagency relationship.

If Designated Agency status was not selected above, this Agreement does not create nor establish terms and conditions of an agency or subagency relationship, but rather, is limited to Buyer's desire to view properties in exchange for compensation to Broker as set forth above. It is acknowledged by all parties that Broker is acting as a facilitator in any transaction involving Buyer unless otherwise agreed in a written agency agreement.

6. **CONFIDENTIALITY.** Information which the Buyer authorizes Broker and Broker's affiliated Licensees to disclose which might otherwise be confidential:

7. **EARNEST MONEY/TRUST MONEY.**

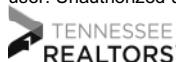
Broker is authorized to accept a deposit of earnest money/trust money to be applied to the purchase price for a property. Such deposit is to be held by Broker in an escrow or trustee account or forwarded to party authorized to hold said funds as set forth in an executed contract for purchase, lease, exchange or option agreement until disbursed in accordance with the terms of said agreement.

8. **LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.**

Buyer acknowledges and agrees that Broker:

- A. May show the same properties to other prospective buyers;
- B. Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; the insurability of the property or cost to insure the property; for the condition of the property, any portion thereof, or any item therein; for any geological issues present on the property; for any issues arising out of the failure to inspect property prior to entering into an agreement to Purchase property and/or closing on property; for the necessity or cost of any repairs to property; hazardous or toxic materials; square footage; acreage; the availability and cost of utilities, septic, or community amenities; conditions existing off a property which may affect said property; proposed or pending condemnation actions involving the property; uses and zoning of a property, whether permitted or proposed; for applicable boundaries of school districts or other school information; termites and wood destroying organisms; building products and construction techniques; the tax or legal consequences of a contemplated transaction; matters

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relating to financing; for the appraised or future value of a property; etc. Buyer acknowledges that Broker is not an expert with respect to the above matters and is hereby advised to seek independent expert advice on any of these or other matters which are of concern to Buyer;

C. Shall owe no duties to Buyer nor have any authority to act on behalf of Buyer other than what is set forth in this Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the Tennessee Real Estate Commission Rules; and

D. May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

E. **Hereby advises Buyer of the possibility that some properties may utilize security devices that record physical movements or audio conversations. Therefore, Buyers should limit making comments concerning the value, features, or condition while viewing any property.**

9. SANCTIONED FOREIGN BUSINESSES, GOVERNMENTS, AND NONRESIDENT ALIENS

Buyer is hereby notified that Pursuant to Tenn. Code Ann. §66-2-301, et seq., a prohibited foreign party or prohibited foreign-party controlled business shall not acquire by grant, purchase, devise, descent, or otherwise an interest in agricultural land. A prohibited foreign-party business shall not acquire by grant, purchase, devise, descent, or otherwise an interest in non-agricultural land in this state. Tenn. Code Ann. §66-2-308 does include certain exceptions to this part.

Buyer warrants Buyer has reviewed Tenn. Code Ann. Title 66, Chapter 3, Part 3 and is not prohibited from purchasing agricultural or non-agricultural land in Tennessee pursuant to the statute.

10. EXPERT ASSISTANCE.

While Broker and the Licensees associated with Broker have considerable general knowledge of the real estate industry and real estate practices, they are not experts in matters of law, tax, financing, square footage, home inspections, wood destroying organisms, surveying, structural conditions, geological issues, hazardous materials, engineering, etc. Buyer acknowledges Broker's guidance to seek professional assistance and advice in these and other areas of professional expertise as needed. If Broker or licensees associated with Broker provide names or sources to Buyer for such advice or assistance, those services and/or products are not warranted or guaranteed by the Broker or the Licensees associated with Broker.

11. OTHER PROVISIONS.

A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

B. **Governing Law and Venue.** This Agreement is intended as a contract for buyer's agency representation and shall be governed by and interpreted in accordance with the laws and in the courts of the state of Tennessee.

C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of the Firm.

D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

E. **Fair Housing.** Broker and Designated Agent shall provide services without regard to race, color, creed, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. A request to observe discriminatory practices in the sale, lease, exchange, or option of property shall not be granted.

12. LEGAL DOCUMENTS. THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY. NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU ANY ADVICE CONCERNING THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS DOCUMENT, YOU ARE CERTIFYING

245 THAT YOU HAVE READ AND ACCEPT THESE TERMS AND ACKNOWLEDGE RECEIPT OF THIS
246 AGREEMENT.

247 **13. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are
248 made a part of this Agreement.
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257 **14. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall
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270 The party(ies) below have signed and acknowledge receipt of a copy.

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272 **BY: Broker or Licensee Authorized by Broker**

BROKER/FIRM

273 _____ at _____ o'clock ☐ am/ ☐ pm

274 Date

Address

275
276 Print/Type Name

Phone: _____

277 The party(ies) below have signed and acknowledge receipt of a copy.

278
279 **BUYER**

BUYER

280
281 Print/Type Name

Print/Type Name

282 _____ at _____ o'clock ☐ am/ ☐ pm

283 Date

_____ at _____ o'clock ☐ am/ ☐ pm

Date

284
285 Address

Address

286 Phone: _____ (H) _____ (Cell)

Phone: _____ (H) _____ (Cell)

287 _____ (W) Email: _____

_____ (W) Email: _____

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