



EXCLUSIVE LISTING AGREEMENT

This Exclusive Listing Agreement ("Agreement") is dated _____ and is entered into between _____ ("Broker"), a member of the Georgia Association of Business Brokers, and _____ ("Seller"), the owner(s) or authorized representative of the owner(s) and/or the legal entity which owns the Business as defined below.

THE PARTIES, intending to be legally bound, hereby agree as follows:

1. Exclusive Listing: In consideration of the Broker's services, Seller hereby grants to Broker the SOLE AND EXCLUSIVE RIGHT TO SELL the assets of the business described below and on **Exhibit A** attached hereto and made a part hereof (the "Business"):

- a) Name of Business: _____
- b) Address: _____
- c) City: _____ County: _____ State: _____ Zip: _____
- d) Phone: _____ Fax: _____ email: _____
- e) Form of Ownership (Check one): () Sole Proprietorship; () C Corp; () S Corp; () LLC; () Partnership; () Other (specify) _____

2. Term: This Agreement shall be in effect from _____, _____ through midnight _____, _____ ("Listing Period") and may be extended by the parties in writing.

3. Broker's Services: Broker shall use its efforts to market the Business and to identify prospective buyers for the Business, furnish material to the prospective buyers describing the Business based upon information supplied by the Seller, and introduce prospective buyers to the Seller. **Seller bears the ultimate responsibility for qualifying the Buyer with regard to the Buyer's ability to run the Business and the Buyer's credit worthiness.**

Broker will assist Seller with the disposition of the Business and consult with and advise Seller as to the aspects of any proposed sale including selling price, terms, conditions of sale, and structure of the transaction. Broker makes no representations, express or implied, that it will affect a sale of the Business as a result of the services furnished under this Agreement. The duties of Broker shall not include legal or accounting services, which shall be procured by the Seller at its own expense.

4. Co-Broker: Broker shall have the right to co-broker the sale or other transaction hereunder with another broker designated by Broker, if Broker shall determine that such arrangement may expedite a satisfactory consummation of such sale or other transaction.

5. Referrals: To facilitate Broker's efforts, Seller shall refer all inquiries about the Business from other brokers, salespersons, prospective buyers, and others to Broker.

6. Business Information: Seller shall furnish to Broker complete and accurate current and historical Business information, and shall inform Broker within 48 hours of any changes which may materially affect the value or salability of the Business (including, without limitation, the products, customer base, competition, services provided, third party contract modifications, financial condition, loss of key employee, loss of a major account, revocation of licenses used in the operation of the Business, worker's compensation claims, tax issues, and any issue which could result in legal or governmental action such as EPA violations, liens against the Business, suits or threatened suits against the Business, judgments and bankruptcies).

Seller represents and warrants that the Business is in full compliance with all applicable laws, rules and regulations regarding the operation of the Business, and that all the financial information provided Broker with respect to the Business is accurate and may be relied upon without independent investigation. Seller hereby authorizes Broker to divulge and communicate to prospective buyers all of the aforementioned information and data. In addition, Seller authorizes Broker to disclose the reason for the sale of the Business to any prospective buyers.

7. Price and Terms of Sale: The Listed Sales Price of the Business is \$ _____ with a down payment of \$ _____ and payment terms of _____ or such price and terms agreed to by Seller and Buyer.

8. Training and Non-Compete: Seller and/or the principals of the Seller agree to work at the Business with the Buyer without compensation for a period _____ in order to familiarize the Buyer with the Business. Seller and/or the principals of the Seller also agree to sign a non-compete agreement for a period of _____ years and within _____ miles of the Business.

9. Marketing Fee: Upon execution of this Agreement, Seller agrees to pay to Broker a non-refundable marketing fee ("Marketing Fee") in the amount of \$ _____. The Marketing Fee shall be applied as a credit towards the payment of the Broker's Fee (as hereinafter defined).

10. Broker's Fee: Seller agrees to pay in cash to Broker at closing its fee based upon the Total Consideration (defined in Paragraph 11) received for the sale of the Business. The Broker's Fee shall be _____ % of Total Consideration or shall be calculated as follows:

The minimum Broker's Fee shall be \$ _____

I. Seller agrees to pay in cash to Broker its fee based upon the upon the Total Consideration (defined in Paragraph 11) immediately upon the occurrence of any of the following events:

a) Seller sells, leases, trades, merges, exchanges, consolidates or otherwise disposes of all or any part of Business within _____ months from the termination date of the Listing Period to any person, firm, or entity referred to Seller by Broker, or who became aware of Business through the efforts of Broker during the Listing Period, a list of said persons, firms, entities, or others to be provided to Seller by Broker upon expiration of the Listing Period. An employment agreement, management agreement, consulting agreement, contract, or subcontract between the Buyer and Seller, or any joint venture, partnership or shareholder arrangement, or possession of the Business by the Buyer, the Buyer's representatives or assignees shall be deemed to be a disposition herein; or

b) Seller sells, leases, trades, merges, exchanges, consolidates or otherwise disposes of all or any part of the Business during the Listing Period regardless of whether or not Broker was involved in or responsible for such disposition, or Seller enters into a contract for sale, accepts a deposit, or causes an amount to be place in escrow for said Business during the Listing Period, or Seller enters into an employment agreement, management agreement, consulting agreement, contract, or subcontract, joint venture, partnership or shareholder arrangement with the Buyer during the Listing Period, or the Buyer, the Buyer's representatives or assignees obtain possession of the Business during the Listing Period; or

c) Seller, its shareholders, agents, or employees sells, purchases or otherwise sells or acquires a related business (defined as any property and/or business, or similar or related asset, including other businesses or assets at other locations that are owned in whole or in part by the Seller during the Listing Period) during the Listing Period or within _____ months after the expiration of the Listing Period and such purchase or sale is made with a prospective buyer with whom Broker or any Co-Broker had any contact regarding the sale of the Business during the Listing Period, said list of prospective Buyers to be provided to Seller by Broker upon expiration of the Listing Period; or

d) Seller fails and refuses to complete a sale, lease, trade or other disposition of the Business after entering into a written agreement to do so.

II. Seller agrees to pay in cash to Broker its fee based upon the Listing Price (defined in Paragraph 7) immediately upon the occurrence of any of the following events:

a) Broker procures a qualified Buyer ready and willing to purchase the Business on the terms set forth above or at any other price and terms acceptable to Seller and Seller fails and refuses to enter into a written agreement with the Buyer to sell, lease, trade or otherwise dispose of the Business; or

b) Seller withdraws the Business for sale, or seeks to terminate or terminates this Agreement prior to the expiration of Listing Period; or

c) Seller sells or transfers any or all shares of stock in the selling corporation (if applicable) during the Listing Period, which sale or transfer shall be construed as a sale of the Business at the Listed Sales Price; or

d) Seller misrepresents or fraudulently communicates any material information, including financial information, to Broker which results in the withdrawal or cancellation of a sale or contemplated sale or offer.

Seller shall notify Broker at least three days prior to closing of the closing date of the sale and provide Broker with a copy of the closing documents at closing. This Agreement authorizes payment of the Broker's Fee at closing.

Seller grants Broker a security interest in the assets of the Business, including without limitation, furniture, fixtures, machinery, equipment, goods, accounts, leasehold improvements, merchandise, inventory, accounts receivable, general intangibles and the proceeds of the foregoing, securing payment of Broker's Fee. The parties agree that a photographic or other reproduction of this Agreement is sufficient as a UCC-1 financing statement, as the term is used in Article 9 of the Uniform Commercial Code.

11. Total Consideration: The term "Total Consideration" includes the cash and all other considerations received by or for the benefit of Seller, its shareholders, partners, agents, employees, or others, directly or indirectly, for the sale of the Business. Without limitation these considerations include any obligations assumed or discharged by the Buyer or to which the assets are subject, and, in the case of a stock transfer or disposition, the purchase price of corporate stock plus any liabilities of the corporation whose stock is being sold and any liabilities to which the assets of the corporation are subject. Further, Total Consideration shall include:

a) Cash considerations including, but not limited to, accounts receivable, down payments, inventory, fixed assets, machinery, equipment, furniture, fixtures, goods, vehicles, leasehold improvements, accounts, supplies, merchandise, stock in trade, work in progress, non-competition payments, consulting payments, employment payments, management agreement payments, partnership payments, license fees, royalties, retained cash, and other consideration received at or subsequent to the consummation of the sale transaction;

b) All future, contingent or undetermined amounts in whole, such as an earn-out. The Total Consideration shall be based on the actual amount of such future or contingent payments as and when the Seller receives the payment; and

c) The current fair market value of all non-cash items such as securities, promissory notes, letters or lines of credit, or other property.

12. Securities Sale: Seller and its shareholders acknowledge that Broker and its representatives are not licensed securities brokers or dealers, and the parties have no intention of consummating a purchase of the Business as a sale of securities of the Seller or in any other form that may require that the scope of activities of Broker and its representatives be restricted under applicable broker/dealer registration laws. If Seller or its shareholders subsequently decide to sell securities of the Business or sell a Business using any other structure that may require that the scope of activities of Broker and its representatives be restricted under applicable broker/dealer registration laws, then (i) Broker shall restrict the scope of its activities to those of a "finder" but still shall be entitled to the full fee set forth in Paragraph 10 as a finder's fee, (ii) Broker shall provide services that Broker deems are permitted by applicable laws, and (iii) Seller and its shareholders shall enter into a supplemental agreement with Broker acknowledging the restrictions on Broker's activities. In addition, Seller and its shareholders specifically agree to take such further actions as may be reasonably requested by Broker to ensure payment of the finder's fee in accordance with all applicable laws.

13. Earnest Money: Seller hereby authorizes Broker to accept earnest money deposits and to deposit them or have them deposited by an escrow agent into an escrow account. If the earnest money deposit is forfeited by the prospective buyer, Seller and Broker shall split the proceeds equally.

14. Indemnity: Seller agrees to indemnify and hold harmless Broker, its officers, directors, employees and agents against any liability, claim, loss, action or damage asserted by third parties arising out of or in connection with this Agreement (including Seller's breach of its representations and warranties herein) or the services performed by Broker hereunder except to the extent such liability, claim, loss, action or damage is attributable to the negligence of Broker.

15. Arbitration: Any controversy, dispute or claim relating to this Agreement between the parties shall be resolved by binding arbitration in _____, Georgia in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators are directed to award any expenses and all reasonable attorney's fees and costs to the prevailing party.

16. Publicity: If Broker sells the Business, Broker may, at its option and expense, claim appropriate credit for its services rendered, including placing a brief announcement in such newspapers and periodicals as it may select.

17. Authority: By signing this Agreement, the signing party represents that he or she has unconditional authority to enter into this Agreement on behalf of the Seller.

18. Advice of Attorney: Broker has advised Seller to consult with an attorney prior to executing this Agreement.

19. Severability: Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be enforceable and valid under applicable law, but if any provision of this Agreement, or any word, phrase, clause, sentence or other portion thereof shall be held to be unenforceable or invalid for any reason, such provision or portion thereof shall be modified or deleted in such a manner so as to make this Agreement, as modified, legal and enforceable to the fullest extent permitted under applicable laws.

20. Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of Georgia.

21. Entire Agreement: This Agreement is the entire agreement between the parties relating to the transactions contemplated hereby or the subject matter herein and supersedes and cancels all prior agreements, representations, warranties, understandings and communications, whether written or oral, between the parties hereto. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the party against whom or which the enforcement of such change, waiver, discharge or termination is sought.

22. Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

23. Counterparts: This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been executed by all of the parties.

24. Special Stipulations:

DATED this _____ day of _____, _____

BROKER

SELLER

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Phone: _____

The undersigned personally guarantees the full, faithful, and timely performance of this agreement by Seller:

Also agreed to by all Shareholders/Owners:

Signature

_____ % _____

Home Address

_____ % _____

City, State, Zip

_____ % _____

Home Phone

**EXHIBIT A
DETAIL OF ASSETS AND CONSIDERATION**

LISTED SALES PRICE OF ASSETS

Listed Sales Price of Assets for which values are indicated are included for sale under this agreement:

Inventory	\$	_____
Equipment & Fixtures		_____
Leasehold Improvements		_____
Accounts Receivable		_____
Notes Receivable		_____
Real Property		_____
Other		_____
Intangible Assets		_____
Listed Sales Price	\$	_____

The Listed Sales Price is based upon inventory value at lower of cost or market. (To top of next column).

Seller expressly agrees that a reduction or increase in the above asset values will result in a dollar for dollar reduction or increase in "Listing Sale Price" and in "Cash at Closing". Intangible Assets include, without limitation, company name, phone numbers, customer Lists, covenant not to compete, and goodwill.

ESTIMATED TOTAL CONSIDERATION

Cash at closing	\$	_____
Seller Financing		_____
Outside Financing		_____
Loan Assumption		_____
Other		_____
Est. Total Consideration	\$	_____

Note: The Listed Sales price and Estimated Total Consideration must be equal.

DISCRETIONARY CASH FLOW CALCULATIONS

Financial Statement for the period beginning _____ and ending _____

FROM THE P&L STATEMENT

Gross Income	\$	_____
Cost of Goods		_____
Gross Profit	\$	_____
Less Expenses		_____
1. Profit Before Taxes	\$	_____

LESS DEDUCTIONS FROM PROFIT

Unpaid Employee	\$	_____
Interest Income		_____
Gain on Asset Sale		_____
_____		_____
_____		_____
2. Deductions from Profit	\$	_____

ADDBACKS TO PROFIT

Seller's Salary	\$	_____
Seller's Payroll Taxes		_____
Auto Expense, Seller		_____
Insurance, Personal		_____
Contributions		_____
Dues & Subscriptions		_____
Entertainment		_____
Travel		_____
Non-Working Payroll		_____
Mdse for Personal Use		_____
One-Time Major Expense		_____
Loss on Sale of Assets		_____
_____		_____
_____		_____
Interest Expense		_____
Depreciation		_____
Amortization		_____
3. Additions to Profit	\$	_____
DISCRETIONARY CASH FLOW		_____
(1-2+3)	\$	_____

OTHER INFORMATION

1. Reason for selling: _____
 2. Other Comments: _____
- _____
- _____
- _____
- _____
- _____