

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

This EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT ("Agreement") is entered into (Date) _____, between _____ as Seller(s) ("Seller") of the property described below (the "Property"), and _____ as Listing Firm ("Agent").

1. **REAL PROPERTY.** The real property that is the subject of this Agreement is located in the City of _____, County of _____, State of North Carolina, and is known more particularly and described as: Street Address _____ Zip _____ Legal Description _____ (All A portion of the property in Deed Reference: Book _____ Page No _____, _____ County.)

2. **FIXTURES:** The following items, if any, are included free of liens: any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, burglar/fire/smoke alarms, pool and spa equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), basketball goals, storage sheds, mailboxes, wall and/or door mirrors, and any other items attached or affixed to the Property, EXCEPT the following items: _____

3. **PERSONAL PROPERTY:** The following personal property is included in the listing price: _____

4. **LISTING PRICE.** Seller lists the Property at a price of \$ _____ on the following terms: () Cash () Loan Assumption () Conventional () FHA () VA () Seller Financing () Other _____. Seller agrees to sell the Property for the Listing Price or for any other price or on any other terms acceptable to Seller.

5. **TERM.** In consideration of the Seller agreeing to list the Property for sale and in further consideration of Agent's services and efforts to find a buyer, Agent is hereby granted the exclusive right to sell the Property from (Date) _____ until midnight, (Date) _____.

6. **AGENCY RELATIONSHIPS.** Seller has read the Description of Agent Duties and Relationships on page 3 and (**Check only ONE**):
 Seller authorizes the Agent to act as a Dual Agent, representing both the Seller and the Buyer, subject to the terms and conditions of the attached Dual Agency Addendum.
 Seller desires exclusive representation at all times during this agreement and does NOT authorize Agent to act in the capacity of Dual Agent.

7. **COOPERATION WITH OTHER AGENTS.** Agent has advised Seller of Agent's general company policy regarding cooperation with subagents, buyer agents or both. Seller authorizes Agent to (**Check ALL applicable authorizations**):
 Cooperate with and compensate subagents representing only the Seller
 Cooperate with and compensate buyer agents representing only the buyer
Cooperating agents must orally disclose the nature of their relationship with a buyer (subagent or buyer agent) to Agent at the time of initial contact with Agent, and confirm that relationship in writing no later than the time an offer to purchase is submitted for the Seller's consideration. **Seller should be careful about disclosing confidential information because agents representing buyers must disclose all relevant information to their clients.**

8. **AGENT'S COMPENSATION.** Seller agrees to pay Agent a fee of _____ % of the gross sales price of the Property, OR _____, and that such fee shall be deemed earned under any of the following circumstances:

- (a) If a ready, willing and able buyer is procured by Agent, the Seller, or anyone else during the Term of this Agreement at the price and on the terms set forth herein, or at any price and upon any terms acceptable to the Seller;
- (b) If the Property is sold, exchanged, conveyed or transferred, or the Seller agrees to sell, exchange, convey or transfer the Property at any price and upon any terms whatsoever, during the Term of this Agreement or any renewal hereof;
- (c) If, within _____ days after expiration of the Term of this Agreement (the "Protection Period"), Seller either directly or indirectly sells, exchanges, conveys or transfers, or agrees to sell, exchange, convey or transfer the Property upon any terms whatsoever, to any person with whom Seller, Agent, or any real estate licensee communicated regarding the Property during the Term of this Agreement or any renewal hereof, provided the names of such persons are delivered or postmarked to the Seller within 15 days from date of expiration. HOWEVER, Seller shall NOT be obligated to pay such fee if a valid listing agreement is entered into between Seller and another real estate broker and the Property is sold, exchanged, conveyed or transferred during such Protection Period.

Once earned as set forth above, Agent compensation will be due and payable at the earlier of: (i) closing on the Property; (ii) the Seller's failure to sell the Property (including but not limited to the Seller's refusal to sign an offer to purchase the Property at the price and terms stated herein or on other terms acceptable to the Seller, the Seller's default on an executed sales contract for the Property, or the Seller's agreement with a buyer to unreasonably modify or cancel an executed sales contract for the Property); or (iii) Seller's breach of this Agreement.



NORTH CAROLINA ASSOCIATION OF REALTORS®



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Seller initial: _____

Seller initial: _____

Agent initial: _____

9. **AGENT'S DUTIES.** Agent agrees to provide Seller the benefit of Agent's knowledge, experience and advice in the marketing and sale of the Property. Seller understands that Agent makes no representation or guarantee as to the sale of the Property, but Agent agrees to use his best efforts in good faith to find a buyer who is ready, willing and able to purchase the property. Seller acknowledges that Agent is required by law to disclose to potential purchasers of the Property all material facts pertaining to the Property about which the Agent knows or reasonably should know, and that REALTORS® have an ethical responsibility to treat all parties to the transaction honestly. Seller further acknowledges that Agent is being retained solely as a real estate professional, and understands that other professional service providers are available to render advice or services to Seller at Seller's expense, including but not limited to an attorney, insurance agent, tax advisor, surveyor, structural engineer, home inspector, environmental consultant, architect, or contractor. If Agent procures any such services at the request of Seller, Seller agrees that Agent shall incur no liability or responsibility in connection therewith.

In connection with the marketing and sale of the Property, Seller authorizes and directs Agent: *(Check ALL applicable sections)*

- to place "For Sale," "Under Contract," "Sale Pending," or other similar signs on the Property (where permitted by law and relevant covenants) and to remove other such signs.
- to place a lock box on the Property.
- to advertise the Property, including, but not limited to, placing information about the Property on the Internet either directly or through a program of any listing service of which the Agent is a member.
- to submit pertinent information concerning the Property to any listing service of which Agent is a member and to furnish to such listing service notice of all changes of information concerning the Property authorized in writing by Seller. Seller authorizes Agent, upon execution of a sales contract for the Property, to notify the listing service of the pending sale, and upon closing of the sale, to disseminate sales information, including sales price, to the listing service, appraisers and real estate brokers.

Agent shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller.

10. **SELLER'S DUTIES.** Seller agrees to cooperate with Agent in the marketing and sale of the Property, including but not limited to:
- (a) providing to Agent, in a timely manner, accurate information including but not limited to the Residential Property Disclosure Statement (unless exempt), and the Lead-Based Paint or Lead-Based Paint Hazard Addendum with respect to any residential dwelling built prior to 1978;
 - (b) making the Property available for showing (including working, existing utilities) at reasonable times and upon reasonable notice;
 - (c) providing Agent as soon as reasonably possible after the execution of this Agreement copies of restrictive covenants, if any, and copies of the bylaws, articles of incorporation, rules and regulations, and other governing documents of the owners' association and/or the subdivision, if applicable;

If the Property is sold during the period set forth herein, the Seller agrees to execute and deliver a GENERAL WARRANTY DEED conveying fee simple marketable title to the Property, including legal access to a public right of way, free of all encumbrances except ad valorem taxes for the current year, utility easements, rights-of-way, and unviolated restrictive covenants, if any, and those encumbrances that the buyer agrees to assume in the sales contract. Seller represents that the Seller has the right to convey the Property, and that there are currently no circumstances that would prohibit the Seller from conveying fee simple marketable title as set forth in the preceding sentence.

Seller acknowledges receipt of a sample copy of an Offer to Purchase And Contract for review purposes.

11. **FLOOD HAZARD INSURANCE.** The Seller does does not currently maintain flood hazard insurance on the Property.

12. **SYNTHETIC STUCCO.** To the best of Seller's knowledge, the Property has not been clad previously (either in whole or in part) with an "exterior insulating and finishing system," commonly known as "EIFS" or "synthetic stucco", unless disclosed as follows: *(If the Seller does not wish to disclose, put "No Representation")*: _____

13. **EARNEST MONEY.** Unless otherwise provided in the sales contract, earnest money deposits paid toward the purchase price shall be held by the Agent, in escrow, until the consummation or termination of the transaction. Any earnest money forfeited by reason of the Buyer's default under a sales contract shall be divided equally between the Agent and Seller. In no event shall the sum paid to the Agent because of a Buyer's default be in excess of the fee that would have been due if the sale had closed as contemplated in the sales contract.

14. **MEDIATION.** If a dispute arises out of or related to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. If the need for mediation arises, the parties will choose a mutually acceptable mediator and will share the cost of mediation equally.

15. **ADDITIONAL TERMS AND CONDITIONS.** The following additional terms and conditions shall also be a part of this Agreement: _____

Seller initial: _____

Seller initial: _____

Agent initial: _____

16. **ENTIRE AGREEMENT/CHANGES.** This Agreement constitutes the entire agreement between Seller and Agent and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions, or deletions to this Agreement must be in writing and signed by both Seller and Agent.

Seller and Agent each acknowledge receipt of a signed copy of this Agreement.

Seller _____ SS/TAX ID# _____

Seller _____ SS/TAX ID# _____

Mailing Address _____

Home Phone _____ Work Phone _____ Work Phone _____

Fax _____ E-mail Address _____

Agent (Listing Firm) _____

By: _____ Office Phone _____

Fax _____ E-mail Address _____

Office Address _____

DESCRIPTION OF AGENT DUTIES AND RELATIONSHIPS

Before you begin working with any real estate agent, you should know who the agent represents in the transaction. Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction in North Carolina must contain this "Description of Agent Duties and Relationships" [N.C. Real Estate Commission Rule 21 NCAC 58A .0104(c.), eff. 7/1/95. Real estate agents should carefully review this information with you prior to entering into any agency agreement.

AGENTS' DUTIES

When you contract with a real estate firm to act as your agent in a real estate transaction, the agent must help you obtain the best price and terms possible, whether you are the buyer or seller. The agent also owes you the duty to:

- | | |
|--|---|
| •Safeguard and account for any money handled for you | •Be loyal and follow reasonable and lawful instructions |
| •Act with reasonable skill, care and diligence | •Disclose to you any information which might influence your decision to buy or sell |

Even if the agent does **not** represent you, the agent must still be fair and honest and disclose to you all "material facts" which the agent knows or reasonably should know. A fact is "material" if it relates to defects or other conditions affecting the property, or if it may influence your decision to buy or sell. *This does not require a seller's agent to disclose to the buyer the minimum amount the seller will accept, nor does it require a buyer's agent to disclose to the seller the maximum price the buyer will pay.*

AGENTS WORKING WITH SELLERS

A seller can enter into a "listing agreement" with a real estate firm authorizing the firm and its agent(s) to represent the seller in finding a buyer for his property. The listing agreement should state what the seller will pay the listing firm for its services, and it may require the seller to pay the firm no matter who finds the buyer.

The listing firm may belong to a listing service to expose the seller's property to other agents who are members of the service. Some of those agents may be working with buyers as buyer's agents; others will be working with buyers but still representing the sellers' interests as an agent or "subagent." When the buyer's agents and seller's subagents desire to share in the commission the seller pays to the listing firm, the listing agent may share the commission with the seller's permission.

AGENTS WORKING WITH BUYERS

A buyer may contract with an agent or firm to represent him (as a **buyer's agent**) or may work with an agent or firm that represents the seller (as a **seller's agent or subagent**). All parties in the transaction should find out at the beginning who the agent working with the buyer represents.

If a buyer wants a buyer's agent to represent him in purchasing a property, the buyer should enter into a "buyer agency agreement" with the agent. The buyer agency agreement should state how the buyer's agent will be paid. **Unless some other arrangement is made which is satisfactory to the parties, the buyer's agent will be paid by the buyer.** Many buyer agency agreements will also obligate the buyer to pay the buyer's agent no matter who finds the property that the buyer purchases.

A buyer may decide to work with a firm that is acting as agent for the seller (a **seller's agent or subagent**). If a buyer does not enter into a buyer agency agreement with the firm that shows him properties, that firm and its agents will show the buyer properties as an agent or subagent working on the seller's behalf. Such a firm represents the seller (not the buyer) and must disclose that fact to the buyer.

A seller's agent or subagent must still treat the buyer fairly and honestly and disclose to the buyer all material facts which the agent knows or reasonably should know. The seller's agent typically will be paid by the seller. **If the agent is acting as agent for the seller, the buyer should be careful not to give the agent any information that the buyer does not want the seller to know.**

DUAL AGENTS

A real estate agent or firm may represent more than one party in the same transaction only with the knowledge and written consent of all parties for whom the agent acts. "Dual Agency" is most likely to occur when a buyer represented by a buyer's agent wants to purchase a property listed by that agent's firm. A dual agent must carefully explain to each party that the agent and the agent's firm are also acting for the other party.

In some situations, the agents may practice a form of dual agency known as "designated agency:" an agent in a firm is designated to represent the interests of the seller, and another agent in the same firm is designated to represent the interests of the buyer. This form of dual agency allows the designated agent to more fully represent the interests of the party with whom the agent is working.

In any dual agency situation, the agent must obtain a written agreement from the parties which fully describes the obligations of the agent and the agent's firm to each of them.

This firm represents both sellers and buyers. This means that it is possible that a buyer we represent will want to purchase a property owned by a seller we represent. When that occurs, the agent and firm listed above will act as dual agents if all parties agree.