

**EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT
AUCTION SALES**

NOTE: This form is designed for use where the listing firm may sell the property either at or outside of a public auction. This form should be used only by those who hold a current, valid real estate broker's license, auctioneer's license and appropriate firm licenses, if applicable.

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 ("Broker").

1. EXCLUSIVE RIGHT TO SELL. For a period extending from (Date) _____ until midnight, (Date) _____, Broker shall have the exclusive right to sell the Property as agent of Seller at the price and on the terms set forth below. The auction will be conducted at _____ (Location), _____ (Street Address), on or before the _____ day of _____, 20____, at _____ A.M. P.M. At such time and place, Broker, in its sole discretion, may accept for sale other consigned properties. Unless otherwise provided, all consigned properties shall be advertised at no expense to Seller and no commissions or fees due Broker from Seller shall be diminished by any commission or fee received on consigned properties.

2. REAL PROPERTY. The real property that is the subject of this Agreement is located in _____ County, North Carolina, and is known more particularly and described as (Complete ALL applicable):
Address: Street _____ City _____ Zip _____
Legal Description: _____
Subdivision Name: _____
Plat Reference: Lot _____, Block or Section _____, containing _____ acres as shown on Plat Book or Slide _____ at Page(s) _____
The PIN/PID or other identification number of the Property is: _____
Some or all of the Property may be described in Deed Book _____ at Page _____.

See attached Exhibit _____ for legal description/description of premises.

If more than one parcel of real property is the subject of this Agreement, the term "Property" as used herein shall be deemed to refer to all such parcels individually or collectively as the context may require unless specifically indicated otherwise.

Mineral rights are are not included.

Timber rights are are not included.

3. FIXTURES. The following items, if any, and if owned by the Seller, 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, attached propane gas tank, invisible fencing including all related equipment, lawn irrigation systems and all related equipment, water softener/conditioner and filter equipment, and any other items attached or affixed to the Property, EXCEPT any such items leased by the Seller and the following items: _____

4. PERSONAL PROPERTY. The following personal property is included in the sale price: _____



5. BROKER AGENCY RELATIONSHIPS AND COOPERATION WITH/COMPENSATION TO OTHER FIRMS. Seller has received the "Working with Real Estate Agents" publication and has reviewed it with Broker. **In the case of a sale of the Property at auction, Broker will act exclusively as agent of the Seller.** In the case of a sale of the Property other than at auction, with respect to dual agency (check only ONE):

Seller authorizes Broker to act as a Dual Agent, representing both the Seller and the Buyer in the same transaction, 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 Broker to act in the capacity of Dual Agent.

Broker has advised Seller of Broker's company policies regarding cooperation and the amount(s) of any compensation that will be offered to other brokers, including but not limited to, seller subagents, buyer agents or both, brokers who do or do not participate in a listing service and brokers who are or are not REALTORS®. Seller authorizes Broker to compensate and cooperate with the following: (CHECK ALL APPLICABLE AGENCIES):

Subagents representing the Seller

Buyer Agents representing the Buyer

Broker shall inquire of all cooperating agents at the time of initial contact as to their agency status. A written confirmation of agency shall be provided to Seller no later than the time of the presentation to Seller of any contract pursuant to this Agreement or, in the case of an auction sale, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase.

6. AUCTION.

(a) Authority. Seller authorizes the Broker to sell the Property at auction in the manner set forth herein.

(b) Auction With Or Without Reserve.

- Without Reserve. An auction without reserve, also known as an absolute auction, means an auction where the real or personal property offered for auction is sold to the highest bidder (i) without the requirement of any minimum bid; (ii) without competing bids of any type by a seller or agent of a seller; and (iii) without any other limiting condition of sale.
- With Reserve. An auction with reserve, also known as a sale subject to confirmation (this does not mean confirmation by a court, only acceptance by the seller) means an auction in which a seller reserves the right to establish a minimum bid, to accept or decline any and all bids or to withdraw the property at any time prior to the announcement of the completion of the sale by the broker. In the event that the high bid at auction does not meet Seller's reserve price, then Seller pays Broker an agreed-upon "no sale fee" in addition to any other fees and commissions payable by Seller under this Agreement.

SINGLE PARCEL. If a single parcel of real property is the subject of this Agreement, any auction will be conducted (check only ONE):

Without Reserve

With Reserve (Reserve Price: \$ _____ No Sale Fee: \$ _____)

Determined At Later Time. Seller and Broker agrees that a decision as to whether the Property shall be auctioned With Reserve or Without Reserve (including the Reserve Price and No Sale Fee if auctioned With Reserve) shall be made at a later time by Seller in consultation with Broker, based on the circumstances existing at or around the time of any such auction.

MULTIPLE PARCELS. If more than one parcel of real property is the subject of this Agreement, any such parcel will be auctioned With Reserve or Without Reserve as set forth in the attached Multi-Parcel Addendum.

(c) Live And/Or Online Auction. As defined by N.C.G.S. Section 85B-1(1), "(a)uction means the sale of goods or real estate by means of exchanges between an auctioneer and members of an audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer." An auction may be a traditional "live" auction in which the auctioneer and the members of the audience may hear each other, or it may be conducted online by means of electronic exchanges between the auctioneer and the members of an audience who submit bids via the Internet, or it may be conducted by a combination of live and online means.

SINGLE PARCEL. If a single parcel of real property is the subject of this Agreement, any auction will be conducted (check only ONE):

- Live
- Online
- Live/Online Combination

MULTIPLE PARCELS. If more than one parcel of real property is the subject of this Agreement, any such parcel will be auctioned live and/or online as set forth in the attached Multi-Parcel Addendum.

7. COMMISSIONS. (Note: For purposes of this paragraph 7, the term "Property" shall be deemed to refer to each individual parcel of real property that may be the subject of this Agreement.)

(a) **Sale Of Property At Auction.** (check only ONE)

Seller shall pay Broker _____ % of the bid price of the Property.

Seller shall pay Broker _____ % of the contract price of the Property.

OTHER. Seller shall pay Broker as follows: _____
_____.

(b) **Buyer's Premium At Auction.**

Seller authorizes Broker to charge a buyer's premium in the amount of _____ % of the bid price, to be included in the contract price, and: (check only ONE)

Seller will collect and pay over the buyer's premium to Broker, in addition to any compensation due Broker under Section 7(a) above.

Seller will collect and retain the buyer's premium as part of the contract price.

Seller does not authorize Broker to charge a buyer's premium.

(c) **Sale Of Property Other Than At Auction.** If the Property is sold during the term of this Agreement on any day other than the day of the auction, Seller shall pay Broker _____ % of the gross sales price of the Property or _____.

(d) **General Commissions Provisions.** Commissions shall be deemed earned under any of the following circumstances:

(i) If a ready, willing and able buyer is procured by Broker, 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;

(ii) 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;

(iii) 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 a party with whom Seller or Broker (or any agent acting for or through Broker) communicated regarding the Property during the term of this Agreement or any renewal hereof, then Seller shall pay Broker the commission provided for in Section 7(c); provided, that names of prospects are delivered or postmarked to the Seller within _____ days after the expiration of this Agreement. In the event the Property is exclusively listed for sale with another agency after the expiration of this Agreement and a registered prospect options or contracts to purchase the Property during the Protection Period, then the Seller shall pay to the Broker _____ % of the commission provided for in Section 7(c). It is not Broker's intention to hereby obligate Seller to pay two commissions; Seller should insure that any prospects registered pursuant to this Section are excluded from any subsequent listing agreement.

Once earned as set forth above, Broker 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 accept a bid or 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.

If Seller is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Seller at the time of the transfer.

If Broker is the prevailing party in any legal proceeding brought by Broker against Seller to recover any or all of the commission set forth herein, Broker shall be entitled to recover from Seller reasonable attorney fees and court costs incurred by Broker in connection with the proceeding.

8. **MARKETING FEE.** In addition to any other fees and commissions payable by Seller under this Agreement, Seller shall pay Broker a marketing fee in the amount of \$ _____ payable at closing upon execution of this Agreement. In the event an auction is rescheduled through no fault of the Broker, then Seller shall reimburse Broker for actual expenses incurred in rescheduling the auction.

9. **SELLER'S DUTIES.** Seller shall cooperate with Broker in the marketing and sale of the Property, including, but not limited to:
(a) If the Property is sold during the term of this Agreement, executing and delivering bills of sale and a (check only ONE) GENERAL WARRANTY DEED OTHER: _____ conveying fee simple marketable and insurable 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 and insurable title as set forth in the preceding sentence;

(b) Paying the following expenses of conveyance: (i) Revenue Stamps; (ii) Deed Preparation; and (check all that apply)
 Termite Inspection Report; Survey; Soil test(s) to determine septic system suitability; Planning Board, subdivision and re-zoning fees; clean-up of the Property, including mowing and trash removal; Title opinion for the benefit of the Seller; and Other: _____

(c) Providing an accurate description of the Property to the Broker;
(d) Informing Broker of any encumbrances that are placed on the Property on or after the date of this Agreement, within _____ days of the encumbrance;
(e) Obtaining releases of any and all encumbrances on the Property;
(f) Reimbursing Broker for any expense actually incurred by Broker as a result of an advance made by the Broker on behalf of Seller in furtherance of this Agreement;
(g) Being present at the time and place of auction sale and assist Broker in the sale of the Property;
(h) Making known to Broker or any prospective purchasers any defects in the Property;
(i) Making the Property available for showing (including working, existing utilities) at reasonable times and upon reasonable notice;
(j) Providing Agent, as soon as reasonably possible after the execution of this Agreement, copies of leases affecting the property, if any, 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;
(k) Referring all inquiries or offers regarding the Property to Broker;
(l) (check if applicable) Providing to Broker, in a timely manner, the North Carolina Residential Property Disclosure Statement; and
(m) (check if applicable) Providing a Lead-Based Paint and/or Lead-Based Paint Hazards Disclosure with respect to any residential dwelling built prior to 1978.

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 Seller does not wish to disclose, put "No Representation")*: _____

No management services, repair services, collection services, notices or tax services shall be implied as being provided by Broker by this Agreement. In the event that Broker does procure any of these services at the request of Seller, it is understood and agreed that Broker shall only be acting in the capacity of procurer for Seller and shall accrue no liability or responsibility in connection with any services so obtained on behalf of Seller. This exclusion of liability and responsibility shall not apply in the event that Broker directly contracts with Seller to provide any such service. 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.

10. OWNERS' ASSOCIATION. There is is not an owners' association. If there is an owners' association, then it is recommended that the Seller provide to Broker a completed Form 2A12-T (Owners' Association Disclosure and Addendum). The name, address and telephone number of the President of the owners' association or the Property Manager is: _____

11. BROKER'S DUTIES. Broker agrees to provide Seller the benefit of Broker's knowledge, experience and advice in the marketing and sale of the Property. Seller understands that Broker makes no representation or guarantee as to the sale of the Property, but Broker agrees to use best efforts in good faith to find a buyer who is ready, willing and able to purchase the property. Seller acknowledges that Broker is required by law to disclose to potential purchasers of the Property all material facts pertaining to the Property about which the Broker knows or reasonably should know, and that REALTORS® have an ethical responsibility to treat all parties to the transaction honestly. Broker shall do the following:

- (a) Schedule auction(s) at appropriate times;
- (b) Provide experienced and qualified personnel for the auction sale;
- (c) Document all records of the auction sale; and
- (d) Comply with all provisions of law in obtaining the highest sales price.

12. MARKETING: Seller authorizes Broker (*Check ALL applicable sections*):

- Signs.** To place "For Sale," "Auction," "Under Contract," "Sale Pending," or other similar signs on the Property and/or upon Seller's other properties (where permitted by law and relevant covenants) and to remove other such signs.
- Lock/Key Boxes.** To place a lock/key box on the Property.
- Open Houses.** To conduct open houses of the Property at such times as Seller and Broker may subsequently agree.
- Listing Service.** To submit pertinent information concerning the Property to any listing service of which Broker is a member or in which any of Broker's agents participate and to furnish to such listing service notice of all changes of information concerning the Property authorized in writing by Seller. Seller authorizes Broker, 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.
- Advertising Other Than On The Internet.** To advertise the Property in non-Internet media, and to permit other firms to advertise the Property in non-Internet media to the extent and in such manner as Broker may decide.
- Internet Advertising.** To display information about the Property on the Internet either directly or through a program of any listing service of which the Broker is a member or in which any of Broker's agents participate, and authorizes other firms who belong to any listing service of which the Broker is a member or in which any of Broker's agents participate to display information about the Property on the Internet in accordance with the listing service rules and regulations. *If Seller does not authorize Internet Advertising as set forth above, Seller MUST complete an opt-out form in accordance with listing service rules. (NOTE: NCAR Form #105 may be used for this purpose.)*

If Seller authorizes Internet Advertising as set forth above, Seller further authorizes the display of (*Check ALL applicable sections*):

- The address of the Property
- Automated estimates of the market value of the Property
- Third-party comments about the Property

Seller acknowledges and understands that while the marketing services selected above will facilitate the showing and sale of the Property, there are risks associated with allowing access to and disseminating information about the Property that are not within the reasonable control of the Broker, including but not limited to:

1. unauthorized use of a lock/key box,
2. control of visitors during or after a showing or an open house,
3. inappropriate use of information about the Property placed on the Internet or furnished to any listing service in which the Broker participates.

Seller therefore agrees to indemnify and hold harmless Broker from any damages, costs, attorneys' fees and other expenses as a result of any personal injury or property loss or damage to Seller or any other person not caused by Broker's negligence arising directly or indirectly out of any such marketing services.

13. EARNEST MONEY DEPOSITS. Unless otherwise provided in the sales contract, earnest money deposits paid toward the purchase price shall be made payable to Broker as agent of Seller and held by Broker in an escrow account until the consummation or termination of the transaction. Any earnest money forfeited by reason of buyer's default under a sales contract shall be divided equally between Broker and Seller. In no event shall the sum paid to Broker because of a buyer's default exceed the commission that would have been due if the sale had closed as contemplated in the contract. Likewise, the sum paid to Broker because of a buyer's default shall not decrease the commission payable to Broker as a result of the subsequent sale of the Property.

14. ENVIRONMENTAL MATTERS: Seller, directly or through whom a claim may be made by any other party or parties against the Broker, shall indemnify, defend and hold harmless the Broker, its agents and employees from any loss, liability, damage, cost or expense, including without limitation reasonable legal, accounting, consulting, engineering, court costs and other expenses, related to the presence of storage tanks or the presence or release of hazardous substances, materials and wastes, including, but not limited to, those substances, materials and wastes which are listed in the United States Department of Transportation Hazardous Materials Table or by the Environmental Protection Agency as hazardous substances and those that are or become regulated under any applicable local, state or federal law.

15. BANKRUPTCY: In the event that the Property comes under the jurisdiction of a bankruptcy court, Seller shall immediately notify Broker of the same and if Seller is the subject of bankruptcy, shall promptly take all steps necessary to obtain court approval of Broker's appointment to sell the Property, unless Broker shall elect to terminate this Agreement upon said notice.

16. REPRESENTATIONS: Seller represents and warrants to Broker that it has the right to offer the Property for sale and further represents and warrants that it has the right and authority to execute and deliver such instruments as may be necessary to effectuate any transaction contemplated hereby.

17. INDEMNIFICATION: Seller represents and warrants that the information set forth herein and any other information as may be furnished by the Seller is correct to the best of Seller's knowledge; Broker shall have no obligation or responsibility for checking or verifying any such information. Further, Seller agrees to indemnify Broker for any and all loss or damage sustained by Broker as a result of Broker's or Seller's furnishing such information to a buyer or anyone else.

18. PARTIES AND BENEFIT: This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this agreement on behalf of the party for whom he or she signs and that this Agreement binds such party.

19. 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. The mediation will take place at a mutually acceptable location in the city where the Broker's Office Address is located unless otherwise indicated as follows: _____

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

21. ENTIRE AGREEMENT/CHANGES. This Agreement constitutes the entire agreement between the parties 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 the parties.

THE 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 PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

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

THE NORTH CAROLINA ASSOCIATION OF REALTORS[®], INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

Seller _____

Seller _____

Mailing Address _____

Home Phone _____ Work Phone _____ Mobile Phone _____

Fax _____ E-mail _____

Broker (Listing Firm) _____

By: _____ Individual license #: _____

Office Address _____

City/State/Zip : _____

Office Phone _____ Mobile Phone _____

Fax _____ E-mail _____

SAMPLE