



EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

DRAFT 03/22/2021

This Exclusive Right to Sell Listing Agreement, hereinafter known as "Agreement", is by and between \_\_\_\_\_ (Name of Firm), hereinafter known as "Firm" and \_\_\_\_\_ hereinafter known as "Client".

In consideration of Firm's agreement to list the following described property, hereinafter known as "Property," for sale and to use its efforts to find a buyer, Client agrees with Firm as follows:

1. EXCLUSIVE RIGHT TO SELL: For a period extending until 11:59 p.m. (based upon the time at the locale of the Firm's office) on \_\_\_\_\_, 20\_\_\_\_, Firm shall have the exclusive right to sell the Property as agent of Client at the price and on the terms set forth below, or upon such other terms as may be agreed upon in writing by Client with any buyer. Client represents that, as of the commencement date of this Agreement, Client is not a party to a listing agreement with any other firm.

2. BROKER COOPERATION/AGENCY RELATIONSHIPS: Firm has advised Client of Firm's general company policy regarding cooperating with subagents, buyer agents or dual agents. Client has received and read the "Working with Real Estate Agents" publication and authorizes the Firm to compensate (subject to Sections Paragraphs 7b.(i) and 7b.(ii)) and cooperate with the following (Firm agrees to inquire of all agents at the time of initial contact as to their agency status): (CHECK ALL APPLICABLE AGENCIES)

- checkbox subagents of Client
checkbox buyer agents
checkbox dual agents representing both Client and the buyer in the same transaction (subject to the terms of Section 16).

3. PROPERTY: (Address) \_\_\_\_\_
(Legal Description/Description) \_\_\_\_\_

checkbox See attached Exhibit \_\_\_\_\_ for legal description/description of premises.

To the best of Client's knowledge: (i) the Property is not subject to any rights of first refusal, rights of first offer or similar rights of others to acquire or lease all or a portion of the Property, (ii) as respects the Property there have been no licenses or leases granted or transfers of mineral, oil and gas or other similar rights, (iii) Client has paid or will pay in full all persons recently contracted with (or contracted with hereafter prior to any transaction) to do work related to or affecting the Property and Client will comply with all laws related to mechanics liens, (iv) the streets serving the Property are public streets and are maintained by a public authority, and (v) 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 (Insert "None" or the identification of any matters relating to (i) through (v) above, if any): \_\_\_\_\_

4. LISTING TERMS:

Sales Price: \_\_\_\_\_

Client Financing Terms: \_\_\_\_\_

Possession Delivered: \_\_\_\_\_

Other Terms: \_\_\_\_\_

checkbox See attached Exhibit \_\_\_\_\_ for additional listing terms.



This form approved by:
North Carolina Association of REALTORS®, Inc.

Firm Rep. Initials \_\_\_\_\_ Client Initials \_\_\_\_\_

ADVERTISING AND DATABASE LISTINGS: In connection with the marketing and sale of the Property, Client authorizes and directs Firm: (CHECK ALL APPLICABLE SECTIONS)

- to place a sign on the Property. All other signs marketing the Property for sale shall be removed.
- Listing Service.** To submit pertinent information concerning the Property to any listing service or information exchange of which Firm is a member or in which any of Firm's agents participate and to furnish to such listing service or information exchange notice of all changes of information concerning the Property authorized in writing by Client. Client authorizes Firm, upon execution of a sales contract for the Property, to notify the listing service or information exchange of the pending sale, and upon closing of the sale, to disseminate sales information, including sales price, to the listing service, information exchange, appraisers and real estate brokers.
- Advertising Other Than On The Internet.** Client authorizes Firm 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 Firm may decide.
- Internet Advertising.** Client authorizes Firm to display information about the Property on the Internet either directly or through a program of any listing service or information exchange of which the Firm is a member or in which any of Firm's agents participate, and authorizes other firms who belong to any listing service of which the Firm is a member or in which any of Firm's agents participate to display information about the Property on the Internet in accordance with the listing service or information exchange rules and regulations. *If Client does not authorize Internet Advertising as set forth above, Client MUST complete an opt-out form in accordance with listing service rules. (NOTE: NCAR Form #105 may be used for this purpose.)*

If Client authorizes Internet Advertising as set forth above, Client 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

Client 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 Firm, 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 Firm participates.

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

MARKETING EXPENSE: In the event that the Property does not sell during the term of this Agreement, Client shall nonetheless be obligated to reimburse Firm for actual documented expenses incurred in marketing the Property up to the amount of \$ \_\_\_\_\_.

#### 5. SPECIAL PROVISIONS:

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See attached Exhibit \_\_\_\_\_ for special provisions.

#### 6. COOPERATION WITH FIRM:

**a. Exclusive Rights:** Client agrees to cooperate with Firm to facilitate the sale of the Property. The Property may be shown only by appointment made by or through Firm. Client immediately shall refer to Firm all inquiries or offers it may receive regarding the Property. Client agrees to cooperate with Firm in bringing about a sale of the Property. All negotiations shall be conducted through Firm. Firm shall be identified as the contact firm with all state and local economic development agencies being notified of the Property's availability.

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

**7. COMMISSIONS:** The amount, format or rate of real estate commission is not fixed by law. Commissions are set by each broker individually and may be negotiable between a firm and its client.

**a. Sales Commissions:**

(i) Commissions shall be earned when Client accepts an unconditional offer from a buyer or when all conditions have been met following Client's acceptance of a conditional offer from a buyer, whether the buyer is procured by Firm, the Client or anyone else during the term of this Agreement. Client shall pay Firm a commission equal to \_\_\_\_\_ percent (\_\_\_\_%) of the gross sales price of the Property, or the sum of

(\$ \_\_\_\_\_), whichever is greater, and/or other: \_\_\_\_\_

Commission shall be paid in cash or by bank check. Gross sales price includes any and all consideration received or receivable, in whatever form, by Client including, but not limited to, the assumption or release of existing liabilities. Client shall pay the commission upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Client shall pay the commission upon the signing of such installment contract. In the event of any breach or termination by Client of any contract of purchase and sale, it is understood and agreed that the commission remains earned and payable upon notice given by Client to buyer of Client's intent not to proceed with such sale, notwithstanding the basis of such intent not to proceed. In the event Client contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the commission shall be calculated on the fair market value of the Property or interest therein contributed, conveyed, transferred or exchanged and is payable at the time of the contribution, conveyance, transfer or exchange. If Client 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 fee or 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 Client at the time of the transfer. Provided, however that this interest transfer provision shall not apply to a transfer of an interest in a partnership, corporation or other business entity between existing partners, shareholders or other interest holders of the entity.

If this box is checked, notwithstanding the foregoing, in the event that there is no cooperating agent involved in a sale transaction, the commission stated in (i) above shall be adjusted to \_\_\_\_\_ percent (\_\_\_\_%) of the gross sales price of the Property or \_\_\_\_\_ (\$ \_\_\_\_\_), whichever is greater, and/or other: \_\_\_\_\_

For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm below.

(ii) **Options:** \_\_\_\_\_ % of any option fees shall be paid to Firm at the time such monies are paid to Client, said amount to be applied to commissions payable pursuant to **Section Paragraph 7.a.(i)**, provided, Firm shall not be paid, on account of this provision, an amount in excess of its entitlement pursuant to **Section Paragraph 7.a.(i)**.

(iii) Should there be a forfeiture of earnest money, Firm shall be entitled to \_\_\_\_\_ % of same, provided that Firm shall not receive an amount in excess of the commission set forth in **Section Paragraph 7.a.(i)**.

**b. General Commissions Provisions:**

(i) Firm shall not be required to compensate or pay any commission to, either directly or indirectly, a buyer who seeks to be compensated or paid a commission in connection with any transaction pursuant to this Agreement.

(ii) If Firm has worked directly with a buyer in connection with the Property, either as a client or a customer, and such relationship is evidenced in writing (either by a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 - or substantially similar registration document), then Firm may not compensate or pay any commission to another real estate agent (not associated with Firm) in connection with any transaction pursuant to this Agreement involving said registered buyer.

(iii) In the event Client fails to make payments within the time limits set forth in this Agreement, then the delinquent amount

shall bear interest from the date due until paid at the maximum rate permitted in the state of North Carolina. If Firm is required to institute legal action (including mediation or arbitration) against Client relating to this Agreement, Firm shall be entitled to costs of such action.

(iv) In the event Client sells or otherwise disposes of its interest in the Property, Client shall remain liable for payment of the commissions provided for in this Agreement, including, without limitation, the commission obligations set forth in **Section Paragraph 7.a.** unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.

(v) "Buyer" and "registered prospect" as used herein shall be deemed to include, but not be limited to: (i) any holder of a right of first offer or refusal or similar right which holder is not specifically named herein and excluded from the terms of this Agreement, (ii) any prospect registered by Firm pursuant to **Section Paragraph 8** hereof (which prospect registration listing shall identify specific principals and shall not include brokers acting in a brokerage capacity), and, (iii) the successors or assigns, principals, officers, directors, employees or shareholders thereof or any affiliate, alter-ego or commonly controlled entity of any such person.

## 8. REGISTERED PROSPECTS:

**a. Prior Listing Agreements:** If the Property was exclusively listed for sale with another agency prior to this Agreement, then Client shall provide Firm in writing the names of registered prospects (as defined in **Section Paragraph 7b.(v)** above) and the duration of the protection period under the prior listing agreement. If Client provides such information to Firm within twenty (20) days of the date of this Agreement, then a direct or indirect sale or agreement to sell during such protection period to a registered prospect is excluded from this Agreement.

**b. Later Sale To Registered Prospect:** If within \_\_\_\_\_ days after the expiration or earlier termination of this Agreement (the "Protection Period"), Client directly or indirectly sells or agrees to sell the Property to a party with whom Firm (or any other agent acting for or through Firm) has had substantive bilateral communication concerning the Property during the term of this Agreement, Client shall pay Firm the same commission to which Firm would have been entitled had the sale been made during the term of this Agreement; provided that names of registered prospects (as defined in **Section Paragraph 7b.(v)** above) are delivered or postmarked to Client within fifteen (15) days after the expiration or earlier termination of this Agreement. **In the event the Property is exclusively listed for sale with another agency after the expiration or earlier termination of this Agreement and Client directly or indirectly sells or agrees to sell the Property to a registered prospect (as defined in Section Paragraph 7b.(v) above) during the Protection Period, then Client shall pay to Firm the same commission to which Firm would have been entitled.**

**9. LEASE PROTECTION PROVISION:** In the event that the Property is leased during the term hereof, it is acknowledged that Firm shall nonetheless earn a commission upon execution of such lease agreement. The parties agree to act in good faith in determining that the commission is an amount reasonable in this area for the type of Property.

**10. AUTHORITY:** Client represents and warrants to Firm that it has the right to offer the Property for sale. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party and the holders of the interests in Client.

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

**12. INDEMNIFICATION:** Client represents and warrants that the information set forth herein and any other information as may be furnished to Firm by Client, including information relating to environmental matters, is correct to the best of Client's knowledge. Firm shall have no obligation or responsibility for checking or verifying any such information, except as may be required by law. Client shall indemnify Firm for any and all loss or damage sustained by Firm as a result of (i) Firm's or Client's furnishing such information to a buyer or anyone else; and (ii) the presence of storage tanks on, or the presence or release of hazardous substances, materials and wastes on or from, the Property.

**13. PARTIES AND BENEFITS:** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Client agrees that at any time during the term of this Agreement, Firm may either assign Firm's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Firm's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State of North Carolina. In the event of any such assignment or transfer, Client may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Client's intent to terminate this Agreement.

**14. COUNTERPARTS; ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; ATTORNEYS FEES; GOVERNING LAW:** This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall

constitute originals. This Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included. It shall not be deemed a breach of this Agreement for Firm to comply with an order resulting from an arbitration conducted by a REALTOR® association or issued by a court of competent jurisdiction. If legal proceedings (including mediation or arbitration) are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**15. INTELLECTUAL PROPERTY RIGHTS:** Client grants to Firm and any listing or commercial database service in which Firm or its agents participate a non-exclusive, perpetual license to use any information, photographs, drawings or other intellectual property that Client provides to Firm, including the rights to display, reproduce or make derivative works from the intellectual property.

**16. DUAL AGENCY:** Client understands that the potential for dual agency will arise if a buyer who has an agency relationship with Firm becomes interested in viewing the Property. If such circumstance of dual agency arises, Firm at that time shall orally confirm to Client that Firm is then serving in a dual agency role.

(a) Disclosure of Information. In the event Firm serves as a dual agent, Client agrees that without permission from the party about whom the information pertains, Firm shall not disclose to the other party the following information:

- (1) that a party may agree to a price, terms, or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

(b) Firm's Role as Dual Agent. If Firm serves as agent for both Client and a buyer in a transaction involving the Property, Firm shall make every reasonable effort to represent Client and buyer in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Client and buyer. Client understands and acknowledges that:

- (1) Prior to the time dual agency occurs, Firm will act as Client's exclusive agent;
- (2) In its separate representation of Client and buyer, Firm may obtain information which, if disclosed, could harm the bargaining position of the party providing such information to Firm;
- (3) Firm is required by law to disclose to Client and buyer any known or reasonably ascertainable material facts. Client agrees Firm shall not be liable to Client for (i) disclosing material facts required by law to be disclosed, and (ii) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

(c) Client's Role. Should Firm become a dual agent, Client understands and acknowledges that:

- (1) Client has the responsibility of making Client's own decisions as to what terms are to be included in any purchase and sale agreement with a buyer client of Firm;
- (2) Client is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Client and buyer and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;
- (3) Client has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;
- (4) Client may seek independent legal counsel to assist Client with the negotiation and preparation of a purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a purchase and sale agreement.

Client agrees to indemnify and hold Firm harmless against all claims, damages, losses, expenses or liabilities, other than violations of the North Carolina Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Client shall have a duty to protect Client's own interests and should read any purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Client wants included in said agreement.

THE BROKER 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**. FURTHER, REALTORS® HAVE AN ETHICAL DUTY TO CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OF ANY PARTY OR PROSPECTIVE PARTY **TO 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.

**CLIENT:**

**Individual**

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**Business Entity**

\_\_\_\_\_

(Name of Entity)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

**FIRM:**

\_\_\_\_\_

(Name of Firm)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Individual License #: \_\_\_\_\_ **State:**

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_