



DISCLOSURE AND FEE AGREEMENT FOR NON-LISTED PROPERTY SALE

DRAFT 4/14/21

This Agreement ("Agreement") is entered into by and between: \_\_\_\_\_ ("Seller"), and \_\_\_\_\_ ("Firm"). (Name of Firm)

RECITALS:

A. Seller is the owner of the property commonly known as:

\_\_\_\_\_ ("Property").

B. Firm has advised Seller of Firm's general company policy regarding agency. Seller has received and read the North Carolina Real Estate Commission's "Working with Real Estate Agents" publication disclosure (NCAR Standard Form 520) and understands that Firm will be acting as:

- a Seller's Agent
 a Buyer's Agent

with respect to:

\_\_\_\_\_ who would like to see the Property.

any prospect Firm registers with Seller as evidenced by a registration document (either a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 or substantially similar registration document) provided by Firm to Seller prior to showing the Property.

C. To the best of Seller'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) Seller 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 Seller 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): \_\_\_\_\_

Accordingly, the parties agree as follows:

1. FEE. When Seller accepts an unconditional offer from Buyer or when all conditions have been met following the Seller's acceptance of a conditional offer from Buyer, then Seller shall pay Firm a fee equal to \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the gross sales price of the Property, or the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), whichever is greater.

Seller shall pay the fee to Firm in cash or by bank check. Gross sales price includes any and all consideration received or receivable, in whatever form, by Seller including, but not limited to, the assumption or release of existing liabilities. Seller shall pay the fee upon



delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Seller shall pay the fee upon the signing of such installment contract. In the event of any breach by Seller, Seller's successors or assigns, of any contract of purchase and sale, it is understood and agreed that the fee remains earned and payable upon notice given by Seller to Buyer of Seller's intent not to proceed with such sale, notwithstanding the basis of such intent not to proceed.

In the event Seller contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the fee 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 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 fee or commission in connection with such sale or transfer, the fee 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.

**2. TERM:** This Agreement shall be effective for a period extending until 11:59 p.m. (based upon the time at the locale of the Property) on \_\_\_\_\_, 20\_\_\_. If, within \_\_\_\_\_ days after the expiration of this Agreement, Seller directly or indirectly sells or agrees to sell the Property to Buyer, then Seller shall pay Firm the same commission to which it would have been entitled had the sale been made during the term of this Agreement. "Buyer" 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 Recital B hereinabove, 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.

**3. LEASE PROTECTION PROVISION.** In the event that the Property is leased to Buyer during the term hereof, it is acknowledged that a commission shall be nonetheless earned by Firm 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.

**4. 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. Seller 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, Seller may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Seller's intent to terminate this Agreement.

**5. 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 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.

**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.

**SELLER:**

**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: \_\_\_\_\_