



EXCLUSIVE BUYER/TENANT REPRESENTATION AGREEMENT

Draft 3-8-22

The undersigned, _____ ("Client"), hereby employs _____ ("Firm"),

as Exclusive Representative to secure for Client acceptable properties and assist in negotiating terms and conditions acceptable to Client for the purchase or lease of such properties in accordance with the terms of this Agreement.

1. This Agreement shall commence this date and terminate at 11:59pm (based upon the time at the locale of the Firm's office) on _____. Client represents that, as of the commencement date of this Agreement, Client is not a party to a buyer/tenant representation agreement with any other person or firm.

2. General requirements and purposes of the properties and transactions sought will be outlined by specifications. In the event Client modifies these specifications, Client will notify Firm in writing of the new requirements and/or purposes. These requirements and purposes are informational only in nature and are not a condition of this Agreement.

3. Client understands that other prospective buyers or tenants represented by Firm may seek property, submit offers, and contract to purchase or lease property through Firm, including the same or similar property as Client seeks to purchase or lease. Client acknowledges, understands and consents to such representation of other prospective buyers or tenants by Firm.

4. The geographic scope of this Agreement contemplates any properties within: _____

5. In consideration of this exclusive right to represent Client, Firm will pursue diligently the location of acceptable properties and transactions as specified by Client. Any purchase or lease of property by Client during the term of this exclusive right will be subject to the terms of this Agreement.

6. In consideration of the services to be performed by Firm, Client agrees to compensate Firm for each property purchased or leased by payment of a fee as follows:

Purchase:

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

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.

Lease:

If Client and a landlord directly or indirectly leases or agrees to the lease of a property, Client shall pay Firm _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term; or \$ _____ (flat fee), whichever is greater.

Other: (Retainer Fee, Bonus, Incentives, etc.) _____



The parties agree that Firm shall first seek the fee from the listing agent. If there is no listing agent, Firm shall first seek the fee from the seller/landlord. Should the fee so obtained be greater than the fee listed above, Firm shall be entitled to retain the difference. Should the fee so obtained be less than the fee listed above, Client shall pay Firm the difference at closing or upon execution of a lease, as applicable.

Fees will be due and payable at closing or upon execution of a lease, as applicable. If Client defaults in a purchase or lease contract, or if such agreement is terminated after becoming a binding agreement, the total compensation that would have been due Firm had the transaction been consummated will be due and payable immediately in cash from Client. "Client" as used herein is deemed to include, but is not limited to, its successors or assigns, principals, officers, directors, employees or shareholders thereof or any affiliate, alter-ego or commonly controlled entity of the Client.

If a lease for which a commission is payable hereunder contains (i) an option or right of first refusal to renew or extend, and a lease term is renewed or extended whether strictly in accordance with the terms of such option or right or otherwise and/or (ii) an option or right of first refusal to expand, and Client exercises such option or right whether strictly in accordance with the terms of such option or right or otherwise, then Client shall pay a commission in accordance with this Section 6- Lease on the additional base rental to be paid, calculated at the commission rate applicable hereunder for the years of the lease in which the additional base rental is payable. Said commission shall be earned and payable upon the notice of exercise of any option or right of first refusal to renew or extend or upon the notice of exercise of any option or right of first refusal to expand, as applicable.

Notice: Client understands and acknowledges that there is the potential for a conflict of interest generated by a percentage of transaction value based fee for representing Client. The amount, format or rate of real estate fees is not fixed by law. Fees are set by each firm individually and may be negotiable.

7. In the event that, during the _____ (____) months following the termination of this Agreement, Client consummates a transaction involving property disclosed to him by Firm or a different property from a party introduced to Client by Firm during the representation period, Client will assure the payment to Firm of the fee provided in Section 6 of this Agreement; provided that the names of prospective properties, owners and other agents are delivered to Client by Firm or postmarked within **fifteen (15)** ~~thirty (30)~~ days after the termination of this Agreement. Firm will provide negotiation and closing services to Client in connection with such transaction only if this Agreement is extended in writing; however, if this Agreement is not extended, Firm will still be entitled to payment of its fee.

8. Firm will act as agent on behalf of Client and will disclose its agency relationship in writing, and Client will cooperate with Firm in executing a written disclosure of agency, in connection with any transaction hereunder. Firm has advised Client of Firm's general company policy regarding cooperation with other agents. Client authorizes Firm to cooperate with and compensate buyer/tenant subagents representing only the Client. Firm shall disclose to Client the identity and role of any buyer/tenant subagent in a transaction.

9. Client has received a copy of the "Working With Real Estate Agents **Disclosure**" ~~disclosure~~ and has reviewed it with Firm. Client understands that the potential for dual agency will arise if Client becomes interested in viewing a property listed by Firm. Firm may represent more than one party in the same transaction only with the knowledge and informed consent of all parties for whom Firm acts.

~~(a) Authorization (initial only ONE).~~

~~_____ Client authorizes the Firm to act as a dual agent, representing both the Client and the seller/landlord, subject to the terms and conditions set forth in this Section below.~~

~~_____ Client desires exclusive representation at all times during this agreement and does NOT authorize Firm to act in the capacity of dual agent. If Client does not authorize Firm to act as a dual agent, the remainder of this Section shall not apply.~~

(ba) 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 or lease 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.

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

- (1) Prior to the time dual agency occurs, Firm will act as Client's non-exclusive agent;
- (2) In its separate representation of Client and seller/landlord, 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 seller/landlord 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.

(ec) 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 lease or purchase and sale agreement with a seller/landlord 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 seller/landlord 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 lease or purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a lease or purchase and sale agreement.

~~Client agrees to indemnify and hold Firm harmless against~~ **Should Firm become a dual agent, Client waives** 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 lease or purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Client wants included in said agreement.

(d) Designated Dual Agency. When a real estate firm represents both the buyer/tenant and seller/landlord in the same real estate transaction, the firm may, in its discretion, offer designated dual agency. If offered, designated dual agency permits the firm, with the prior express approval of both the buyer/tenant and seller/landlord, to designate one or more agents to represent only the interests of the seller/landlord and a different agent(s) to represent only the interests of the buyer/tenant, unless prohibited by law.

An individual agent may not be designated to represent a party in a transaction if that agent has received confidential information concerning the other party in connection with the transaction.

(e) Authorization/Direction (initial).

Dual Agency. Client authorizes the Firm to act as a dual agent, representing both the Client and the seller/landlord, subject to the terms and conditions set forth in paragraph 9.

Client DOES DOES NOT authorize the same individual agent to represent both the Client and the seller/landlord in a transaction.

(also initial if Firm offers designated dual agency and Client authorizes designated dual agency) Designated Dual Agency. In addition to authorizing Firm to act as a dual agent, Client authorizes and directs Firm to designate an individual agent(s) to represent the Client and a different individual agent(s) to represent the seller/landlord. Firm will practice designated dual agency unless: (i) designated agency would not be permitted by law due to circumstances existing at the time of the transaction, or (ii) Client authorizes Firm in writing to remain in dual agency only.

OR

Exclusive Representation. Client desires exclusive representation at all times during this agreement and does NOT authorize either dual agency or designated dual agency.

10. Client will provide Firm, upon request, relevant personal and financial information to assist Firm's efforts to locate property as outlined. Client further agrees to view or consider property of the general nature set forth in this Agreement, to negotiate a transaction

in good faith if acceptable to Client, and cooperate fully with Firm, including referring to Firm all inquiries and proposals received regarding potential properties. Upon request, Client will provide Firm with documentation disclosing Firm's exclusive right to represent Client.

11. 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.

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

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: _____

FIRM:

(Name of Firm)
By: _____
Name: _____
Individual license #: _____ State: _____
Date: _____

CLIENT:

Business Entity

(Name of Entity)
By: _____
Name: _____
Title: _____
Date: _____

FIRM:

Address: _____

Phone: _____
Facsimile: _____
E-mail: _____

Address: _____

Phone: _____
Facsimile: _____
E-mail: _____