

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 between _____ as Seller(s) ("Seller") of the property described below (the "Property"), and _____ as Listing Firm ("Firm").

NOTE: If the Property was most recently owned by a person who is now deceased, the tax listing or last recorded deed to the Property may not accurately identify the party(ies) who should be named as Seller. In such a case, the deceased owner's will, or applicable North Carolina law if the deceased owner died without a will, will determine the correct party(ies) to sign this Agreement. Advice from an NC attorney should be obtained concerning the proper party(ies) prior to completing this Agreement.
If the owner of the Property is a corporation, limited liability company, trust or other legal entity, the entity should be named as Seller and a duly authorized officer, manager, trustee or other legal representative of the entity should sign this Agreement on the entity's behalf.
A non-owner spouse should be named as Seller because he or she will be required in most cases to sign the deed to release certain marital rights in the Property. If a married owner has signed and recorded a pre-nuptial agreement, post-nuptial agreement, or a free trader agreement, consult an NC attorney to determine whether the non-owner spouse will be required to sign the deed.

In consideration for Firm's services and efforts to find a buyer for the Property, Firm is hereby granted the exclusive right to sell the Property on the terms and conditions set forth in this Agreement.

1. TERM OF AGREEMENT.

- (a) Term. The term of this Agreement ("Term") shall begin on its Effective Date and shall end at midnight on its Expiration Date.
(b) Effective Date. This Agreement shall become effective and the Seller and Firm's respective rights and obligations under this Agreement shall commence ("Effective Date") as follows (check appropriate box):
- [] The Effective Date shall be the date that this Agreement has been signed by both Seller and Firm
- [] The Property is currently listed for sale exclusively with another real estate firm. Seller represents that the current listing agreement expires on _____. The Effective Date of this Agreement shall commence immediately upon the expiration of the current listing agreement. (NOTE: According to Article 16 of the REALTORS® Code of Ethics: "REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.")
(c) Expiration Date. This Agreement shall terminate at midnight on _____ ("Expiration Date").
(d) Auction. 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, Firm, 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 Firm from Seller shall be diminished by any commission or fee received on consigned properties.

2. REAL PROPERTY. The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraphs 2 and 3 below.
NOTE: If the Property will include a manufactured (mobile) home(s), Buyer and Seller should consider including the Manufactured (Mobile) Home provision in the Additional Provisions Addendum (Standard Form 2A11-T) with this offer.

Street Address: _____
City: _____ Zip: _____
County: _____, North Carolina



NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description: (Complete ALL applicable)

Plat Reference: Lot/Unit _____, Block/Section _____, Subdivision/Condominium _____

_____, as shown on Plat Book/Slide _____ at Page(s) _____

The PIN/PID or other identification number of the Property is: _____ Acreage: _____

Other description: _____

Some or all of the Property may be described in Deed Book _____ at Page _____

MULTIPLE PARCELS. If additional parcels of real property are the subject of this Agreement, any such parcels are described in an attached Multi-Parcel Addendum, and the term "Property" as used herein shall be deemed to refer to all such parcels unless specifically indicated otherwise.

Mineral rights are are not included.

Timber rights are are not included.

WARNING: THE PARTIES SHOULD NOT ASSUME THAT AN ITEM WILL OR WILL NOT BE INCLUDED IN THE SALE BASED ON AN ORAL OR WRITTEN STATEMENT OR UNDERSTANDING THAT IS NOT A PART OF A SALES CONTRACT. BUYER AND SELLER SHOULD BE SPECIFIC WHEN NEGOTIATING WHAT ITEMS WILL BE INCLUDED IN OR EXCLUDED FROM THE SALE.

3. **FIXTURES.** The following items, if any, which are owned by Seller, are deemed fixtures and are included in the Purchase Price free of liens, as well as any other items attached or affixed to the Property: _____

NOTE: Seller should confirm whether any items attached or affixed to the Property are leased or not owned by Seller and should identify any such items in the following blank: _____

4. **PERSONAL PROPERTY.** The following personal property shall be transferred to Buyer at no value at Closing: _____

5. **AUCTION SALE/PRE-AUCTION SALE.**

(a) **Authority.** Seller authorizes the Firm to sell the Property at auction in the manner set forth herein. **Seller also authorizes the Firm to sell the Property other than at auction in accordance with this Agreement and applicable laws and regulations.**

(b) **Absolute Auction or Auction With Reserve.**

- **Absolute.** An absolute auction, also known as an auction without reserve, 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 Firm 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):

Absolute

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

Absolute/With Reserve Combination (applicable if Property is subdivided after the Effective Date)

Determined At Later Time. Seller and Firm agrees that a decision as to whether the Property shall be auctioned Absolute or With 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 Firm, 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 Absolute or With Reserve as set forth in the attached Multi-Parcel Addendum.

(c) **Live, Sealed Bid, And/Or Online Auction.** As defined by N.C.G.S. Section 85B-1(1), "auction 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" **or sealed bid** auction in which the auctioneer and the members of the audience may hear each other **or see sealed bids**, 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 all that apply**):

- Live
- Online
- Live/Online Combination
- Sealed Bid

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, **and/or by sealed bid** as set forth in the attached Multi-Parcel Addendum.

6. **MARKETING FEE; ONLINE AUCTION HOSTING FEE.** In addition to any other fees and commissions payable by Seller under this Agreement, Seller shall pay Firm the following fee(s):

- (a) a marketing fee in the amount of \$ _____ payable at closing upon execution of this Agreement, and
- (b) if applicable, an Online Auction hosting fee of \$ _____ payable at closing upon execution of this Agreement.

In the event an auction is rescheduled through no fault of the Firm, then Seller shall reimburse Firm for actual expenses incurred in rescheduling the auction.

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 Firm _____ % of the bid/gavel price of the Property.
- Seller shall pay Firm _____ % of the contract/purchase price of the Property.
- OTHER. Seller shall pay Firm as follows: _____.

(b) **Buyer's Premium(s) At Auction** (check all applicable).

- Seller authorizes Firm to charge a live auction buyer's premium in the amount of _____ % of the bid/gavel price, to be included in the contract/purchase price, and/or
- Seller authorizes Firm to charge an Online Auction buyer's premium in the amount of _____ % of the bid/gavel price, to be included in the contract/purchase price;
- Seller does not authorize Firm to charge a buyer's premium.

If Seller authorizes Firm to charge a buyer's premium (check only ONE):

- Seller will collect and pay over the buyer's premium(s) to Firm, in addition to any compensation due Firm under Section 7(a) above.
- Seller will collect and retain the buyer's premium(s) as part of the contract/purchase price.

(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 Firm _____ % 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 Firm, Seller, or anyone else during the term of this Agreement at the Reserve price-set forth herein, or at any other 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 Firm (or any agent acting for or through Firm) communicated regarding the Property during the term of this Agreement or any renewal hereof, then Seller shall pay Firm 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 Firm _____% of the commission provided for in Section 7(c). It is not Firm'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, Firm 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 Firm is the prevailing party in any legal proceeding brought by Firm against Seller to recover any or all of the commission set forth herein, Firm shall be entitled to recover from Seller reasonable attorney fees and court costs incurred by Firm in connection with the proceeding.

8. FIRM AGENCY RELATIONSHIPS AND COOPERATION WITH/COMPENSATION TO OTHER FIRMS. Seller has received the "Working with Real Estate Agents **Disclosure**" publication and has reviewed it with Firm. **In the case of a sale of the Property at auction, Firm 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 Firm 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 Firm to act in the capacity of Dual Agent.

Firm has advised Seller of Firm'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 Firm to: (CHECK ALL APPLICABLE AGENCIES):

- Cooperate with buyer agents representing the buyer and offer them the following compensation: _____ % of the gross sales price or \$ _____.
- Cooperate with subagents representing the Seller and offer them the following compensation: _____% of the gross sales price or \$ _____; and/or,
- Cooperate with and compensate other Cooperating Real Estate Firms according to the attached Firm policy, or Firm's marketing proposal, receipt of which Seller hereby acknowledges.

Firm 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.

9. SELLER REPRESENTATIONS.

(a) **Flood Hazard Disclosure/Insurance.** To the best of Seller’s knowledge, the Property is is not located partly or entirely within a designated Special Flood Hazard Area. The Seller does does not currently maintain flood hazard insurance on the Property.

(b) **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:

(c) **Owners’ Association.**

(i) Complete ONLY if the Residential Property and Owner’s Association Disclosure Statement is required: The name, address and telephone number of the president of the owners’ association or the association manager is: _____

Owners’ association website address, if any: _____

The name, address and telephone number of the president of the owners’ association or the association manager is: _____

Owners’ association website address, if any: _____

(ii) Complete ONLY if New Construction or where the Residential Property and Owner’s Association Disclosure Statement is NOT required: To the best of Seller’s knowledge there is is not an owners’ association which imposes various mandatory covenants, conditions and restrictions upon the Property. If there is an owners’ association, Seller agrees to promptly complete an Owners’ Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T) at Seller’s expense and to attach it as an addendum to any contract for the sale of the Property.

(d) **Termite Bond.** To the best of Seller’s knowledge there is is not a termite bond on the Property. If there is a termite bond, it is is not transferable. If transferable, the transfer cost is \$ _____, and the bonding company is: _____

(e) **Ownership. Seller represents that Seller:**

- has owned the Property for at least one year;
- has owned the Property for less than one year

~~(f) **Residence.** Seller represents that the Property is or is not the Seller’s primary residence~~

(gf) Receipt of Sample Form.

Seller acknowledges receipt of a sample copy of a Real Property Auction Purchase and Sale Contract (form 620-T)

(hg) Current Liens. Seller represents to the best of Seller’s knowledge:

(1) The Property is is not encumbered by a deed of trust or mortgage. Complete any of the following where applicable:

- (i) There is a first deed of trust or mortgage on the Property securing a loan held by:
Lender Name: _____
Approximate balance: \$ _____ Lender Phone#: _____
Lender Address: _____
- (ii) There is a second deed of trust or mortgage on the Property securing a loan held by:
Lender Name: _____
Approximate balance: \$ _____ Lender Phone#: _____
Lender Address: _____
- (iii) There is a deed of trust or mortgage on the Property securing an equity line of credit held by:
Lender Name: _____
Approximate balance: \$ _____ Lender Phone#: _____
Lender Address: _____

(2) Seller is current on all payments for the loans identified in numbered items (i), (ii) and (iii) above except as specified in (7) below.

(3) Seller is not in default on any loan identified in numbered items (i), (ii) and (iii) above and has not received any notice(s) from the holder of any loan identified in numbered items (i), (ii) and (iii) above or from any other lien holder of any kind, regarding a default under the loan, threatened foreclosure, notice of foreclosure, or the filing of foreclosure except as specified in (7) below.

(4) There are not any liens secured against the Property for Federal, State or local income taxes, unpaid real property taxes, unpaid condominium or homeowners’ association fees, mechanics’, laborers’ or materialmen’s liens, or other liens affecting the Property, and Seller has no knowledge of any matter that might result in a lien affecting the Property except as specified in (7) below.

(5) There are not any judgments against Seller affecting the Property, and Seller has no knowledge of any matter that might result in a judgment that may potentially affect the Property except as specified in (7) below.

(6) There are not any Uniform Commercial Code (UCC) fixture filings affecting the Property, and Seller has no knowledge of any matter that might result in a UCC fixture filing affecting the Property except as specified in (7) below.

(7) Specify any information, including approximate balances, required by Seller representations (2) through (6) above (NOTE: Outstanding liens may affect Seller's net proceeds): _____

(ih) Bankruptcy. Seller currently:

- (1) is is not under bankruptcy protection under United States law.
- (2) is is not contemplating seeking bankruptcy protection during the term of this Agreement.

(ji) Access. Seller represents that the Property has legal access to a public right of way. If access is by private road/easement/other, Seller further represents that there is is not an agreement regarding the maintenance of such private road/easement/other means of access. If applicable, Seller agrees to promptly provide Firm information pertaining to any such agreement.

(kj) Lease(s). To the best of Seller's knowledge, the Property is is not subject to any lease(s). If applicable, Seller agrees to promptly provide Firm a copy of any such lease(s) or a written statement of the terms of any oral lease(s).

(hk) VA/FHA Appraisal. To the best of Seller's knowledge, ~~a VA or~~ **an** FHA appraisal has has not been performed on the Property within ~~six~~ **four** months prior to the Effective Date. If applicable, Seller agrees to promptly provide Firm a copy of any such appraisal if available.

(ml) Special Assessments. To the best of Seller's knowledge, there are no **Proposed or Confirmed Special Assessments (as defined in the sample contract form provided to Seller) pending or confirmed governmental or owners' association special assessments** regarding the Property except as follows (Insert "none" or the identification of such assessments, if any): _____

(am) Manufactured (Mobile) Home. Complete ONLY if there is a manufactured (mobile) home(s) on the Property that Seller intends to include as a part of the sale of the Property: VIN(s): _____ or VIN(s) unknown. Other description (year, model, etc.): _____

(en) Fuel Tank/Fuel. To the best of Seller's knowledge, there is is not a fuel tank(s) located on the Property. *If "yes" complete the following to the best of Seller's knowledge:*

- Ownership of tank 1: owned leased If leased, the name of tank lessor is: _____
- Location of tank 1: above ground below ground
- Type of fuel: oil propane gasoline and/or diesel other: _____
- Ownership of tank 2: owned leased If leased, the name of tank lessor is: _____
- Location of tank 2: above ground below ground
- Type of fuel: oil propane gasoline and/or diesel other: _____

If, during the term of this Agreement, Seller becomes aware that any of the representations set forth in this paragraph 12 are incorrect or no longer accurate, Seller shall promptly notify Firm and cooperate with Firm in taking appropriate corrective action.

10. **SELLER'S DUTIES.** Seller shall cooperate with Firm 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 SPECIAL WARRANTY DEED NON-WARRANTY (QUITCLAIM) DEED. OTHER: _____ (sheriff's deed, tax deed, trustee's deed, executor or administrator's deed, etc.) 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 rezoning 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 Firm;
 - (d) Informing Firm 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 Firm for any expense actually incurred by Firm as a result of an advance made by the Firm on behalf of Seller in furtherance of this Agreement;
 - (g) Being present at the time and place of auction sale and assist Firm in the sale of the Property;
 - (h) Making known to Firm 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 Firm;
- (l) (check if applicable) Providing to Firm, in a timely manner, the North Carolina Residential Property and Owners Association Disclosure Statement;
- (m) (check if applicable) Providing to Firm, in a timely manner, the North Carolina Mineral and Oil and Gas Rights Mandatory Disclosure Statement;
- (n) (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;
- (o) providing Firm, in a timely manner, any information necessary (including any information omitted under Paragraph 9) to enable Firm to prepare an estimate of Seller's net proceeds at settlement. Seller acknowledges and understands that any such estimate is an approximation only and that Seller should verify the accuracy of the calculations; and
- (p) if required by N.C.G.S. §44A-11.1, timely designating a Lien Agent, and providing Firm as soon as reasonably possible a copy of the appointment of Lien Agent.

Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Firm, (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Firm, and (3) the owners' association manager (or other authorized representative) to release and disclose copies of all restrictive covenants affecting the Property, bylaws, articles of incorporation, rules and regulations, and other governing documents of the owners' association and/or the subdivision. Seller acknowledges and understands that Firm is under no obligation to acquire any of the information referenced in this subparagraph or to verify the accuracy of any such information that may be provided to Firm.

No management services, repair services, collection services, notices or tax services shall be implied as being provided by Firm by this Agreement. In the event that Firm does procure any of these services at the request of Seller, it is understood and agreed that Firm 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 Firm 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.

11. **FIRM'S DUTIES.** Firm agrees to provide Seller the benefit of Firm's knowledge, experience and advice in the marketing and sale of the Property. Seller understands that Firm makes no representation or guarantee as to the sale of the Property, but Firm 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 Firm is required by law to disclose to potential purchasers of the Property all material facts pertaining to the Property about which the Firm knows or reasonably should know, and that REALTORS® have an ethical responsibility to treat all parties to the transaction honestly. Firm 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 Firm **to commence marketing the Property as described below on the Effective Date OR (insert later date if applicable)** (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 Firm may subsequently agree.
- Listing Service.** To submit pertinent information concerning the Property to any listing service of which Firm is a member or in which any of Firm'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 Firm, 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 Firm 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 Firm is a member or in which any of Firm's agents participate. Seller further 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 rules and regulations, and also authorizes any listing service of which the Firm is a member or in which any of Firm's agents participate to use, license or sell to others information about the Property entered into the listing service. Seller specifically authorizes the display of the address of the Property, automated estimates of the market value of the Property and third-party comments about the Property. If seller desires to limit or prohibit 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 to limit or prohibit Internet advertising and explains how such limitations may or may not be effective.)

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 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.
4. **information about the Property placed on the Internet by or through any listing service in which the Firm participates which is inaccurate or dated, or information about the Property which may remain on the Internet following the Expiration Date, including but not limited to photographs.**

Seller acknowledges and understands that neither Firm nor its agents have control over information about the Property that has been placed on the Internet in connection with the marketing of the Property, whether by or through a listing service or otherwise, including but not limited to photographs, and that any such information will not be removed.

Seller therefore agrees to ~~indemnify and hold harmless~~ **release and discharge** Firm **and Firm's agents** ~~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~~ **from any and all claims, demands, rights and causes of action of whatsoever kind and nature** not caused by Firm's negligence arising directly or indirectly out of any such marketing services.

13. **EARNEST MONEY.** Unless otherwise provided in the sales contract, any initial and additional earnest money deposits and any other earnest monies paid in connection with any transaction shall be held by the Firm, 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 Firm and Seller. In no event shall the sum paid to the Firm 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. In accordance with NC General Statutes Section 93A-12, if a dispute regarding the return or forfeiture of any earnest money deposit arises between Seller and the buyer, the escrow agent holding the deposit may deposit the disputed monies with the appropriate Clerk of Court following written notice to the parties. In the event of any such dispute, Seller directs Firm to disclose Seller's last known mailing address to the escrow agent upon request to enable the escrow agent to comply with the notice requirement of such law.

14. **ENVIRONMENTAL MATTERS:** Seller, directly or through whom a claim may be made by any other party or parties against the Firm, shall indemnify, defend and hold harmless the Firm, 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. **ADDITIONAL SELLER REPRESENTATIONS:** Seller represents and warrants to Firm 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.

16. **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; Firm shall have no obligation or responsibility for checking or verifying any such information. Further, Seller agrees to indemnify Firm for any and all loss or damage sustained by Firm as a result of Firm's or Seller's furnishing such information to a buyer or anyone else.

17. **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.

18. **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 Firm's Office Address is located unless otherwise indicated as follows: _____

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

20. **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.

21. WIRE FRAUD WARNING.

IF SELLER'S PROCEEDS WILL BE WIRED, IT IS RECOMMENDED THAT SELLER PROVIDE WIRING INSTRUCTIONS AT CLOSING IN WRITING IN THE PRESENCE OF THE ATTORNEY. IF SELLER IS UNABLE TO ATTEND CLOSING, SELLER MAY BE REQUIRED TO SEND AN ORIGINAL NOTARIZED DIRECTIVE TO THE CLOSING ATTORNEY'S OFFICE CONTAINING THE WIRING INSTRUCTIONS. THIS MAY BE SENT WITH THE DEED, LIEN WAIVER AND TAX FORMS IF THOSE DOCUMENTS ARE BEING PREPARED FOR SELLER BY THE CLOSING ATTORNEY. AT A MINIMUM, SELLER SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO PROVIDE THE WIRE INSTRUCTIONS. THE WIRE INSTRUCTIONS SHOULD BE VERIFIED OVER THE TELEPHONE VIA A CALL TO SELLER INITIATED BY THE CLOSING ATTORNEY'S OFFICE TO ENSURE THAT THEY ARE NOT FROM A FRAUDULENT SOURCE.

SELLER SHOULD CALL THE CLOSING ATTORNEY'S OFFICE AT A NUMBER THAT IS INDEPENDENTLY OBTAINED. TO ENSURE THAT SELLER'S CONTACT IS LEGITIMATE, SELLER SHOULD NOT RELY ON A PHONE NUMBER IN AN EMAIL FROM THE CLOSING ATTORNEY'S OFFICE, SELLER'S REAL ESTATE AGENT OR ANYONE ELSE.

Seller acknowledges and understands that there are risks associated with wire transfers that are not within the reasonable control of Firm, and Seller hereby agrees to release and discharge Firm and Firm's agents from any and all claims, demands, rights and causes of action of whatsoever kind and nature not caused by gross negligence of Firm or Firm's agents arising directly or indirectly out of any wire transfer Seller sends or receives/was to receive in connection with any real estate transaction in which Firm represents Seller.

