

EXCLUSIVE BUYER AGENCY AGREEMENT

Draft 3-9-17

[Consult "Guidelines" (Form 201G) for guidance in completing this form]

This EXCLUSIVE BUYER AGENCY AGREEMENT ("Agreement") is entered into (Date) _____, between _____ as Buyer(s) ("Buyer"), and _____ ("Firm") as the Buyer's exclusive agent to assist the Buyer in the acquisition of real property which may include any purchase, option and/or exchange on terms and conditions acceptable to Buyer. The individual agent who signs this Agreement on behalf of the Firm shall, on behalf of the Firm, be primarily responsible for ensuring that the Firm's duties hereunder are fulfilled; however, it is understood and agreed that other agents of the Firm may be assigned to fulfill such duties if deemed appropriate by the Firm. For purposes of this Agreement, the term "Firm," as the context may require, shall be deemed to include the individual agent who signs this Agreement and any other agents of the Firm.

Buyer represents that, as of the commencement date of this Agreement, the Buyer is not a party to a buyer representation agreement with any other real estate firm. Buyer has received a copy of the "WORKING WITH REAL ESTATE AGENTS" brochure and has reviewed it with Firm. Buyer further represents that Buyer has disclosed to Firm information about any properties of the type described in paragraph 1 below that Buyer has visited at any open houses or that Buyer has been shown by any other real estate firm.

- 1. TYPE OF PROPERTY. [] Residential (improved and unimproved) [] Commercial (improved and unimproved) [] Other _____ (a) General Location: _____ (b) Other: _____

2. EFFECT OF AGREEMENT. Buyer intends to acquire real property of the type described in paragraph 1. By employing Firm as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for such property through Firm, and to refer to Firm all inquiries received in any form from other real estate firms, prospective sellers or any other source, during the time this Agreement is in effect.

3. DURATION OF AGENCY. Firm's authority as Buyer's exclusive agent shall begin _____, and subject to paragraph 4, shall expire at midnight, _____, or when Buyer acquires real property of the type described in paragraph 1, whichever occurs sooner.

- 4. COMPENSATION OF FIRM. (a) Firm acknowledges receipt of a non-refundable retainer fee in the amount of \$ _____ which [] shall [] shall not be credited toward any compensation due Firm under this Agreement. (b) Buyer agrees that Firm's fee for services hereunder shall be in the amount of _____ ("Fee")

(Insert dollar amount, percentage of purchase price, or other method of determining Firm's compensation for each type of property the Buyer may purchase, such as resale, new construction, land/lot and/or unrepresented seller. Do not insert N/A or a zero (\$0)).

- (i) Firm shall seek the Fee from a cooperating listing firm (through the listing firm's offer of compensation in MLS or otherwise) or from the seller if there is no listing firm, and Buyer agrees that Firm shall be entitled to receive same in consideration for Firm's services hereunder. (ii) If Buyer purchases property where the compensation offered by the listing firm and/or seller is less than the Fee, or where no compensation is offered by either the listing firm or the seller, Buyer and Firm agree that Buyer will pay the difference between the Fee and the compensation offered unless prohibited by law. Firm will timely inform Buyer if the compensation offered is less than expected. (iii) If additional compensation, incentive, bonus, rebate and/or other valuable consideration ("Additional Compensation") is offered through the MLS or otherwise, Buyer will permit the Firm to receive it in addition to the Fee. Firm shall timely disclose the promise or expectation of receiving any such Additional Compensation and confirm the disclosure in writing before Buyer makes or accepts an offer to buy. (Note: NCAR Form #770 may be used to confirm the disclosure of any such Additional Compensation) (c) The compensation shall be deemed earned under any of the following circumstances: (i) If, during the term of this Agreement, Buyer, any assignee of Buyer or any person/legal entity acting on behalf of Buyer directly or indirectly enters into an agreement to purchase, option, and/or exchange any property of the type described above regardless of the manner in which Buyer was introduced to the property; or (ii) If, within _____ days after expiration of this Agreement, Buyer enters into a contract to acquire property introduced to Buyer during the term of this Agreement by Firm or any third party, unless Buyer has entered into a valid buyer agency agreement with another real estate firm; or



- (iii) If, having entered into an enforceable contract to acquire property during the term of this Agreement, Buyer defaults under the terms of that contract.
- (d) The compensation will be due and payable at closing or upon Buyer's default of any purchase agreement. If Buyer defaults, the total compensation that would have been due the Firm will be due and payable immediately in cash from the Buyer. No assignment of rights in real property obtained for Buyer or any assignee of Buyer or any person/legal entity acting on behalf of Buyer pursuant to this Agreement shall operate to defeat any of Firm rights under this Agreement.

NOTE: Buyer understands and acknowledges that there is the potential for a conflict of interest generated by a percentage of price based fee for representing Buyer. The amount, format or rate of real estate commission is not fixed by law, but is set by each broker individually, and may be negotiable between Buyer and Firm.

(e) Attorney Fees and Costs. If Firm is the prevailing party in any legal proceeding brought by Firm against Buyer to recover the Fee, Firm shall be entitled to recover from Buyer reasonable attorney fees and court costs incurred by Firm in connection with the proceeding.

5. OTHER POTENTIAL BUYERS. Buyer understands that other prospective purchasers represented by Firm may seek property, submit offers, and contract to purchase property through Firm, including the same or similar property as Buyer seeks to purchase. Buyer acknowledges, understands and consents to such representation of other prospective purchasers by Firm through its agents.

6. FIRM'S DUTIES. During the term of this Agreement, Firm shall promote the interests of Buyer by: (a) performing the terms of this Agreement; (b) seeking property at a price and terms acceptable to Buyer; (c) presenting in a timely manner all written offers or counteroffers to and from Buyer; (d) disclosing to Buyer all material facts related to the property or concerning the transaction of which Firm has actual knowledge; and (e) accounting for in a timely manner all money and property received in which Buyer has or may have an interest. Unless otherwise provided by law or Buyer consents in writing to the release of the information, Firm shall maintain the confidentiality of all personal and financial information and other matters identified as confidential by Buyer, if that information is received from Buyer during the brokerage relationship. In satisfying these duties, Firm shall exercise ordinary care, comply with all applicable laws and regulations, and treat all prospective sellers honestly and not knowingly give them false information. In addition, Firm may show the same property to other buyers, represent other buyers, represent sellers relative to other properties, or provide assistance to a seller or prospective seller by performing ministerial acts that are not inconsistent with Firm's duties under this Agreement.

Upon closing of any sale of property not entered in a listing service of which Firm is a member, Buyer authorizes Firm to submit pertinent information concerning the property, including sales price, to such listing service.

7. DISCLOSURE OF BUYER'S NAME/MAILING ADDRESS.

- (a) Unless otherwise stated in Paragraph 13 below, Firm has Buyer's permission to disclose Buyer's name.
- (b) In accordance with NC General Statutes Section 93A-12, if a dispute regarding the return or forfeiture of any earnest money deposit arises between Buyer and the seller of any real property Buyer may agree to purchase, 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, Buyer directs Firm to disclose Buyer'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.

8. NON-DISCRIMINATION. THE AGENT (FIRM) 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 OR GENDER IDENTITY OF ANY PARTY OR PROSPECTIVE PARTY TO THIS AGREEMENT.

9. BUYER'S DUTIES. Buyer agrees to cooperate with Firm in the acquisition of real property of the type described in paragraph 1, including but not limited to:

- (a) working exclusively with Firm during the term of this Agreement;
- (b) immediately referring to Firm information about any properties Buyer may have an interest in examining;
- (c) complying with the reasonable requests of Firm to supply any pertinent financial or personal data needed to fulfill the terms of this Agreement;
- (d) being available for reasonable periods of time to examine properties;
- (e) examining properties only by appointments made by or through Firm and accompanied by an agent of Firm;
- (f) conducting all negotiations and communications through Firm;
- (g) conducting all due diligence on property in consultation with Firm; and

(h) paying for all products and/or services required in the examination and evaluation of properties (examples: surveys, water/soil tests, title reports, property inspections, etc.).

10. **OTHER PROFESSIONAL ADVICE.** In addition to the services rendered to Buyer by the Firm under the terms of this Agreement, Buyer is advised to seek other professional advice in matters of law, taxation, financing, insurance, surveying, wood-destroying insect infestation, structural soundness, engineering, and other matters pertaining to any proposed transaction. Although Firm may provide Buyer the names of providers who claim to perform such services, Buyer understands that Firm cannot guarantee the quality of service or level of expertise of any such provider. Buyer agrees to pay the full amount due for all services directly to the service provider whether or not the transaction closes. Buyer also agrees to indemnify and hold Firm harmless from and against any and all liability, claim, loss, damage, suit, or expense that Firm may incur either as a result of Buyer's selection and use of any such provider or Buyer's election not to have one or more of such services performed.

- Buyer acknowledges receipt of a sample copy of an Offer to Purchase And Contract for review purposes.
- Buyer acknowledges receipt of a copy of the brochure *Questions and Answers on: Home Inspections*.
- Buyer acknowledges receipt of a sample copy of a Professional Services Disclosure and Election form (form #760) for review purposes.

11. **HOME WARRANTY.** The seller of any property Buyer may be interested in buying may or may not provide a home warranty as a part of any sale. If the seller does not provide a home warranty, Buyer may elect to purchase one. Buyer understands that although Firm will assist Buyer in identifying available home warranty products, Buyer must refer specific questions regarding coverage afforded by any such product to the provider thereof. If Firm assists Buyer in obtaining a home warranty, a fee of _____ will be offered to Firm by the person or entity through or from which any home warranty is obtained as compensation to Firm for its assistance in obtaining the home warranty, and Buyer hereby consents to Firm's receipt of such fee.

12. **CONFIDENTIALITY OF OFFERS.** Real estate brokers are prohibited by N.C. Real Estate Commission rule from disclosing the price or other material terms contained in a party's offer to purchase, sell, lease, rent or option real property to a competing party without the express authority of the party making the offer. However, sellers may elect not to treat the existence, terms, or conditions of any offers Buyer may make as confidential. Additionally, sellers may elect not to disclose or authorize seller's agent to disclose the existence of any other offer(s).

13. **ADDITIONAL PROVISIONS.** _____

14. **DUAL AGENCY.** Buyer understands that the potential for dual agency will arise if Buyer becomes interested in viewing property listed with 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) **Disclosure of Information.** In the event Firm serves as a dual agent, Buyer 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 Buyer and a seller in a transaction, Firm shall make every reasonable effort to represent Buyer and seller in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Buyer and seller. Buyer understands and acknowledges that:
 - (1) Prior to the time dual agency occurs, Firm will act as Buyer's exclusive agent;
 - (2) In its separate representation of Buyer and seller, 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 Buyer and seller any known or reasonably ascertainable material facts.

Buyer agrees Firm shall not be liable to Buyer 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) **Buyer's Role.** Should Firm become a dual agent, Buyer understands and acknowledges that:
- (1) Buyer has the responsibility of making Buyer's own decisions as to what terms are to be included in any purchase and sale agreement with a seller client of Firm;
 - (2) Buyer 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 Buyer and seller and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;
 - (3) Buyer has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;
 - (4) Buyer may seek independent legal counsel to assist Buyer 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.

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

(d) **Authorization** (*initial only ONE*).

_____ Buyer authorizes the Firm to act as a dual agent, representing both the Buyer and the seller, subject to the terms and conditions set forth in this Paragraph 14.

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

(e) **Designated Agent Option** (*Initial only if applicable*).

_____ Buyer hereby authorizes the Firm to designate an individual agent(s) to represent the Buyer, to the exclusion of any other individual agents associated with the Firm. The individual designated agent(s) shall represent only the interests of the Buyer to the extent permitted by law.

NOTE: When dual agency arises, an individual agent shall not practice designated agency and shall remain a dual agent if the individual agent has actually received confidential information concerning a seller client of the Firm in connection with the transaction or if designated agency is otherwise prohibited by law.

(f) **Dual Agency Compensation.** If the Firm acts as a dual agent (including designated agency), the total fee the Firm expects to receive for its services in representing Buyer and the seller shall be _____.

(Insert dollar amount, percentage of purchase price, or other method of determining Firm's compensation for each type of property such as resale, new construction and/or land/lot the Buyer may purchase.) THIS WILL IN NO WAY AFFECT OR MODIFY THE AMOUNT OF THE FEE SET FORTH IN PARAGRAPH 4 ABOVE THAT FIRM EXPECTS TO RECEIVE FOR ITS SERVICES IN REPRESENTING BUYER UNDER THIS AGREEMENT. In the event Buyer is interested in purchasing a property where the Firm's total fee is different from that described in this subparagraph (f), the Firm shall timely disclose the fee to Buyer and confirm it in writing before Buyer makes or accepts an offer to buy or sell any such property.

15. **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.

16. **ENTIRE AGREEMENT/CHANGES/TERMINATION.** This Agreement constitutes the entire agreement between Buyer and Firm relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. This Agreement may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument. No modification of any of the terms of this Agreement shall be valid, binding upon the parties, or entitled to enforcement unless such modification has first been reduced to writing and signed by both Buyer and Firm. Buyer acknowledges and understands that this Agreement constitutes a binding contract between Buyer and Firm. Although Buyer may at

any time withdraw from the fiduciary relationship existing between Buyer and Firm, the contract created by this Agreement may not be terminated by Buyer or Firm prior to its Expiration Date without legally sufficient cause. Any such termination shall be by mutually-acceptable written agreement signed by both Buyer and Firm.

NOTE: Buyer should consult with Firm before visiting any resale or new homes or contacting any other real estate firm representing sellers, to avoid the possibility of confusion over the brokerage relationship and misunderstandings about liability for compensation.

17. SURVEILLANCE: Buyer is advised to be mindful of the fact that there could be video/audio/surveillance/audio device(s) located on any property examined by Buyer and that Buyer or Buyer's representatives may be under surveillance during any such examination. Federal and State laws prohibit the interception of an oral communication through the use of any electronic, mechanical, or other device, whether or not recorded, without the consent of a party to that communication. However, video surveillance without consent is not illegal.

18. USE OF PHOTOGRAPHS AND VIDEO: Unless a property owner has notified the public that photography and video recording is prohibited, it is permissible to photograph or video the interior of private property since the owner's permission to enter the property implies permission to do so. However, under no circumstances may Buyer take photographs or videos that intrude on a property owner's reasonable expectations of privacy.

Buyer should only photograph or video things that are in "plain view". For example, taking a photo or video of the contents of a medicine cabinet or of financial records in a desk drawer would be impermissible. In addition, any permitted photography or video should be used only in a manner related directly to Buyer's examination and purchase of a property. **TAKING IMPERMISSIBLE PHOTOGRAPHS OR VIDEOS OR USING THEM FOR AN IMPERMISSIBLE PURPOSE COULD SUBJECT BUYER TO CIVIL LIABILITY.**

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