



REALTOR® North Carolina Association of REALTORS®

EXCLUSIVE RIGHT TO LEASE AND/OR SELL LISTING AGREEMENT

This Exclusive Right to Lease And/Or 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 lease and/or sale and to use its efforts to find a buyer/tenant, Client agrees with Firm as follows:

1. EXCLUSIVE RIGHT TO LEASE AND/OR 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 lease and/or 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/tenant. 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/tenant agents or dual agents. Client has received and read the "Working with Real Estate Agents Disclosure" and authorizes the Firm to compensate (subject to Sections 7c.(ii) and 7c.(iii)) 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/tenant agents
checkbox dual agents representing both Client and the buyer/tenant in the same transaction (subject to the terms of Section 15).

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:

SALE

LEASE

Sales Price _____ Rental _____
Client Financing Terms _____
Taxes Paid By _____
Insurance Paid By _____
Possession Delivered _____ Utilities Paid By _____
Operating Expenses Paid By _____



Firm Rep. Initials _____ Client Initials _____

Maintenance Paid By _____

Possession Delivered _____

Other Terms: _____

Other Terms: _____

See attached Exhibit _____ for additional listing terms.

ADVERTISING AND DATABASE LISTINGS: In connection with the marketing and lease/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 lease or 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 lease or sales contract for the Property, to notify the listing service or information exchange of the lease/pending sale, and upon lease execution or closing of the sale, to disseminate leasing/sales information, including rate/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 or lease 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 or lease 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:

See attached Exhibit _____ for special provisions.

6. COOPERATION WITH FIRM:

a. Exclusive Rights: Client agrees to cooperate with Firm to facilitate the leasing and/or 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 lease or 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 7.a.(i), provided, Firm shall not be paid, on account of this provision, an amount in excess of its entitlement pursuant to Section 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 7.a.(i).

b. Lease Commissions:

(i) Commissions shall be earned when Client directly or indirectly leases or agrees to lease the Property, whether tenant is procured by Firm, the Client or anyone else during the term of this Agreement. Firm's commission shall be calculated according to the schedule in Section 7.b.(ii). Commissions shall be paid in cash or by bank check.

(ii) **Schedule of Commissions:**

(complete both (a) and (b), only (a) will apply unless Firm elects in writing to have (b) apply)

(a) **Commission Paid Upon Execution of Lease:**

- (i) _____ 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;
- (ii) \$ _____ (flat fee);

payable in full upon execution of a lease by Client and tenant, unless otherwise provided here:

(b) **Commission Paid Over the Term of Lease:** In the event Firm elects in writing to collect a commission over the term of the lease, the commission is _____ percent (_____%) of the total rent collected from tenant or \$ _____ per collection period, whichever is more, payable within ten (10) days of the receipt of each lease payment by Client during the term of the lease.

- If this box is checked, notwithstanding the foregoing, in the event that there is no cooperating agent involved in a lease transaction, the commission stated in (a) above shall be adjusted to _____ 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), or, if Firm elects in writing to have (b) above apply, the greater of _____ percent (_____%) of the total rent collected from tenant or \$ _____ per collection period.
For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm below.

(iii) **Percentage Rent:** If a lease for which a commission is payable hereunder contains a percentage rent clause, Client shall pay a commission on the percentage rent payable by the tenant at the commission rate applicable to the period of the lease term for which the percentage rent is payable. This commission shall be payable within fifteen (15) days after receipt of each tenant payment to Client.

(iv) **Option(s) or Right(s) of First Refusal to Renew, Extend Lease or Occupy Additional Space:** 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 tenant occupies additional space 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 7.b. on the additional rent to be paid, calculated at the commission rate applicable hereunder for the years of the lease in which the additional rent 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.

(v) Commissions payable pursuant to this Agreement are leasing fees only and shall not be considered compensation for or an obligation to manage or sell the Property.

c. General Commissions Provisions:

(i) **Purchase of Property by Tenant:** If a tenant under a lease for which a commission is payable hereunder directly or indirectly purchases the Property, whether strictly in accordance with the terms of any option, right of first refusal, similar right or otherwise, during the term of the lease (term to include the period of any extensions or renewals thereof based upon extension or renewal rights contained in the original provisions of such lease), then a sales commission shall be calculated and paid in accordance with the provisions of Section 7.a.(i).

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

(iii) If Firm has worked directly with a buyer/tenant 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/tenant.

(iv) 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.

(v) 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 7.a. or 7.b. unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.

(vi) "Buyer", "tenant" 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 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 lease or sale with another agency prior to this Agreement, then Client shall provide Firm in writing the names of registered prospects (as defined in Section 7c.(vi) 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 lease or agreement to lease or sale or agreement to sell during such protection period to a registered prospect is excluded from this Agreement.

b. Later Lease Or Sale To Registered Prospect: If within _____ days after the expiration or earlier termination of this Agreement (the "Protection Period"), Client directly or indirectly leases or agrees to lease or 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 or lease been made during the term of this Agreement; provided that names of registered prospects (as defined in Section 7c.(vi) 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 lease or sale with another agency after the expiration or earlier termination of this Agreement and Client directly or indirectly leases or agrees to lease or sells or agrees to sell the Property to a registered prospect (as defined in Section 7c.(vi) above) during the Protection Period, then Client shall pay to Firm the same commission to which Firm would have been entitled.**

9. AUTHORITY: Client represents and warrants to Firm that it has the right to offer the Property for lease and/or 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.

10. 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 or lease the Property, unless Firm shall elect to terminate this Agreement upon said notice.

11. 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 tenant 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.

12. 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.

13. 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.

14. 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.

15. DUAL AGENCY: Client understands that the potential for dual agency will arise if a buyer/tenant 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 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.

(b) Firm's Role as Dual Agent. If Firm serves as agent for both Client and a buyer/tenant in a transaction involving the Property, Firm shall make every reasonable effort to represent Client and buyer/tenant in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Client and buyer/tenant. 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/tenant, 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/tenant 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 lease or purchase and sale agreement with a buyer/tenant 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/tenant 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.

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 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 buyer/tenant, subject to the terms and conditions set forth in Paragraph 15.

Client DOES DOES NOT authorize the same individual agent to represent both the Client and the buyer/tenant 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 buyer/tenant. 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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: _____

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: _____