

# EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

[With Consent To Designated Agency]



MASSACHUSETTS ASSOCIATION OF REALTORS®

I/We \_\_\_\_\_ ("SELLER"), hereby grant to \_\_\_\_\_, a real estate broker licensed under the laws of the Commonwealth of Massachusetts ("BROKER"), the exclusive right to sell the property described as \_\_\_\_\_ and recorded in the \_\_\_\_\_ County Registry Of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ ("PROPERTY") on the following terms and conditions:

- 1. Seller's Duties And Representations.** The BROKER is granted the exclusive right to sell the PROPERTY, as the SELLER'S agent, during the term of the Agreement and the SELLER agrees to refer all inquiries to the BROKER, to cooperate in marketing the PROPERTY, including completing lead paint (if property built before 1978) and other forms. If the PROPERTY is sold to a buyer procured by the BROKER, by the SELLER or by anyone else, the fee described in paragraph 4 shall be due. The BROKER is authorized, but is not required: (a) to offer compensation to other licensed brokers as buyer's agents or facilitators; (b) to place a listing for the PROPERTY in any multiple listing service; (c) to place a sign on the PROPERTY; (d) to photograph and advertise the PROPERTY in such media as the BROKER may select; and (e) to place a lock box on the PROPERTY. The SELLER authorizes the BROKER to disclose to prospective buyers all information about the PROPERTY provided to the BROKER by the SELLER, all of which the SELLER represents to be accurate. **The SELLER acknowledges receipt of a Mandatory Licensee-Consumer Relationship Disclosure form.** According to the Code of Ethics and Standards of Practice of the National Association of REALTORS®, the SELLER has been advised of (1) the broker's general company policies regarding cooperation with and compensation to subagents, buyer's agents and facilitators; (2) the fact that a buyer's agent, even if compensated by the listing broker or seller will represent the interest of the buyer; and (3) any potential for the listing broker to act as a disclosed dual agent on behalf of the seller and buyer. The SELLER agrees to comply with all applicable fair housing laws. Seller is aware that there is a risk of injury to persons viewing the Property as well as a risk of loss or damage to property of the seller during a showing or open house, whether the showing is accompanied by the Broker, via lockbox or otherwise. Seller has the responsibility to prepare the Property for marketing to minimize the likelihood of injury, damage and loss. Seller agrees to indemnify, defend and hold Broker and its agents harmless from any loss or claim of liability during any showing or open house, other than if proven to have been the result of broker's intentional misconduct. Seller understands and agrees that showings may be conducted by licensees other than the Broker or its agents and that inspectors or appraisers may conduct inspections and appraisals outside the presence of the Broker. Seller further understands and agrees that other licensees and prospective buyers are permitted to photograph and videotape the property unless expressly stated to the contrary.
- 2. Listing Price.** The listing price for the PROPERTY shall be \_\_\_\_\_ dollars or such other price and terms as the SELLER may approve.
- 3. Listing Period.** This Agreement shall begin on \_\_\_\_\_ and end on \_\_\_\_\_ and may be extended by agreement.
- 4. Broker's Fee.** (a) If within the term of this Agreement or any extension the PROPERTY is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a fee of \_\_\_\_\_ percent of the selling price, whether or not the transaction is completed or title passes. Said fee shall be paid at the time set for closing and may be deducted from amounts held by BROKER as escrow agent. The aforesaid fee shall also be due upon sale of the property to any person who was introduced to the PROPERTY during the aforesaid term or any extension or who entered into an agreement to purchase during the term, during any extension or within \_\_\_\_\_ days after expiration of the term or any extension, regardless of the date that title passes, except if the SELLER has entered into an exclusive agreement with another broker in good faith, in which case the BROKER shall be entitled to receive only the difference between the fee set forth herein and any lesser net fee paid to the other broker. If any deposit is retained by the SELLER as liquidated damages for default by the buyer under any agreement for sale of the PROPERTY, the BROKER shall be due one-half (1/2) of the amount so retained, but not more than an amount equal to the full commission that would have been paid to BROKER if a sale had been completed.  
(b) SELLER shall not pay any other broker for services in connection with sale of the PROPERTY nor give any instruction that reduces the BROKER'S fee, except if the BROKER has given written consent. Acceptance of escrowed funds shall not constitute consent. Should SELLER violate the foregoing provision and BROKER initiates or is caused to participate in any lawsuit, arbitration or other proceeding, including an interpleader action, BROKER shall be reimbursed by SELLER: (i) for BROKER'S reasonable attorneys' fees and costs; and (ii) to receive from SELLER interest at the legal rate on the amount due BROKER.  
(c) All disputes, claims or controversies arising out of or related to this Agreement shall, upon demand of either party, be submitted for binding arbitration, to the local association/board of REALTORS® or, in the event the association/board declines to hear the matter, to the American Arbitration Association ("AAA") or, upon mutual agreement, to another dispute resolution service. The REALTOR® arbitration proceedings shall be conducted by a

panel of three (3) arbitrators according to the then current rules of the association/board of REALTORS® (or, if before AAA, by a single arbitrator according to the consumer arbitration rules, or if not applicable, to the commercial arbitration rules of the AAA), and all proceedings will be conducted at a location in Massachusetts chosen by the arbitrator. Except as provided for proceedings pursuant to paragraph (b), reasonable attorneys' fees and costs shall be awarded to the generally prevailing party in the arbitration or lawsuit. Should either party file a claim for violation of General Laws Chapter 93A, the prevailing party (including any agent of the BROKER) shall be entitled to recover reasonable attorneys' fees and costs, but no fees and costs shall be recovered in the event that a tender of settlement was made in advance of suit, but rejected, and the court or arbitrator determines that the rejected tender was reasonable in relationship to the injury actually suffered.

5. Broker Cooperation. BROKER hereby advises SELLER that BROKER will offer compensation to cooperating real estate licensees as follows: buyer's agents \_\_\_\_\_ % of the selling price; facilitators (non-agents) \_\_\_\_\_ % of the selling price. If subagency will be offered, Consent To Subagency form must be signed. SELLER hereby authorizes the BROKER to disclose to prospective buyers whether an offer has been submitted on the PROPERTY and to disclose whether the offer is from a buyer introduced to the PROPERTY by the listing agent, by another licensee associated with the BROKER, or by a cooperating broker. Disclosure of the price and other terms of any offer shall remain confidential until closing, unless otherwise authorized by SELLER.
6. Broker's Duties. The BROKER agrees to use reasonable efforts in marketing the PROPERTY and agrees to list the PROPERTY with the \_\_\_\_\_ multiple listing service. The BROKER shall have no obligation to continue to market the PROPERTY after an offer has been accepted and shall have no obligation to present any offer once an offer has been accepted and while a transaction is pending. The BROKER is not hired as a property inspector, tax advisor or attorney and if such services are desired SELLER should hire professionals. It shall not constitute a violation of any duty owed by the BROKER or by any agent associated with the BROKER to advise a prospective buyer of the availability of a competing property or to assist a buyer with the purchase of another property.
7. Consent To Designated Agency. A designated agent is a real estate licensee who has been appointed by a broker or salesperson to represent a buyer as a "designated buyer's agent" or to represent a seller as a "designated seller's agent." When a buyer or seller consents to designated agency only that designated agent represents the buyer or seller. Any other agents affiliated with BROKER may represent another party to the transaction and by consenting to designated agency the buyer or seller permits those agents to represent another party. Individuals who are designated agents owe fiduciary duties to their respective clients. SELLER is further advised that: (a) the designated seller's agent will represent the SELLER and will owe the SELLER the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care and obedience to lawful instruction; (b) all other licensees affiliated with the appointing BROKER will not represent the SELLER nor will they owe the other duties specified in paragraph (a) to that SELLER, and may potentially represent the buyer; and (c) if designated agents affiliated with the same broker represent the SELLER and buyer in a transaction, the appointing broker shall be a dual agent and neutral as to any conflicting interests of the SELLER and buyer, but will continue to owe the SELLER and buyer the duties of confidentiality of material information and to account for funds. **By signing this agreement, SELLER consents to designated agency.** If BROKER is a designated agent for buyer and SELLER in a transaction, a notice will be given. The designated agent(s) for the SELLER is/are: \_\_\_\_\_

\_\_\_\_\_ In the event that the designated agent appointed to represent SELLER ceases to be associated with the BROKER, SELLER hereby consents to appointment by BROKER of one or more agents associated with the BROKER to represent SELLER. Written notice of that appointment shall be given by BROKER to SELLER in a timely manner.

8. Additional Terms.

Dated: \_\_\_\_\_

SELLER or Authorized Representative

BROKER or Authorized Representative

SELLER or Authorized Representative

## Footnotes