



EXCLUSIVE RIGHT TO MARKET PROPERTY AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING

Owner: _____ Owner _____

Owner: _____ Owner _____

Property Address: _____ Price \$ _____

The Property is: Residential Land Only Multi-Family (duplex, triplex, etc.) Commercial Condominium/Townhouse
 Homestead Non-Homestead Other (describe) _____

Property Description:

1. Owner's deed is recorded in Volume _____ at Page _____ of the _____ Land Records; and/or
2. Parcel ID # (from municipal tax records) _____; and/or
3. Approximate size of Property: _____ Acres or _____ Square Feet
Source: Survey Owner's Deed Other Source (describe) _____
4. Other: _____

Owner hereby agrees that _____, as **Listing Agency**, is hereby given for the period set forth herein, the sole and exclusive right, power and authority to act as **Owner's** real estate agent for the listing, marketing, sale or exchange of the Property described in this Agreement (the "Property"). This Agreement prohibits the listing and marketing of the Property with any other broker or salesperson or the offering of the Property for sale at auction during the period set forth herein. **Owner** agrees to direct all inquiries concerning this Property from whatever source to **Listing Agency** during the period of this Agreement which shall include inquiries from the general public and all other real estate agents. Any failure to do so shall constitute a substantial breach of this Agreement. **Owner** agrees to fully cooperate with **Listing Agency** in the marketing of the Property.

Owner acknowledges that the compensation to be paid under this Agreement is solely and entirely a matter of negotiation between **Owner** and **Listing Agency** and is not in any way controlled, fixed or pre-established. **Owner** agrees to pay **Listing Agency** a commission for its services in the following manner:

- a. _____% of the amount of the sale price;
- b. A fee of _____ irrespective of the sale price;
- c. A fee determined as follows: _____

Owner agrees to pay **Listing Agency** the above commission if, during the term of this Agreement, the Property is sold or exchanged or **Owner** enters into an agreement for the sale or exchange of the Property and all closing contingencies to be performed by the purchaser under such agreement are satisfied. **Owner** also agrees to pay **Listing Agency** the commission set forth in this Agreement if the Property is subject to a right of first refusal or option to purchase, and is sold to the holder of the right of first refusal or option to purchase as a result of **Listing Agency** presenting **Owner** with an offer to purchase the Property or as a result of any other marketing efforts by **Listing Agency**. In addition, if, prior to the Expiration Date of this Agreement, **Listing Agency** presents an offer at or above the price stated herein or at any other price established during the term of this Agreement (or any extension thereof), with no closing contingencies that provides for a closing within a reasonable period of time from the date of the offer, **Owner** will pay the commission set forth herein whether or not **Owner** accepts that offer.

If this Agreement expires prior to the closing of any agreement for the sale or exchange of the Property entered into by **Owner** during the term of this Agreement, **Listing Agency** shall be entitled to the commission set forth above whether or not this Agreement is renewed or extended beyond the Expiration Date. In addition, **Owner** authorizes **Listing Agency** to provide brokerage services with respect to any agreement for sale or exchange of the Property entered into during the term of this Agreement up to the closing of such agreement, whether or not this Agreement is renewed or extended beyond the Expiration Date. This authorization extends only to activities of **Listing Agency** concerning a sale or exchange agreement for the Property made during the term of this Agreement and does not authorize or obligate **Listing Agency** to provide brokerage services concerning any other offer or agreement concerning the Property after the Expiration Date. If an Agreement for the sale or exchange of the Property has been entered into, but has not yet closed prior to the Expiration Date, **Listing Agency** recommends that this Agreement be renewed or extended at least through the closing date of such agreement.

Owner also agrees to pay the full commission due under this Agreement if, within _____ month(s) after the Expiration Date or earlier termination of this Agreement, **Owner** directly or indirectly enters into a purchase and sale contract, sells, exchanges or closes on the sale or exchange of the Property and **Listing Agency** is the procuring cause thereof. For purposes of this Agreement, **Listing Agency** will be regarded as the procuring cause of any such agreement, sale, exchange or closing if its efforts are the

foundation upon which the negotiations are begun that result in a purchase and sale contract, sale, exchange or closing. If **Owner** sells, exchanges, closes upon or agrees to sell the Property, directly or indirectly, to anyone who has made an oral or written offer to purchase the Property through **Listing Agency**, procuring cause will be deemed established. **Listing Agency** shall provide **Owner** with written notice of all persons on account of whom it may be entitled to a commission under this paragraph within ten (10) calendar days after the Expiration Date or earlier termination of this Agreement. **Owner** will not be obligated to pay **Listing Agency** the commission if, at the time of such sale, exchange, agreement to sell, exchange or closing, **Owner** has entered into a valid, bona fide Exclusive Right to Market Agreement relating to the Property with any other licensed broker, salesperson or brokerage firm and such agreement contains terms and conditions, including duration and compensation, similar to those set forth in this Agreement.

Upon the signing of this Agreement, a non-refundable, unconditional retainer payment of \$ _____ will be paid to **Listing Agency**. Such non-refundable, unconditional retainer payment will will not be credited against any commission due hereunder.

MARKETING OPTIONS

- A. **Owner** does does not grant **Listing Agency** permission to place and maintain a "For Sale" sign upon the Property (if allowed under State or municipal law or condominium association rule).
- B. **Owner** does does not grant **Listing Agency** authority to permit cooperating agents to show the Property without **Listing Agency** being present.
- C. **Owner** does does not grant **Listing Agency** permission to place and maintain a lockbox on the Property.
- D. **Owner** does does not grant **Listing Agency** permission to submit this listing to the Multiple Listing Service (MLS) of a Board of REALTORS®. If this listing is submitted to an MLS, one exterior image of the Property is required. If **Owner** has special instructions, requirements or directions concerning submitting this listing to an MLS, insert below under Additional Conditions.
- E. **Owner** does does not grant **Listing Agency** authority to submit this listing to internet websites. If "yes", **Owner** acknowledges and agrees that **Owner's** name, as well as photographs and information about the Property, may be accessed by persons other than **Listing Agency**.
- F. **Owner** does does not grant **Listing Agency** permission to take interior photographs, digital images or provide virtual tours of the interior of the Property to be used for marketing.
- G. **Owner** does does not grant **Listing Agency** authority to disclose to cooperating Brokers or prospective purchasers the existence (but not the terms or amounts) of other offers to purchase the Property.
- H. Seller's Property Information Report will will not be provided to **Listing Agency** by **Owner**.
- I. The Property does does not include a residential dwelling built before 1978 and, therefore, is is not subject to Federal Lead-Based Paint Regulations. If "yes" Lead Based Paint Disclosure will be provided to **Listing Agency** by **Owner**.
- J. **Owner** acknowledges receipt of a Consumer Information Disclosure from **Listing Agency** prior to entering into this Agreement. Yes
- K. Additional Conditions:

ADDITIONAL TERMS AND CONDITIONS

1. **Listing Agency's Authority.** **Owner** authorizes **Listing Agency** to list the Property for sale or exchange, to advertise, show and market the Property as **Listing Agency** deems appropriate, to negotiate for offers on the Property and to present all offers, whether oral or written, to **Owner** up to and including the Expiration Date of this Agreement. **Owner** understands that, during the term of this Agreement, **Listing Agency** will be marketing other properties that may be of the same general nature as **Owner's** Property. **Owner** consents to **Listing Agency** representing other owners and marketing other properties during the term of this Agreement. Neither the Listed Price nor anything else in this Agreement constitutes a legally binding offer by **Owner** to any purchaser to sell the Property at that price or at any other price or terms. The decision to accept any purchaser's offer that may be presented is **Owner's** exclusive decision. **Listing Agency has no authority to accept or agree to any offers on Owner's behalf.** **Owner** reserves the right to change the Listed Price by a written and signed notice to **Listing Agency**. Any change in the Listed Price becomes effective only upon delivery to **Listing Agency** of the written Listed Price change notice signed by all **Owners**.

2. **Assistance of Other Brokers/Submittal of Listing to MLS.** Owner authorizes **Listing Agency** to enter into agreements to engage the services of other licensed brokers or salespersons as part of **Listing Agency's** marketing efforts. In addition, if **Listing Agency** is authorized by a Multiple Listing Service (MLS) of a Board of REALTORS® to submit listings to it, in the event **Owner** has authorized **Listing Agency** to do so in this Agreement, **Listing Agency** shall submit this listing to the MLS to offer broker agency, cooperation with buyer brokers, or both, to other MLS participants as part of **Listing Agency's** marketing efforts. In such case, **Listing Agency** shall market the Property in accordance with the procedures, rules and regulations of the MLS. Additionally, **Listing Agency** is authorized to provide sales information, including the selling price of the Property, to the MLS which is, in turn, authorized to circulate and disseminate such information.

3. **Authorization for Broker Agency Agreements.** **Listing Agency** is authorized to engage the services of other brokers, salespersons or brokerage firms through broker's agency agreements ("Broker's Agents"). These Broker's Agents may assist in marketing the property as agents of **Listing Agency**. They are not agents of **Owner**. **Listing Agency** is authorized to permit such Broker's Agents to show, market and negotiate for offers to purchase or exchange the Property, but neither **Listing Agency** nor any Broker's Agent is authorized to accept or agree to any offers on **Owner's** behalf. In authorizing the use by **Listing Agency** of Broker's Agents, **Owner** shall have no responsibility for the actions or inactions of such Broker's Agents and shall have no responsibility to any Broker's Agent for the payment of any commission or fee. The decision to offer broker agency and the amount of compensation or allocation of commissions or fees between **Listing Agency** and any Broker's Agent are matters within **Listing Agency's** sole discretion.

4. **Cooperation Agreements with Buyer Brokers.** **Owner** authorizes **Listing Agency** to offer, accept and enter into cooperation agreements for the allocation of the commission or fees paid to **Listing Agency** under this Agreement with licensed brokers, salespersons or brokerage firms who represent prospective purchasers of the Property ("Buyer Brokers"). **Listing Agency** is authorized to make or accept offers to compensate Buyer Brokers out of the commission or fees due **Listing Agency** under this Agreement. All such offers or agreements shall be on terms mutually satisfactory to **Listing Agency** and any such Buyer Broker. In authorizing **Listing Agency** to enter into cooperation agreements with Buyer Brokers, **Owner** shall have no responsibility to any Buyer Broker for the payment of any commission or fees. **Owner** understands that such Buyer Brokers do not act as **Owner's** agents or as Broker's Agents. **Owner** shall have no responsibility for the actions or inactions of such Buyer Brokers. The decision to offer or accept Buyer Broker cooperation agreements and the amount of compensation or allocation of commissions or fees which **Listing Agency** may offer, accept or agree to with any Buyer Broker(s) are within **Listing Agency's** sole discretion.

5. **Prohibition of Dual Agency/Limited Agency Agreement.** **Listing Agency** shall not act as the real estate agent for both the **Owner** and the purchaser of the Property whereby, in the same transaction, a purchaser represented by **Listing Agency** agrees to purchase **Owner's** Property. However, **Owner** acknowledges that **Listing Agency** may be representing prospective purchasers of property as a Buyer Broker. **Owner** consents to such representation. In the event a prospective purchaser whom **Listing Agency** represents as a Buyer Broker develops an active, substantial interest in the Property which is the subject of this Agreement, the differing interests of the **Owner** and the prospective purchaser concerning the same property may create a conflict of interest. In the event such a conflict of interest develops, a limited agency agreement can be entered into, provided all parties agree and consent in writing. A limited agency agreement, if entered into, will replace this Agreement as well as any buyer broker agreement that **Listing Agency** may have with a prospective purchaser. A limited agency agreement can only be entered into if a conflict of interest arises and thereafter all parties agree in writing to a limited agency relationship. A limited agency relationship is not intended to be the agency relationship of first choice if a conflict develops. In the event all parties cannot agree to a limited agency relationship in writing, this Agreement shall remain in full force and effect unless **Listing Agency** elects to terminate this Agreement by written notice to **Owner**.

6. **Interest On Purchaser's Contract Deposit/Forfeit of Purchaser's Contract Deposit.** **Owner** acknowledges that if interest on any purchase and sale contract deposit is reasonably expected to earn less than Fifty Dollars (\$50.00), the contract deposit will be placed in a pooled interest bearing trust account and the interest on the contract deposit will be remitted to the Vermont Housing Finance Agency (VHFA) to be used for the benefit of affordable housing programs in Vermont pursuant to Vermont's Interest on Real Estate Trust Accounts law. Even if the interest on any contract deposit is reasonably expected to accrue more than Fifty Dollars (\$50.00), **Owner** and any contract Purchaser may agree, in the Purchase and Sale Contract, to have the contract deposit placed in a pooled interest bearing trust account and the interest remitted to VHFA for the benefit of affordable housing programs in Vermont. In the event any contract deposit or portion thereof is paid to **Owner** as a result of a breach or claimed breach of a Purchase and Sales Contract by a contract Purchaser, **Listing Agency** shall be entitled to receive, as a liquidated and agreed upon sum, one-half of the deposit, together with one-half of any interest accrued thereon to which **Owner** is entitled, provided the total amount paid to **Listing Agency** shall not exceed the full commission which would otherwise be due under this Agreement. It is agreed that this allocation of any contract purchaser's forfeit of a deposit is a liquidated damage provision which is solely intended to compensate **Listing Agency** for reasonably estimated losses, costs and expenses and is neither a penalty for a purchaser's breach nor an incentive to **Owner** or purchaser to perform any purchase agreement.

7. **Accuracy of Information Concerning the Property.** **Owner** has furnished **Listing Agency** with all of the information about the Property contained in this Agreement or in any attachment or addendum hereto, including, if applicable, the Disclosure of Information and Acknowledgment of Lead-Based Paint and/or Lead-Based Paint Hazards. **Owner** represents to **Listing Agency** that, to the best of **Owner's** knowledge, such information is complete, correct and accurate and does not leave out any material information about the Property. **Owner** agrees to indemnify and hold **Listing Agency**, any Broker's Agent and any MLS to which a listing of the

Property is submitted harmless from any and all loss, damage, claim or liability, including attorney's fees, arising out of any inaccurate, misleading or undisclosed information or facts about the Property whether made by **Owner** in this Agreement or made by **Owner** during the course of **Listing Agency's** marketing efforts. The provisions of this paragraph shall apply to and include information in any Seller's Property Information Report. **Owner** further warrants and represents that this Agreement contains the signatures of all **Owners** of the Property or their legally authorized agents and that the person(s) signing this Agreement as **Owner** constitute **all** of the persons required to enter into a Purchase and Sale Contract for the Property and to convey all interests in the Property to a purchaser.

8. Limitation of Liability. In recognition of the relative risks, rewards and benefits of this Agreement to **Owner** and **Listing Agency**, **Owner** agrees that the **Listing Agency**, its agents, associates or affiliates together with any other brokers, salespersons or brokerage firms acting as Broker's Agents pursuant to this Agreement in no event shall be liable to **Owner** either jointly, severally or individually in an aggregate amount exceeding one-half of the compensation to be paid pursuant to this Agreement or Five Thousand Dollars (\$5,000), whichever is greater, by reason of any act or omission including breach of this Agreement, negligence or misrepresentation unless such breach, negligence or misrepresentation amounts to willful or intentional misconduct.

9. Non-Discrimination in Marketing. **Owner** authorizes and instructs **Listing Agency** to market the Property without respect to any person's race, sex, age, marital or familial status, religious creed, color, national origin, sexual orientation, physical or mental handicap and without respect to whether a person intends to occupy the Property with one or more minor children or is a recipient of public assistance. **Owner** further authorizes and directs **Listing Agency** to market the Property in compliance with all laws and regulations relating to non-discrimination in the sale of real estate.

10. Tax and Land Use Permits. **Owner** is advised by **Listing Agency** to seek competent legal, accounting or other professional assistance to determine the tax and other legal obligations imposed by any sale of the Property including, but not limited to, federal and state income tax (including capital gains tax), Foreign Investment in Real Property Tax Act (FIRPTA), Vermont Land Gains Tax, Vermont Non-Resident Income Tax Withholding and all land use permits and disclosures including those required by Act 250. **If Owner is a non-resident of Vermont or a foreign citizen, the provisions of the Vermont Non-Resident Income Tax Withholding and/or FIRPTA may require withholding of portions of Closing proceeds and payment of taxes to federal and Vermont taxing authorities. Owner is advised to seek legal or accounting advice concerning the impact of these laws prior to entering into any agreement for the sale of the Property.**

11. Owner's Disclosure Responsibilities Concerning Lead-Based Paint. **Owner** acknowledges that if the Property includes a residential dwelling built before 1978, **Owner** must disclose to the purchaser **Owner's** actual knowledge of lead-based paint or lead-based paint hazards and must provide purchaser with any records, test results or other information in **Owner's** possession related to lead-based paint. **Owner** agrees to complete appropriate portions of the Disclosure of Information and Acknowledgement form concerning lead-based paint.

12. Term of Agreement/Binding Effect/Severability. This Agreement shall not be for a period in excess of twelve (12) months and, except as provided in Section 5, cannot be cancelled or terminated prior to the Expiration Date unless **Owner** and **Listing Agency** mutually agree to such cancellation or termination in writing. However, if **Owner** directs or insists that **Listing Agency** market the Property in a manner that would, in the judgment of **Listing Agency**, violate applicable law or subject **Listing Agency** to civil or regulatory liability, **Listing Agency** shall have the right to terminate this Agreement by written notice to **Owner** whereupon all obligations of **Listing Agency** under this Agreement shall terminate and **Listing Agency** shall have no further responsibility in any manner whatsoever to **Owner**. This Agreement is binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives and assigns. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement shall not be affected thereby.

13. Dispute Resolution System/Fees and Costs to Prevailing Party. **Listing Agency** recommends the use of a dispute resolution system that utilizes mediation as an alternative to litigation in the event of any dispute or claim arising out of or relating to this Agreement. In the event of any litigation or lawsuit between **Owner** and **Listing Agency** arising out of or relating to this Agreement, or to the services provided to **Owner** by **Listing Agency** the substantially prevailing party will be entitled to the costs and expenses thereof, including reasonable attorney's fees.

14. Execution of Agreement/Amendments. This Agreement and all modifications, amendments or changes thereto, including any changes in the listed price, shall be in writing signed by **Owner** and authorized agent of **Listing Agency**. This Agreement, and all modifications or changes, may also be made by facsimile transmission (fax) or by a scanned, signed document sent by electronic means (pdf, jpg, scanned Word document, Tablet pc or other electronic transmission) provided the original of the document sent by electronic transmission is sent to the other party within a reasonable period of time. **Other means of electronic transmission, including e-mails without scanned, signed documents are not adequate to enter into this Agreement or to modify, amend or change this Agreement.** The failure to deliver the original document shall not, in itself, void or nullify an otherwise valid agreement. Alternatively, **Owner** and **Listing Agency** hereby agree that this Agreement and any changes or amendments thereto may be made by electronic means, including electronic signatures and shall be effective and binding if entered into by electronic signatures.

15. Owner's Obligations Concerning Certain State and Local Permits. **Owner** acknowledges that a State subdivision or wastewater/water supply permit or evidence of exemption from said permit **may** be required for this Property. In addition, a building permit, certificate of occupancy, or zoning or health officer permit issued by the municipality **may** be required. Without these permits

or evidence of exemption therefrom, a purchaser may be unable or unwilling to close on any Purchase and Sale Contract that may be entered into for the Property. Accordingly, **Owner** agrees to proceed with reasonable and diligent efforts, either personally or through attorneys or other qualified persons, to provide evidence to **Listing Agency** that the permits described above, **if required**, have been issued or that the Property is exempt from such permits. **Listing Agency** shall not be required to investigate the need for or issuance of such permits or exemptions. **Owner** is not required under this section to represent that the Property is currently in compliance with any such required permits or exemptions, but merely that such permits, **if required**, have been or will be issued or that the Property is exempt from such permits.. If **Owner** is unable or unwilling to provide **Listing Agency** with evidence that such required permits have been or will be issued or that exemptions apply not later than thirty (30) days from the date of this Agreement, **Listing Agency** reserves the right to suspend its efforts to market the Property until evidence of such permits or exemptions is provided or, in its discretion, to terminate this Agreement. **Owner is not obligated under this section to engage an attorney to perform a title search of the Property.**

OWNER SPECIFICALLY ACKNOWLEDGES HAVING READ AND DISCUSSED WITH LISTING AGENCY ALL PROVISIONS OF THIS AGREEMENT AND, IN PARTICULAR, PARAGRAPHS 2, 3, 4, 5 and 15 OF THE ADDITIONAL TERMS AND CONDITIONS PRIOR TO SIGNING THIS AGREEMENT.

Commencement Date _____ **Expiration Date** _____ (at midnight)

UNDERSTOOD AND AGREED:

Listing Agency _____ By _____ Date _____

Listing Agency Address _____

Phone _____ Fax _____ Email _____

Owner _____ Phone _____ Email _____ Date _____

Owner _____ Phone _____ Email _____ Date _____

Owner _____ Phone _____ Email _____ Date _____

Owner _____ Phone _____ Email _____ Date _____

Owner Contact Information to which all notices to Owner under this Agreement shall be sent:

Street Address/P.O. Box _____ City/Town _____ State _____ Zip _____

Res. Telephone _____ Business Telephone _____ Email _____

Fax _____ Cell phone _____