



**EXCLUSIVE SALE AND LISTING AGREEMENT FORM**

Revised 12/19/2024

This Exclusive Sale and Listing Agreement (the "Agreement") is made by and between \_\_\_\_\_ ("Seller") and \_\_\_\_\_ ("Listing Broker") with regard to the real property commonly known as \_\_\_\_\_, City \_\_\_\_\_, County \_\_\_\_\_, Massachusetts Zip \_\_\_\_\_ ("the Property").

- 1. **DEFINITIONS.** (a) "MLS PIN" means MLS Property Information Network, Inc., a Massachusetts business corporation; and (b) "sell" includes a contract to sell; an exchange or contract to exchange; or an option to purchase. Listing Broker need not submit to Seller any offers to lease, rent, or enter into any agreement other than for sale of the Property.
  
- 2. **TERM.** Seller grants to Listing Broker the sole and exclusive right to list, market and sell the Property from the date of mutual acceptance of this Agreement ("Effective Date") until midnight of \_\_\_\_\_ ("Listing Term"). If this Agreement expires while Seller is a party to a purchase and sale agreement for the Property, the Listing Term shall automatically extend until the sale is closed or the purchase and sale agreement is terminated.
  
- 3. **AGENCY.**
  - a. Listing Agent. Listing Broker appoints to represent Seller ("Listing Agent"). This Agreement creates an agency relationship with Listing Broker and any of Listing Broker's managing brokers who supervise Listing Agent ("Supervising Broker") during the Listing Term. No other brokers affiliated with Listing Broker are agents of Seller.
  
  - b. Pamphlet. Seller acknowledges receipt of (a) the pamphlet entitled "**Massachusetts Mandatory Licensee-Consumer Relationship Disclosure Form**", and (b) the lead paint "**Property Transfer Notification Certification**" disclosure (if the Property was built prior to 1978), and (c) \_\_\_\_\_ (add other applicable disclosure forms).
  
  - c. Listing Broker Duties and Responsibilities. Listing Broker shall use reasonable efforts to procure a purchaser for the Property in accordance with this Agreement. Listing Broker is given authority to advertise the Property for sale, including listing the Property for sale in the MLS PIN listing service as provided in Section 9 below. Listing Broker is authorized to disclose to prospective buyers all Property information disclosed by Seller to Listing Broker, and Listing Broker shall present all offers for the Property received from prospective buyers to Seller.
  
  - d. Listing Price. The parties agree that the initial listing price for the Property shall be \$ \_\_\_\_\_. The listing price may be changed by mutual agreement of the parties.
  
  - e. Seller Cooperation. Seller agrees to cooperate with Listing Broker's reasonable efforts to market the Property and will refer all inquiries about the Property to Listing Broker.

4. **COMPENSATION.** Seller has been advised and hereby acknowledges that there are no standard compensation rates for the sale of the Property, and the compensation in this Agreement is fully negotiable and not set by law. If during the Listing Term, Seller sells the Property and the sale closes, whether during or after the Listing Term; or the sale fails to close due to Seller's breach of the terms of this Agreement or the purchase and sale agreement, Seller shall pay compensation as follows:

a. Listing Broker Compensation.

- (a) \_\_\_\_\_% of the sales price of the Property; or
- (b) a flat fee of \$ \_\_\_\_\_; or
- (c) other amount \_\_\_\_\_ (describe compensation).

Such Listing Broker compensation shall be due and payable at the closing of the sale of the Property and may be deducted from amounts held in escrow by Listing Broker in connection with the sale of the Property.

b. Buyer Broker Compensation.

Seller is not required to offer or provide compensation to brokers who represent a prospective buyer. However, Seller may authorize Listing Broker to communicate the Seller's offer of compensation to licensed buyer brokers (a "Buyer Broker Fee"), who procure a ready, willing and able buyer to purchase the Property. Any Buyer Broker Fee is not set by law, is fully negotiable by the parties, and shall not alter the terms of this Agreement unless the parties otherwise agree in writing. Seller hereby (*select one*):

authorizes Listing Broker to communicate Seller's offer of a Buyer Broker Fee pursuant to the *MLS PIN Exclusive Sale and Listing Agreement Addendum* attached and incorporated herein.

does not authorize Listing Broker to offer a Buyer Broker's Fee.

c. Expiration of the Listing Term. If Seller shall, within \_\_\_\_\_ days (180 days if not filled in) after the expiration of the Listing Term, sell the Property to any person to whose attention it was brought through the signs, advertising or other action of Listing Broker, or on information secured directly or indirectly from or through Listing Broker, during the Listing Term, Seller will pay Listing Broker the above compensation at closing. Provided that, if Seller pays compensation to one or more other licensed brokerage firms in conjunction with a sale of the Property, the amount of compensation payable to Listing Broker shall be reduced by the amount paid to such other listing firms.

d. Cancellation Without Legal Cause. If Seller cancels this Agreement without legal cause, Seller may be liable for damages incurred by Listing Broker as a result of such cancellation, regardless of whether Seller pays compensation to another licensed brokerage.

**5. DUAL AGENCY.**

- a. Listing Broker as Dual Agent. Dual agency, or a dual agent relationship, where a broker represents both a seller and prospective buyer in a transaction, is allowed under Massachusetts law. However, a dual agency is only permitted if both a seller and buyer give their informed consent to such an arrangement. Having a single dual agent may facilitate a transaction, but a dual agent must act as a neutral and will not be able to favor one party's interests over the other party's. If initialed below, Seller consents to Listing Broker and Supervising Broker acting as dual agents in the sale of the Property to a buyer that Listing Broker also represents. Seller acknowledges that as a dual agent, it cannot advocate terms favorable to Seller to the detriment of the buyer.
- b. Listing Broker Dual Agency. If the Property is sold to a buyer represented by one of Listing Broker's agents other than Listing Agent representing the Seller ("Listing Broker's Buyer's Agent"), Seller consents to any Supervising Broker, who also supervises Listing Broker's Buyer's Agent, acting as a dual agent.

Seller Initials: \_\_\_\_\_ Seller Initials: \_\_\_\_\_

**6. LIST DATE.** Listing Broker shall submit the Property, including Property information and photographs of the Property (collectively the "Listing Data"), for listing and publication by MLS PIN on \_\_\_\_\_ ("List Date"). Prior to such submission by Listing Broker, Seller shall review and confirm to Listing Broker the accuracy of the Listing Data. Seller acknowledges that exposure of the Property to the open market through MLS PIN will increase the likelihood that Seller will receive fair market value for the Property. Seller shall not materially interfere with Listing Broker's marketing of the Property. Seller may instruct \_\_\_\_\_ and Listing Broker must comply with Seller's request to limit marketing by not displaying the Property address or map location on the internet, by eliminating any and all internet advertising, and by imposing specific showing requirements and other similar restrictions.

**7. FAIR HOUSING.** Seller acknowledges that local, state, and federal fair housing laws prohibit discrimination based on sex, marital status, sexual orientation, gender identity, race, creed, color, religion, caste, national origin, citizenship or immigration status, families with children status, familial status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a support or service animal by a person with a disability or any other status protected by federal or state law.

**8. PROPERTY ACCESS AND LOCKBOX.** Listing Broker may install a lockbox on the Property that holds a key to the Property which may be opened by participants brokers in MLS PIN, their agents, and affiliated appraiser members of MLS PIN. Unless otherwise agreed by the parties in writing, Listing Broker and other participant brokers in MLS PIN shall be entitled to show the Property at all reasonable times.

Property Access for Non-Participant Brokers. Listing Broker may be contacted by licensed brokers who are not participants in MLS PIN and do not have access to the lockbox on the Property. Seller  authorizes;  does not authorize (authorizes if not filled in) Listing Broker to provide access to the Property to licensed brokers who are not participants in MLS PIN. If authorized, Listing Broker or other licensed agent of Listing Broker  shall;  shall not (shall if not filled in) be required to attend any such showing.

**9. MULTIPLE LISTING SERVICE.** Seller authorizes Listing Broker and MLS PIN to publish and distribute the Listing Data to other participants in and subscribers to MLS PIN and their affiliates and third parties for public display and other purposes, subject to any restrictions imposed by Seller. This authorization shall survive the termination of this Agreement. Listing Broker is authorized to report the sale of the Property (including price and all terms) to MLS PIN and to MLS PIN's participants and subscribers, Listing Broker may refer this listing to any other cooperating multiple listing service at Listing Broker's discretion or a licensed broker that is not a participant in or member of a multiple listing service.

Listing Broker shall cooperate with all other participants in MLS PIN, participants in and members of a multiple listing service to which this listing is referred, and any licensed brokers who are not participants in or members of a multiple listing service. MLS PIN is an intended third-party beneficiary of this Agreement and may provide some or all of the Listing Data to its participants and subscribers and to their affiliates and third parties, without verification, without liability, and without assuming any responsibility under this Agreement.

- 10. PROPERTY CONDITION AND INSURANCE.** Seller has been advised that there is a risk of injury to persons viewing the Property and potential damage to, or loss of, personal property during the marketing of the Property, and Seller acknowledges that it is Seller's responsibility to prepare the Property to reduce or eliminate such potential injury or loss. Neither Listing Broker, MLS PIN, nor any participants in or subscribers to MLS PIN or of any multiple listing service to which this listing is referred shall be responsible for, and Seller shall indemnify and hold each of them harmless from and against, any loss, theft, or damage of any nature or kind whatsoever to the Property, any personal property therein, or any personal injury resulting from the condition of the Property, including entry by the key to the lockbox and/or at open houses, except for damage or injury caused by their gross negligence or willful misconduct. Seller is advised to notify Seller's insurance company that the Property is listed for sale and ascertain that the Seller has adequate insurance coverage. If the Property is to be vacant during all or part of the Listing Term, Seller is advised to request that a "vacancy clause" be added to Seller's insurance policy. Seller acknowledges that intercepting or recording conversations of persons in the Property without first obtaining their consent violates Massachusetts law and Seller shall indemnify and hold Listing Broker and other participants in and subscribers to MLS PIN harmless from and against any related claims. Seller warrants that the Property  does  does not (does not if not filled in) contain recording devices. If the Property does contain recording devices, such devices shall be turned off by Seller during any showings or open houses.
- 11. SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants that Seller has the right to sell the Property on the terms set forth in this Agreement. If Seller provides Listing Broker with any photographs, drawings, or sketches of the Property, Seller represents and warrants that Seller has the necessary rights in the photographs, drawings, or sketches to allow Listing Broker to use them as contemplated by this Agreement. Seller shall indemnify and hold harmless Listing Broker and MLS PIN in the event the foregoing representations or warranties are incorrect. Seller represents and warrants, to the best of Seller's knowledge, that all Property information disclosed or made available to Listing Broker, is and will be true and correct in all material respects.
- 12. DAMAGES IN THE EVENT OF BUYER'S BREACH.** If Seller retains earnest money as liquidated damages on a buyer's breach, Seller shall pay therefrom any costs advanced or committed by Listing Broker on Seller's behalf, and the balance shall be  retained by Seller;  divided equally between Seller and Listing Broker (retained by Seller if not checked).
- 13. DISPUTE RESOLUTION.** All disputes, claims or controversies arising out of or related to this Agreement shall be submitted for binding arbitration (a) upon demand of either party, to (i) the local REALTOR® association or Board of REALTORS® where the Property is located, or (ii) the American Arbitration Association for resolution in accordance with its rules before a single neutral arbitrator reasonably acceptable to the parties sitting in the city or town where the Property is located, or (b) upon mutual agreement of the parties, to another dispute resolution body or service. Each party shall pay one half of any fees and expenses related to such arbitration or dispute resolution. The results of such arbitration or dispute resolution shall be final and binding upon the parties, and either party shall have the right to enter judgement thereon in any court having jurisdiction.

**14. ENTIRE AGREEMENT/GOVERNING LAW.** This is legal document that is binding on the parties and their successors and assigns. This Agreement is the final agreement between the parties, and by signing below, Seller acknowledges that it has read the Agreement and understands its terms. This Agreement shall be governed by the laws and decisions of The Commonwealth of Massachusetts. This Agreement may only be modified by a writing signed by all parties. **Time is of the essence under this Agreement.**

**15. ADDITIONAL TERMS AND CONDITIONS:**

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Executed under seal as of \_\_\_\_\_, 20\_\_\_\_

_____ Seller's Signature	_____ Date	_____ Seller's Signature	_____ Date
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_____ Seller's E-mail Address	_____ Seller's Phone Number
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_____ Listing Broker	_____ Listing Agent's Signature	_____ Date
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_____ Listing Broker License Number	_____ Listing Agent License Number
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_____ Listing Agent Email Address	_____ Listing Agent Phone Number
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