



COMMERCIAL EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT – TRANSACTION BROKER

Document updated:
August 2015

1. **PARTIES:** The parties to this agreement (the "Agreement") are:

SELLER: _____
BROKER: _____

2. **PROPERTY:** SELLER appoints BROKER as the SELLER'S sole and exclusive representative to sell the real property, all improvements on the Property, the fixtures described below and any personal property described in Section 3 (the "Property"):

PROPERTY ADDRESS: _____

CITY: _____ **COUNTY:** _____ **STATE:** _____ **ZIP CODE:** _____

LEGAL DESCRIPTION: _____

3. **PERSONAL PROPERTY:** SELLER instructs BROKER to market the Property with the following items of personal property included:

4. **TERM OF THE AGREEMENT:** This agreement shall begin at 12:01 AM on _____ (the "Beginning Date") and shall end at 11:59 PM on _____ (the "Ending Date").

5. **PRICE:** SELLER instructs BROKER to market the Property for sale for the sum of \$ _____ on the following terms agreeable to the SELLER:

6. **BROKER'S COMPENSATION:**

- A. SELLER agrees to pay the BROKER compensation consisting of \$ _____ (flat fee amount) plus _____ % (percentage-based fee) of the selling price of the Property if the BROKER or anyone else produces a purchaser ready, willing and able to purchase the Property at the price and on the terms stated, or later agreed upon, or if a condemnation, donation, exchange, lease, sale or transfer of the Property is made by the SELLER or any other person during the term of this Agreement.
- B. SELLER authorizes the deduction of the BROKER'S compensation from the SELLER'S proceeds at closing. SELLER agrees to divide any deposit made on a contract and forfeited by a buyer equally with BROKER, but the amount of the deposit paid to the BROKER shall not exceed the amount to which the BROKER would be entitled as compensation under this Agreement.
- C. **PROTECTION PERIOD:** "Protection Period" means that time beginning on the day after this Agreement expires or terminates and continuing for _____ calendar days (90 if left blank).
 - (1) No later than _____ calendar days (ten if left blank) following the expiration or termination of this Agreement, the BROKER shall send the SELLER a written notice specifying the names of any persons or entities whose attention was called to the Property during the term of this Agreement.
 - (2) SELLER agrees that the BROKER shall be entitled to receive the BROKER'S compensation specified in this Agreement if the SELLER enters into any agreement to donate, exchange, lease, sell or transfer the Property upon any terms to any person or entity identified by the BROKER in the written notice provided under this section during the Protection Period. An "agreement to sell or transfer the Property" shall mean any agreement to transfer all or a substantial part of SELLER'S interest in the Property, including contracts for deed, contracts for sale or lease-option contracts.
 - (3) SELLER and BROKER agree and acknowledge that this section shall survive and continue to bind the SELLER and BROKER after the expiration or termination of this Agreement. SELLER shall not be obligated to pay said BROKER'S compensation if a valid exclusive right to sell agreement is entered into with another licensed real estate broker and the Property is sold or transferred during the Protection Period.

7. MARKETING FEE (SECTION MUST BE CHECKED IF APPLICABLE):

- A. SELLER agrees to pay a non-refundable marketing fee in the amount of \$ _____ (the "Marketing Fee") to cover the estimated costs that will be incurred by the BROKER to advertise, market and prepare the Property for sale immediately upon the execution of this Agreement. SELLER agrees to pay any and all expenses that will be incurred by the BROKER to advertise, market and prepare the Property for sale.
- B. At closing, BROKER shall provide an itemized list of the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale. In the event that that the amount of the Marketing Fee paid by the SELLER to the BROKER upon the execution of this Agreement does not exceed the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale, BROKER shall refund the excess amount from the Marketing Fee to the SELLER at closing.
- C. In the event that the amount of the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale exceed the amount of the Marketing Fee paid by the SELLER to the BROKER upon the execution of this Agreement, SELLER shall pay the additional amount of funds required to offset the BROKER'S actual costs to advertise, market and prepare the Property for sale at closing.
- D. In the event that the sale of the Property does not close due to a default of the buyer or SELLER under the terms and conditions of the sales contract between the parties, SELLER agrees that any additional funds required to offset the BROKER'S actual costs to advertise, market and prepare the Property for sale shall be paid by the SELLER to the BROKER as if the sale of the Property had closed.

8. BROKER'S OBLIGATIONS TO SELLER: BROKER agrees to and SELLER acknowledges that BROKER will:

- A. Act as a transaction broker and will not be an agent or advocate for either the buyer or SELLER;
- B. Exercise reasonable skill and care;
- C. Perform the terms of this written Agreement;
- D. Present in a timely manner all offers and counteroffers, even when the Property is subject to a contract for sale;
- E. Account in a timely manner for all money and property received;
- F. Keep the parties fully informed regarding the transaction;
- G. Assist the parties in complying with the terms and conditions of any contract, including closing the transaction;
- H. Disclosing to all prospective buyers all adverse material facts actually known by the transaction broker, including but not limited to:
 - (1) Any environmental hazards affecting the Property that are required by law to be disclosed;
 - (2) The physical condition of the Property;
 - (3) Any material defects in the Property;
 - (4) Any material defects in the title to the Property; or
 - (5) Any material limitation on the SELLER'S ability to perform under the terms of the contract.
- I. Regarding the required disclosures in Section 8(H) of this Agreement, the transaction broker has no duty conduct an independent inspection of the Property for the benefit of any party to the transaction and has no duty to independently verify the accuracy or completeness of any statements made by the SELLER, BUYER or any qualified third party;
- J. Disclose to any prospective SELLER all adverse material facts actually known by the transaction broker, including but not limited to material facts concerning the BUYER'S financial ability to perform the terms of the transaction;
- K. Regarding the required disclosures in Section 8(J) of this Agreement, the transaction broker has no duty to conduct an independent investigation of the buyer's financial condition or to verify the accuracy or completeness of any statement made by the buyer;
- L. Disclose to the buyer and SELLER any facts actually known by the transaction broker that were omitted from or contradict any information included in a written report prepared by a qualified third party and provided to the buyer or SELLER; and
- M. Comply with all requirements of the Kansas Brokerage Relationships in Real Estate Transactions Act (BRRETA) and any applicable federal, state and local statutes, ordinances, rules and regulations.

9. BROKER SHALL NOT DISCLOSE CERTAIN INFORMATION: BROKER shall not disclose any information of personal confidences about a party to the transaction that might place the other party at an advantage over the party unless the disclosure is required by law or BROKER reasonably believes the failure to disclose such information would constitute fraudulent misrepresentation. When the disclosure of this information is required, no cause of action shall arise against BROKER for making the permitted or required disclosure.

10. SELLER'S OBLIGATIONS TO BROKER: SELLER agrees to and BROKER acknowledges that SELLER will:

- A. Represent and warrant that this is the one and only Exclusive Right to Sell Listing Agreement in effect on the Property and that the SELLER has the capacity to convey merchantable title to the Property upon closing;
- B. Refer any and all offers or inquiries regarding the Property that are received by the SELLER during the term of this Agreement to the BROKER;

- C. Permit the BROKER to place a "For Sale" sign on the Property and to remove all other signs appearing on the Property during the term of this Agreement;
- D. Allow the BROKER to accept an Earnest Money deposit to be applied against the Purchase Price of the Property and to place that deposit into an escrow or trust account maintained by the BROKER or escrow agent until the closing of the sale of the Property. SELLER agrees and acknowledges that these funds may be deposited into an interest-bearing account and that the BROKER has the right to retain all interest accruing in this account to compensate for the cost and burden of maintaining such account;
- E. Allow the BROKER to enter the Property at all reasonable times for the purpose of inspecting, previewing or showing the Property to prospective buyers or other real estate licensees; and
- F. Leave all utilities on at the Property during the term of this Agreement or until possession of the Property by a buyer, whichever is later, unless provided for otherwise in this Agreement or a contract to sell the Property.

11. SELLER'S AUTHORIZATIONS TO BROKER: SELLER authorizes BROKER to:

- A. Obtain any and all records and information concerning the SELLER'S Property from the appropriate governmental agencies and other entities; and
- B. Cooperate and share the percentage-based fee payable to the BROKER under this Agreement with other licensed real estate brokers who have been employed as buyers' agents, designated agents, sub-agents or transaction brokers, subject where applicable to authorization as otherwise provided in this Agreement. SELLER agrees that BROKER shall:
 - (1) Offer cooperation to buyers' agents: YES NO
 - (2) Offer compensation to buyers' agents: YES NO
 - (3) Offer cooperation to designated agents: YES NO
 - (4) Offer compensation to designated agents: YES NO
 - (5) Offer cooperation to sub-agents: YES NO
 - (6) Offer compensation to sub-agents: YES NO
 - (7) Offer cooperation to transaction brokers: YES NO
 - (8) Offer compensation to transaction brokers: YES NO

12. INCLUSION OF PROPERTY IN THE MULTIPLE LISTING SERVICE:

- A. BROKER shall shall not submit this listing for inclusion in any multiple listing service (the "MLS") within the time required for the submittal of listings under the applicable MLS rules and regulations. If the listing is submitted for inclusion in the MLS, the SELLER:
 - (1) Authorizes the BROKER to submit pertinent information, including virtual tours and images when applicable, concerning the Property to any MLS;
 - (2) Authorizes the BROKER to disseminate data about the Property and other information relating to the Property supplied by or on behalf of the SELLER, including creative works depicting the Property, such as virtual tours, images, videos and any textual descriptions of the Property (collectively referred to as "Content") to MLS participants, subscribers and other licensees or users of the MLS database compilation, any other MLS in which BROKER participates or any other website, in the BROKER'S sole discretion and to further disseminate or permit MLS or other MLS participants to disseminate such Content to potential buyers through websites on the internet that are owned, operated or controlled by the MLS, other MLS participants or such other entities with whom MLS may enter into license agreements authorizing the dissemination or use of such Content;
 - (3) Grants to BROKER an irrevocable, perpetual, non-exclusive and fully sub-licensable and assignable right (through multiple tiers) to use, reproduce, modify, adapt, publish, create derivative works from, distribute, perform and display any photographs, aerial photographs, floor plans, architectural drawings, video images, sounds or other copyrightable material related to the Property (hereinafter referred to as "Works") and to incorporate any such Works (in whole or in part) into other Works in any form, media or technology now known or later developed;
 - (4) Agrees that this non-exclusive license shall survive the termination of this Agreement for any reason whatsoever. SELLER represents and warrants to BROKER that the license granted to BROKER for this Content does not violate or infringe upon the rights, including any copyright rights, of any person or entity. SELLER acknowledges and agrees that all listing content is owned exclusively by the BROKER and that SELLER has no right, title or interest in Content; and
 - (5) Agrees that BROKER may provide to MLS for dissemination to others, including the county appraiser if required by law, timely notice of status changes affecting the Property, sales information about the Property, including the price at which the Property is sold and other information concerning the Property for the use of the members of such services, to compile reliable statistics and to establish market value for other properties.

13. SELLER'S OBLIGATION TO DISCLOSE ADVERSE MATERIAL FACTS REGARDING THE PROPERTY:

A. SELLER understands that SELLER has a legal obligation and affirmative duty to be honest by making accurate and complete disclosures of any adverse material facts regarding the Property to prospective buyers and that the failure to do so may result in civil liability for damages.

(SELLER'S INITIALS REQUIRED)

- B. Upon the signing of this Agreement, the SELLER shall shall not complete a Commercial Property Disclosure Statement (the "Statement") to be provided to prospective buyers and to update the Statement upon the request of the BROKER or in the event of any material change in the condition of the Property or the discovery of any additional material facts regarding the Property that were not disclosed in prior versions of the Statement.
- C. SELLER agrees to provide any and all inspection reports regarding the Property that are in existence at the time of this Agreement or any inspection reports generated during the term of this Agreement to the BROKER and authorizes the BROKER to disclose such inspection reports to prospective buyers and other real estate licensees.
- D. SELLER warrants that there are no known material defects in the Property except as will accurately and completely be disclosed on the Statement or in other written disclosures provided to any prospective buyers of the Property. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors, from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including any reasonable attorneys fees) arising out of any misrepresentation, non-disclosure or concealment by SELLER in connection with the sale of the Property including, without limitation, inaccuracy of information provided by the SELLER for the preparation of listing data, the Statement or otherwise provided or omitted in connection with the sale of the Property.
- E. SELLER agrees to thoroughly review the listing information prepared by the BROKER and advise the BROKER immediately of any errors or omissions. SELLER further stipulates that the dimensions and size of the Property are accurate to the best of his or her knowledge. SELLER agrees to personally assume all responsibility for any claims made by a buyer with respect to any errors or omissions contained in the information provided to BROKER, any prospective buyers and other real estate licensees and that the BROKER shall not be responsible in any manner for any errors or omissions.
- F. SELLER warrants that the SELLER does not have knowledge of any easements, sewer assessments, street assessments or other proposed special assessments except as accurately and completely disclosed on the Statement or the SELLER'S Special Assessment Disclosure Addendum. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors, from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including any reasonable attorneys' fees) resulting from the information that the SELLER has given regarding any easements, sewer assessments, street assessments or other proposal special assessments on the Property.

14. BROKER RECOMMENDS SELLER SEEK LEGAL AND PROFESSIONAL ADVICE:

- A. BROKER recommends that the SELLER seek legal, tax or other professional advice regarding the real estate transaction. BROKER makes no representation or warranty regarding the advisability of any real estate transaction. BROKER is not an expert in matters relating to law, tax, financing, surveying, structural or mechanical condition, hazardous material, engineering or other specialized topics and the SELLER is strongly encouraged to seek expert advice in such areas.
- B. BROKER will cooperate with the experts engaged by the SELLER, but the BROKER shall have no liability to the SELLER pertaining to such matters.

15. LIABILITIES FOR INSPECTIONS:

- A. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including any reasonable attorneys' fees) resulting from any liability for vandalism, theft or damage of any nature to the Property or for personal injury to any persons of the Property.
- B. In consideration of BROKER'S arranging for any inspections at SELLER'S request, SELLER hereby agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including any reasonable attorneys' fees) resulting from or in connection with such inspections.

16. BROKERAGE RELATIONSHIP DISCLOSURE:

- A. SELLER understands that the BROKER may show alternative properties not owned by the SELLER to prospective buyers and may list competing properties for sale without breaching any duty or obligation to the SELLER.

17. TITLE EVIDENCE: SELLER has been informed of the SELLER'S responsibility to provide the buyer of the Property with evidence of clear title to the Property as required by the purchase contract. SELLER authorizes the BROKER to order title evidence for the Property through _____ (name of the title insurance vendor). Title to the Property is vested in the name of _____.

18. NOTICE TO SELLERS WHO ARE FOREIGN PERSONS: A SELLER who is a foreign person should consult an attorney or accountant who is familiar with the Foreign Investment in Real Property Act before entering into negotiations for the sale of the Property.

19. NON-ASSIGNMENT OF AGREEMENT: SELLER and BROKER understand and agree that the relationship created by this Agreement is a personal one and that neither the SELLER nor the BROKER shall have the right to assign this Agreement to third parties. Any attempted assignment shall be void and have no legal effect.

20. ATTORNEYS' FEES: In the event of litigation concerning the rights of the SELLER or BROKER pursuant to this Agreement, the SELLER and BROKER agree that the court shall award reasonable attorneys' fees and court costs to whichever party shall prevail in such action, to the extent allowed by law.

21. LACK OF EXCLUSIVITY FOR BROKER: SELLER acknowledges and agrees that BROKER may now or in the future represent other buyers and sellers of similar properties.

22. ELECTRONIC SIGNATURES AND TRANSACTIONS: SELLER and BROKER agree that this transaction may be conducted through electronic means according to the Kansas Uniform Electronic Transactions Act. However, the BROKER has no authority enter into electronic agreements with other parties on behalf of the SELLER unless authorized to do so by a duly executed power of attorney.

23. ACKNOWLEDGEMENT OF RECEIPT OF THE AGREEMENT: SELLER hereby acknowledges and certifies that he or she has received, read and understood a copy of this Agreement.

24. ENTIRE AGREEMENT OF THE PARTIES: This Agreement constitutes the entire agreement between the parties. Any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. There shall be no modification of any terms of this Agreement unless such modification has been agreed to in writing and signed by both parties.

25. FORM AGREEMENT AND RECOMMENDATIONS FOR INDEPENDENT LEGAL ADVICE: This Agreement has been approved as a form contract by the legal counsel of the Kansas Association of REALTORS® for exclusive use by its REALTOR® members. This is a legally binding contract when the BROKER and SELLER sign the Agreement. If not understood, the Kansas Association of REALTORS® and the BROKER recommend that the SELLER seek the advice of an attorney before signing the completed Agreement.

26. SPECIAL CONDITIONS, PROVISIONS OR TERMS:

CAREFULLY READ THE TERMS OF THIS AGREEMENT BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS DOCUMENT BECOMES PART OF A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.

<hr/> SELLER		DATE		<hr/> BROKER	
<hr/> SELLER		DATE		<hr/> BROKER'S AFFILIATED LICENSEE OR REPRESENTATIVE	DATE
<hr/> SELLER'S MAILING ADDRESS				<hr/> BROKER'S MAILING ADDRESS	
<hr/> SELLER'S CITY, STATE AND ZIP CODE				<hr/> BROKER'S CITY, STATE AND ZIP CODE	
<hr/> SELLER'S CONTACT TELEPHONE NUMBER				<hr/> BROKER'S CONTACT TELEPHONE NUMBER	
<hr/> SELLER'S EMAIL ADDRESS				<hr/> BROKER'S EMAIL ADDRESS	