

# EXCLUSIVE AGENCY MARKETING AGREEMENT

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

Owner: \_\_\_\_\_

Property Address: \_\_\_\_\_ Price \$ \_\_\_\_\_

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 and sale 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 during the period set forth herein. Owner agrees to fully cooperate with Listing Agency in the marketing of the Property.

Although this is an exclusive marketing agreement with respect to all other brokers and salespersons, Owner retains the right to act on his or her own behalf in the marketing and sale of the Property. In the event Owner sells the Property through his or her own efforts and not as a result of Listing Agency's services or activities, Owner shall not be responsible to Listing Agency for the payment of a commission.

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 services in the following manner:

- \_\_\_\_\_ % of the amount of the sale price;
- A flat fee of \_\_\_\_\_ irrespective of the sale price;
- A fee determined as follows \_\_\_\_\_

Unless Owner sells the Property by virtue of his or her own efforts without the involvement of Listing Agency, Owner agrees to pay Listing Agency the above commission if, during the term of this Agreement, the Property is sold or Owner enters into an agreement for the sale of the Property and all closing contingencies to be performed by the purchaser under such agreement are satisfied in accordance with the terms thereof. In addition, if, prior to the Expiration Date of this Agreement, Listing Agency presents an offer at or above the price stated herein (the "Listed Price"), 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 full commission set forth herein whether or not Owner accepts that offer.

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 or closes on the sale 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 or closing if its efforts are the foundation upon which the negotiations are begun that result in a purchase and sale contract, sale or closing. If Owner sells, 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 with 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, agreement to sell 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.

- Owner  does  does not grant Listing Agency permission to place and maintain a "For Sale" sign upon the Property.
- Owner  does  does not grant Listing Agency permission to submit this listing to the Multiple Listing Service (MLS) of a Board of REALTORS® subject to the Board's MLS procedures, rules and regulations.  Service not available.
- Owner  does  does not grant Listing Agency the authority to permit a cooperating agent representing a prospective purchaser or himself or herself to obtain access to the Property without Listing Agency being present.
- Owner  does  does not grant Listing Agency permission to place and maintain a lockbox on the Property.  Service not available.
- Seller's Property Information Report  is  is not provided as part of this Agreement.
- The Property  does  does not include a residential dwelling built before 1978 and, therefore,  is  is not subject to Federal Lead-Based Paint Regulations.
- Additional attachments or addenda to this Agreement:  Lead-Based Paint Disclosure  
 Other: \_\_\_\_\_

## ADDITIONAL TERMS AND CONDITIONS

1. **Listing Agency's Authority.** Owner authorizes Listing Agency to list the Property for sale, 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 buyer to sell the Property at that price or at any other price or terms. The decision to accept any buyer'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 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 seller and the buyer 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 understands that the interest on any purchase and sale contract deposit held by any licensed real estate broker which is expected to accrue less than Fifty Dollars (\$50) in interest will have such interest automatically remitted to an account for the benefit of affordable housing programs in Vermont pursuant to Vermont's Interest on Real Estate Trust Accounts law. In the event a contract purchaser whose purchase of the Property would entitle Listing Agency to a commission under this Agreement forfeits any contract deposit, 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 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.

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), Vermont Land Gains Tax, Vermont Non-Resident Income Tax Withholding and all land use permits and disclosures including those required by Act 250.

**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 Acknowledgment 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. 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, the prevailing party will be entitled to the costs and expenses thereof, including reasonable attorney's fees.

**14. All Amendments to Be In Writing.** Except as provided in Section 5, all modifications, additions, amendments or deletions to this Agreement shall be effective only if set forth in a written document signed by Owner and an authorized representative of Listing Agency. This Agreement may be entered into and notices sent hereunder by facsimile transmission (fax), provided the obligated party's signature appears on the fax and the original of the document sent by fax signed by the obligated party is hand delivered or mailed within a reasonable time, but not more than ten (10) calendar days after the date of the fax transmission.

The parties acknowledge that certain state permits may be required for this Property without which Seller may be unable to convey marketable title. Additionally, certain municipal permits may be required for the use and occupancy of the Property. The absence of necessary state and local permits may result in a purchaser of the Property being unable or unwilling to close on any purchase and sale contract that may be entered into. In order to avoid such an occurrence, Owner agrees that, upon signing this Agreement, he/she shall proceed with reasonable and diligent efforts, either personally or through attorneys or other qualified persons, to determine the need for and produce evidence to Listing Agency of the issuance of such state permits as are necessary to convey marketable title to the Property and such local permits as may affect the use and occupancy of the Property. It shall be Owner's obligation to demonstrate the existence of such permits and not that of the Listing Agency. If Owner is unable to provide Listing Agency with satisfactory demonstration of the issuance of such permits not later than fourteen (14) days after the date of this Agreement, Listing Agency reserves the right to suspend its efforts to market the Property until such permits are obtained or to terminate this Agreement. This provision is for the sole benefit of the parties hereto and is not for the benefit of any prospective or actual purchaser of the Property or any other third party.

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

Commencement Date \_\_\_\_\_ Expiration Date \_\_\_\_\_ (at midnight)

**UNDERSTOOD AND AGREED:**

Listing Agency \_\_\_\_\_ (Type or Print) Owner: \_\_\_\_\_ (Signature) \_\_\_\_\_ Date \_\_\_\_\_ SS# or Federal ID No. \_\_\_\_\_  
 \_\_\_\_\_ (Owner's Name - Type or Print)

By: \_\_\_\_\_ Date \_\_\_\_\_ Owner: \_\_\_\_\_ (Signature) \_\_\_\_\_ Date \_\_\_\_\_ SS# or Federal ID No. \_\_\_\_\_  
 \_\_\_\_\_ (Owner's Name - Type or Print)

Broker/Salesperson \_\_\_\_\_ (Type or Print) (Owner's Name - Type or Print)  
**Listing Agency** Address to which all notices to Owner under this Agreement shall be sent:  
 Address: \_\_\_\_\_ Street/P.O. Box \_\_\_\_\_  
 \_\_\_\_\_ City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Phone No. \_\_\_\_\_ Res. Tel. \_\_\_\_\_ Bus. Tel. \_\_\_\_\_  
 Fax No. \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_  
 E-mail \_\_\_\_\_