

# EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

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1 **DATE:** \_\_\_\_\_

2 This Exclusive Right to Sell Listing Agreement (“Agreement”) is between:

3 **SELLER(s):** \_\_\_\_\_

4 and **BROKER:** \_\_\_\_\_

5 **LISTING TERMS:** The Seller(s) hereby grants to the above named Broker the exclusive right to sell or exchange the  
6 Property hereafter described, from the Agreement start date \_\_\_\_\_ to \_\_\_\_\_ at 11 :59 P.M.,  
7 on the following terms. Seller(s) has the full and legal right to sell the Property and will sign all closing documents  
8 (including a Warranty Deed or Contract for Warranty Deed) necessary to transfer to Buyer(s) marketable ownership of  
9 the Property.

10 **PROPERTY ADDRESS:**

11 Street Address: \_\_\_\_\_

12 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

13 **LEGAL DESCRIPTION:**

14

15

16

17 **LIST PRICE:** \$ \_\_\_\_\_ or at such price and terms as shall be acceptable to Seller(s).

18 Minerals, if owned, included:  Yes  No  Unknown

19 Personal Property Included:

20 \_\_\_\_\_

21 Personal Property Excluded:

22 \_\_\_\_\_

23 Does Seller(s) have an Abstract?  Yes  No **OR** Title Insurance?  Yes  No Policy # \_\_\_\_\_

24 Is there a loan against the Property?  Yes  No If "Yes," are loan payments up to date?  Yes  No

25 Is a sign permitted on the Property?  Yes  No

26 Lock Box?  Yes  No Lock Box Location: \_\_\_\_\_

27 Seller(s) agrees the lockbox  will  will not be attached to the property. Seller(s) accepts all liability for any damage  
28 or loss that may occur on the property as a result of lockbox not being securely attached.

29 Seller(s) has a contract with a  Power Company  Fuel Tank Rental  Water Softener Service  Rural Water  
30 **Membership**

31 Terms: \_\_\_\_\_

32 Is there a functioning audio/visual surveillance system on the Property?  Yes  No If “Yes,” Seller(s) agrees to post  
33 notice of such at the entrance where potential Buyer(s) may enter the Property. Seller(s) understands that Broker must  
34 disclose this information to all parties. Seller(s) should seek appropriate legal advice if Seller(s) intend to utilize technology  
35 that may intercept audio or visual communications between persons other than Seller(s).

36 Is there a security system installed on the Property?  Yes  No If “Yes,” Terms:

37 \_\_\_\_\_

Seller(s) Initials \_\_\_\_\_

38 Home Protection Plan: Seller(s)  will  will not provide a home protection plan.

39 Is there a well on the Property?  Yes  No If "Yes," see WELL DISCLOSURE.

40 Is there a subsurface sewer system/septic system on the Property?  Yes  No If "Yes," see PRIVATE SEWAGE  
41 TREATMENT SYSTEM DISCLOSURE. Seller(s) has been informed that if there is a subsurface sewer system/septic  
42 system on the Property, it may be required to meet certain federal, city, county, or state certification standards. Seller(s)  
43 assumes responsibility for the inspection and will hold Broker harmless of any responsibility for said system.

44 Does Seller(s) currently have flood insurance?  Yes  No

45 Seller(s) understands that Broker intends to rely on the accuracy of the information Seller(s) furnishes, including  
46 information about the condition of the Property. Seller(s) agrees to hold Broker harmless and defend Broker from any  
47 costs, expenses, or damages, including attorney's fees incurred by Broker as a result of Seller's withholding information  
48 from Broker or as a result of giving Broker any information which is incorrect.

49 This shall serve as the Seller's written notice granting the Broker or any authorized closing agent permission to obtain:

- 50 1.) mortgage and title policy information (i.e. mortgage balance, interest rate, payoff and/or assumption figures,  
51 etc.) regarding any existing financing on this Property, and
- 52 2.) utility information.

53 **SELLER'S DUTIES:** The Seller(s) will:

- 54 a) cooperate with Broker in selling the Property, and authorizes Broker, Broker's Agent(s), and/or Agent(s) with  
55 customers or clients to enter the Property for the purposes of showing/reviewing the Property at reasonable times;
- 56 b) promptly tell Broker about all inquiries received about the Property;
- 57 c) provide Homeowner's Association documents, if applicable;
- 58 d) provide and pay for any inspections and reports if required by any governing authority;
- 59 e) give the Buyer(s) an up-to-date abstract, or current owner's title insurance commitment, or mobile home  
60 registration;
- 61 f) provide SELLER'S PROPERTY DISCLOSURE;
- 62 g) warrant appliances, heating, air conditioning, wiring, and plumbing on Property to be in working order on date  
63 of closing, except  
64 \_\_\_\_\_;
- 65 h) remain responsible for security, maintenance, lawn care, snow removal, utilities, and insurance while Seller(s)  
66 owns the Property; and
- 67 i) remain responsible for safekeeping, securing, and/or concealing any valuable personal property during showings  
68 or open houses.

69 **BROKER AUTHORITY:** Seller(s) authorizes Broker to market the Property to the Public, obtain information relating to  
70 the present mortgage(s) on the Property, and provide objective comparative market analysis information to potential  
71 Buyer(s).

72 **MULTIPLE LISTING SERVICE AND INTERNET MARKETING:** Seller(s) understands the Broker is a member of a  
73 Multiple Listing Service (MLS) and will give information to the MLS concerning the Property. Seller(s) grants Broker  
74 access to the Property and authorizes Broker to market the Property including submission of data to a MLS.

75 Shall the Property listing be displayed on the Internet, including sold information?  Yes  No

76 Shall the listing address (house and unit numbers and street name) be displayed on the Internet?  Yes  No

77 Shall an automatic valuation of the Property listing or a link to an automated valuation be displayed adjacent to the  
78 listing?  Yes  No

79 Shall comments or reviews of the Property by persons other than the displaying Broker be displayed with or attached as  
80 a link to the listing data of the Property?  Yes  No

81 **CONSENT FOR COMMUNICATION:** Seller(s) authorizes Broker and Broker's representatives to contact Seller(s) by  
82 mail, phone, fax, email, or other means of communication during the term of this Agreement and anytime thereafter.

83 **MULTIPLE OFFER DISCLOSURE:** Based on receiving a guide or other information regarding multiple offers, Seller(s)  
84 now instructs Broker as follows:

85  Seller(s) agrees that the Listing Agent(s) should inform Agents in the event of a multiple offer situation.

86  Seller(s) does not want the Listing Agent(s) to disclose multiple offer situations to other Agent(s).

Seller(s) Initials \_\_\_\_\_

87 **BROKER COMPENSATION:**

88 **BROKER COMMISSIONS ARE NOT SET BY LAW AND ARE FULLY NEGOTIABLE.**

89 Seller(s) hereby authorizes Broker to market Seller's Property and allows Broker to share Broker compensation with  
 90 cooperating real estate Brokers. The commission rate for the sale, lease, rental, or management of real property shall be  
 91 determined between each individual real estate Broker and its client.

92 In consideration of the services to be performed by the Broker, the Seller(s) agrees to pay the Broker as follows (Check all  
 93 that apply):

- 94 1)  Seller(s) agrees to pay Broker compensation of \_\_\_\_\_% of the purchase price to be split as follows:  
 95 with Buyer's Broker: \_\_\_\_\_% or Other Broker: \_\_\_\_\_%
- 96 2)  Seller agrees to pay a flat fee of \$\_\_\_\_\_, to be split as follows:  
 97 with Buyer's Broker: \$\_\_\_\_\_ or Other Broker: \$\_\_\_\_\_
- 98 3)  Seller(s) agrees to pay Broker a transaction fee of \$\_\_\_\_\_.
- 99 4)  Other terms: \_\_\_\_\_.

100 Compensation is due upon the happening of the following events:

- 101 a) at closing of the sale;
- 102 b) if Broker presents a Buyer(s) who is willing and able to buy or exchange the Property at a price and terms required  
 103 in the PURCHASE AGREEMENT, but Seller(s) refuses or fails to sell for any reason;
- 104 c) if Seller(s), before expiration of this Agreement, agrees to a sale or exchange of the Property with any person, even  
 105 if Broker did not present the Buyer(s), and even if Seller(s) sells or exchanges the Property without Broker's  
 106 assistance;
- 107 d) if within \_\_\_\_\_ calendar days after the end of this Agreement, Seller(s) sells or agrees to sell, or exchanges or  
 108 agrees to exchange, the Property with anyone who:
  - 109 1. during this Agreement made inquiry of Seller(s) about the Property and Seller(s) did not tell Broker  
 110 about the inquiry;
  - 111 2. during this Agreement made an affirmative showing of interest in the Property or was physically shown  
 112 the Property;

113 After the expiration of this Agreement, Seller(s) understands that Seller(s) does not have to compensate Broker if Seller(s)  
 114 signs another valid listing contract under which Seller(s) is obligated to pay a compensation to another licensed real estate  
 115 Broker.

116 **APPOINTED AGENCY REPRESENTATION:** The Broker will appoint to the Seller(s), in writing, a licensed Agent(s)  
 117 who will be acting as the Seller's Appointed Agent(s) to the exclusion of all other affiliated licensed Agent(s) of the Broker.  
 118 By agreeing to Appointed Agency, the Seller(s), the Broker, the Agent(s) of the Broker and the Appointed Agent(s) named  
 119 below are considered to possess only actual knowledge and information. By an act of North Dakota Law, the definitions  
 120 regarding Appointed Agency make it clear that there is no imputed knowledge or information between the Seller(s),  
 121 the Broker, the Broker's Agent(s), or the named Appointed Agent(s).

122 \_\_\_\_\_ ("Appointed Agent(s)"), an affiliated  
 123 licensed Agent(s) of the Broker, is appointed to act solely as an Agent(s) for the Seller(s) unless they personally represent  
 124 the Buyer(s), in which event the Appointed Agent(s) is considered a Dual Agent (see Lines 138-153) in this transaction  
 125 only. Seller's designated Appointed Agent(s) is obligated not to reveal any confidential information obtained from the  
 126 Seller(s) to other licensed Agents, except to the Broker in charge of the oversight of the Seller's transaction.

127 It is understood that the Broker may appoint another Agent(s) for the Seller(s) during the term of this Agreement if:

- 128 1. The Appointed Agent(s) is not able to fulfill the terms of this Agreement, and/or
- 129 2. The Seller(s) and the Broker mutually agree to the appointment of another Agent(s). An appointment of another  
 130 Agent(s) as a new or additional Agent(s) does not relieve the first Appointed Agent(s) of any of the duties owed to  
 131 the Seller(s) as previously described in this Agreement.

132 Having read and understood this information, Seller(s) makes the following decision:

133 Seller(s)  **accepts**  **does not accept** a possible Appointed Agency Representation.

Seller(s) Initials \_\_\_\_\_

134 \_\_\_\_\_  
 135 Seller Signature Date Agent Signature Date

136 \_\_\_\_\_  
 137 Seller Signature Date

138 **DUAL AGENCY REPRESENTATION:** Dual Agency means the Broker represents both Buyer(s) and Seller(s) and owes  
 139 the same duties to both parties. This agency relationship will prohibit the Broker from advocating exclusively for either  
 140 party. Dual Agency will limit the level of representation the Broker can provide. Confidential information communicated  
 141 by Buyer(s) or Seller(s) to the Broker in regard to price, terms, or motivation will remain confidential unless Buyer(s) or  
 142 Seller(s) instructs the Broker in writing specific information to disclose. All other information may be shared. The Broker  
 143 cannot act as a Dual Agent unless both Seller(s) and Buyer(s) agree.

144 By agreeing to a **possible** Dual Agency, Seller(s) may be giving up the right to exclusive representation in a transaction  
 145 where the Agent(s) representing Seller(s) and Buyer(s) work for the same Brokerage or when one Agent is representing  
 146 both Seller(s) and Buyer(s).

147 By not agreeing to a **possible** Dual Agency: Seller(s) will be giving up the opportunity to show and sell the Property to a  
 148 Buyer(s) client from the same Brokerage as Seller's Agent, unless Appointed Agency applies.

149 Seller(s)  **accepts**  **does not accept** a possible Dual Agency Representation.

150 \_\_\_\_\_  
 151 Seller Signature Date Agent Signature Date

152 \_\_\_\_\_  
 153 Seller Signature Date

154 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** 26 U.S. Code § 1445 of the Internal Revenue  
 155 Code provides that a transferee ("Buyer(s)") of a United States real property interest must be notified in writing and must  
 156 withhold tax if the transferor ("Seller(s)") is a foreign person and no exceptions from FIRPTA withholding apply. Buyer(s)  
 157 and Seller(s) agree to comply with FIRPTA requirements under Section 1445 of the Internal Revenue Code. Seller(s) shall  
 158 represent and warrant, under the penalties of perjury, whether Seller(s) is a "foreign person" (as the same is defined within  
 159 FIRPTA), prior to closing. Any representations made by Seller(s) with respect to this issue shall survive the closing and  
 160 delivery of the deed.

161 Buyer(s) and Seller(s) shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement  
 162 reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer  
 163 identification numbers or Social Security numbers.

164 Due to the complexity and potential risks of failing to comply with FIRPTA, including the Buyer's responsibility for  
 165 withholding the applicable tax, Buyer(s) and Seller(s) should seek legal and tax advice regarding FIRPTA compliance, as  
 166 the respective Broker(s)/Agent(s) representing or assisting either party will be unable to assure either party whether the  
 167 transaction is exempt from FIRPTA withholding requirements.

168 **NOTICES:** As of this date, Seller(s)  **has**  **has not** received notice from any municipality, government agency, or  
 169 homeowner's association about the Property that Seller(s) has not told the Broker about, and Seller(s) agrees to promptly  
 170 tell the Broker of any notice of that type should Seller(s) receive.

171 **NONDISCRIMINATION:** All parties agree not to discriminate against or refuse to sell to, or discriminate in the terms,  
 172 conditions, or privileges of sale against, or indicate or publicize that sale is unwelcome, objectionable, not acceptable, or  
 173 not solicited from, any person due to that person's race, color, religion, sex, national origin, age, physical or mental  
 174 disability, family status, status with respect to marriage, or status with respect to public assistance. All parties understand  
 175 further applicable laws, rules, or ordinances may include other protected classes of persons.

176 **ELECTRONIC SIGNATURES:** The Seller(s) agrees the electronic signature of any party on any document related to  
 177 this transaction constitutes valid, binding signatures.

178 **CLOSING SERVICES:** After the PURCHASE AGREEMENT for the Property is fully executed, arrangements must be  
 179 made to close the transaction. Seller(s) understands that no one can require Seller(s) to use a particular person to conduct  
 180 the closing and that Seller(s) may arrange for another qualified person, including Seller's attorney, to conduct the closing.  
 181 The real estate Broker, real estate Agent(s), or real estate closing agent, has not, and under applicable state law, may not,

Seller(s) Initials \_\_\_\_\_

