



## EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT WITH CONSENT TO DESIGNATED AND DUAL AGENCY

### 1. PARTIES TO THIS AGREEMENT.

"SELLER(s)": \_\_\_\_\_

"LISTING BROKER": \_\_\_\_\_

**2. PURPOSE.** This Agreement establishes LISTING BROKER's exclusive right to sell or lease the property located at \_\_\_\_\_ ("PROPERTY"). The PROPERTY is recorded in the \_\_\_\_\_ County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_, registered in the Land Court with Certificate Number \_\_\_\_\_.

**3. EXCLUSIVE RIGHT TO SELL.** Under this Exclusive Right to Sell, SELLER agrees that LISTING BROKER shall be entitled to a commission under the terms described in Section 7 below ("LISTING BROKERAGE FEE").

**4. AGENTS/DISCLOSURE.** By signing below, SELLER understands and agrees that this Agreement creates an agency relationship with LISTING AGENT(s), \_\_\_\_\_, and with any other agent associated with the LISTING BROKER that LISTING BROKER appoints to act as LISTING AGENT. **SELLER acknowledges having received the Massachusetts Mandatory Licensee-Consumer Relationship Disclosure.**

**5. LISTING TERM.** This Agreement shall begin on \_\_\_\_\_ and expires at 11:59 p.m. on \_\_\_\_\_. If SELLER accepts an offer to purchase or lease the Property, the Term extends through the date of closing for that transaction. Upon expiration, this Agreement terminates except SELLER remains obligated under Section 7(b-c) below.

**6. LISTING PRICE.** SELLER agrees to list the Property for \$ \_\_\_\_\_ ("Listing Price") or such other terms and price the SELLER may approve.

**7. LISTING BROKERAGE FEE.** The LISTING BROKERAGE FEE is fully negotiable fee for services rendered and is not fixed, controlled, or recommended by law, any MLS or any other person not a party to this agreement. If within the term of this Agreement or any extension, the Property is sold or the LISTING BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the LISTING BROKER shall be due a Commission of:

\_\_\_\_\_% percentage of the ( net /  gross) selling price. The Gross Sales price is the sales price unmodified by seller concessions or buyer upgrades; or

Flat Fee of \$ \_\_\_\_\_ dollars.

If this box is checked and the buyer is not represented by a licensed real estate licensee, then the LISTING BROKERAGE FEE listed above shall instead be equal to:

\_\_\_\_\_% of the ( net /  gross) sales price; OR  Flat Fee of \$ \_\_\_\_\_ dollars.

a. The Commission shall be due if the Property is sold to a buyer procured by the LISTING BROKER, by the SELLER or by anyone else. The Commission shall be due and paid at the time set for closing. Payment shall first be paid from

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any amounts held by escrow agent.

- b. The Commission shall also be due upon sale of the Property to any person who was introduced to the Property during the aforesaid term or any extension, or who entered into an agreement to purchase during the term, during any extension or within days after expiration of the term or any extension, regardless of the date that title passes, except if the SELLER has entered into an exclusive agreement to sell the Property with another broker in good faith.
- c. If any deposit is retained by the SELLER as liquidated damages for default by the buyer under any agreement for sale of the Property the SELLER's Agent shall be due the amount elected in Paragraph 12 below.

THE LISTING BROKERAGE FEE AMOUNT IN THIS SECTION ONLY REPRESENTS SELLER'S PAYMENT OBLIGATION TO LISTING BROKER; IT DOES NOT INCLUDE ANY COMPENSATION FOR BUYER'S AGENT. IF SELLER AUTHORIZES LISTING BROKER TO ACT AS A DISCLOSED LIMITED AGENT REPRESENTING BOTH SELLER AND BUYER, ANY COMPENSATION EARNED BY AGENT FOR BUYER REPRESENTATION WILL BE ESTABLISHED BETWEEN AGENT AND BUYER.

**8. SELLER CONTRIBUTIONS TO BUYER FEES AND COSTS.** The LISTING BROKERAGE FEE in Section 7 DOES NOT include any compensation for buyer real estate brokerage or any other buyer fees or costs. Under most multiple listing service rules, if buyer is using a real estate agent, buyer and buyer's agent must enter into a written agreement describing the compensation owed by buyer to buyer's real estate brokerage. **Buyer brokerage compensation is fully negotiable between buyer and buyer's real estate brokerage and is not fixed, controlled, or recommended by law, an MLS, or any other party.** Some buyers cannot afford to pay brokerage fees out of pocket, and brokerage fees paid directly by the buyer may not be directly financed through buyer's loan. Buyer may include a provision in their purchase offer specifying an amount for SELLER contributions to buyer brokerage fees and other buyer closing costs. SELLER is not required to accept such offers or make such contributions. Buyers' agents may inquire in advance of submitting offers about SELLER'S willingness to accept offers that include SELLER contributions to Buyer brokerage fees and other closing costs. LISTING BROKER will communicate that buyer are encouraged to submit all offers. LISTING BROKER will present all offers to SELLER. SELLER will consider all offers based on their overall price and terms.

- If this box is checked, LISTING BROKER is authorized to proactively market SELLER willingness to consider buyer offers that contain a request for SELLER contribution towards buyer fees and costs.

**9. MULTIPLE BROKERAGE FEES PROHIBITED.** If SELLER lists the Property with a subsequent duly licensed real estate broker or principal broker after expiration or mutually agreed upon termination of this Agreement, and application of this Agreement would result in SELLER paying more than one LISTING BROKERAGE FEE, no LISTING BROKERAGE FEE will be due under this Agreement. This provision does not apply if SELLER unilaterally terminates.

**10. EARNEST MONEY FORFEITED.** LISTING BROKER and SELLER agree that (Choose one):

- If a Sale Agreement is terminated and the buyer forfeits their Earnest Money, LISTING BROKER expenses, including without limitation advertising costs and attorney fees, will be paid from the forfeited Earnest Money. Up to half of the remaining funds will be disbursed to LISTING BROKER, up to the LISTING BROKERAGE FEE. All remaining funds will be disbursed to SELLER; or
- If a Sale Agreement is terminated and the buyer forfeits their Earnest Money, all funds will be disbursed to SELLER.



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**11. INSUFFICIENT FUNDS.** If the proceeds from the sale of Property are insufficient to cover closing costs, SELLER agrees and acknowledges that SELLER will remain responsible for paying all closing costs and debts including the LISTING BROKERAGE FEE.

**12. TERMINATION; EARLY TERMINATION FEE.** The parties may mutually terminate this Agreement with a written termination statement signed by SELLER and LISTING BROKER. SELLER may unilaterally terminate this Agreement before the end of the Term ("Early Termination"). As a condition required for an Early Termination (or in the case of buyer default per Paragraph 7(c) above), SELLER shall pay an "EARLY TERMINATION FEE" of:

- \_\_\_\_\_% of the expected LISTING BROKERAGE FEE in section 7 above; or
- \$\_\_\_\_\_, representative of the reasonable cost of SELLER'S Agents' expenses and time up to the moment of SELLER'S Early Termination.

If a LISTING BROKERAGE FEE is payable to LISTING BROKER at the time of the EARLY TERMINATION, SELLER shall remain obligated to pay the LISTING BROKERAGE FEE to LISTING BROKER at closing, but will not be required to pay an EARLY TERMINATION FEE.

**13. SERVICES; AUTHORITY.** SELLER authorizes LISTING BROKER to market the Property and authorizes SELLER's Agent (a) to place a sign on the Property when applicable; (b) to photograph, video and advertise the Property in such media as the SELLER's Agent elects; The SELLER authorizes the LISTING BROKER to disclose to prospective buyers all information about the Property provided to the LISTING BROKER by the SELLER, all of which the SELLER represents to be accurate. The LISTING BROKER shall have no obligation to continue to market the Property after an offer has been accepted.

- If this box is checked, LISTING BROKER is authorized to place a lockbox on the Property, with SELLER responsible for all risk of loss or damage stemming from such lockbox

**14. AUDIO/VIDEO RECORDING DEVICES.** The SELLER acknowledges that it is unlawful to secretly listen to or record a communication of another individual without their knowledge and consent. SELLER shall turn off any equipment during a showing, open house, or other inspection of the Property unless visitors are clearly made aware that the device is in use. The SELLER hereby discloses that the Property has Audio/Video devices with the following capabilities:

- None
- Audio Only
- Video Only
- Both Audio & Video

**15. SELLER OBLIGATION.** SELLER shall assist LISTING BROKER during the term of this Agreement and agrees to cooperate in the marketing of the property and refer all potential buyers to the LISTING BROKER. SELLER further agrees to review and execute all required forms, including the lead paint Property Transfer Notification Certification for properties built before 1978.

**16. INDEMNIFICATION.** SELLER shall protect, defend, indemnify, and hold harmless SELLER's Agent, Firm, and their respective agents, assigns and employees from and against: (i) any damages other than for those caused by SELLER's Agent's failure to comply with duties owed to all parties in a transaction as a result of SELLER's Agent's representation of SELLER; (ii) all losses, costs, liabilities, claims, damages, and expenses of every character and kind, as incurred, relating to or arising out of inaccuracy, nonfulfillment or breach of any representation, warranty, covenant or agreement made by SELLER in the Sale Agreement; and (iii) any legal action including any counterclaim based on facts that, if true, would



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constitute a breach of any representation, warranty, covenant or agreement made by SELLER in the Sale Agreement relating to or arising out of any act or omission of SELLER prior to the Closing Date; or information and disclosures about the Property provided by SELLER.

**17. DISPUTE RESOLUTION/GOVERNING LAW.** Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement, shall, upon demand of either party, be submitted for binding arbitration, to the Cape Cod & Islands Association of REALTORS® or, in the event the association/board declines to hear the matter, to the American Arbitration Association ("AAA") or, upon mutual agreement, to another dispute resolution service. The Laws of the Commonwealth of Massachusetts shall govern the terms of this Agreement.

**18. FAIR HOUSING.** SELLER and LISTING BROKER agree to comply with all federal, state, and local fair housing laws. SELLER and LISTING BROKER may not discriminate against potential buyers based on the buyer's status as a member of a protected class. Protected classes under federal law include race, color, religion, national origin, sex, gender, disability, and familial status. Massachusetts additionally identifies sexual orientation, gender identity, marital status, source of income, veteran or active military status, and genetic information as protected classes.

**19. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties. This Agreement is binding upon the SELLER's heirs, successors, and assigns.

**20. DESIGNATED AGENCY CONSENT.** The SELLER consents to Designated Agency with the following agent(s): \_\_\_\_\_ . A designated agent is a real estate licensee who has been specifically appointed or designated by the broker with whom they are affiliated to individually represent a specific client (either a buyer or seller) when selling or buying real estate. The designated agents give their clients full representation, with all the attendant fiduciary duties. The other real estate licensees affiliated with the broker do not represent the SELLER, and do not owe the SELLER any fiduciary duties, and may participate in a transaction as a buyer's agent. If the transaction includes designated buyer agent from the brokerage, then the broker shall be a dual agent and neutral, owing both parties fiduciary duties of confidentiality and accounting of funds. SELLER will be informed in writing if the broker is a dual agent in the transaction. SELLER further consents to the appointment of an alternate agent affiliated with the broker, if the agent listed above ceases to be associated with the brokerage. SELLER will be informed in writing of the appointment of an alternate agent.

**21. DUAL AGENCY CONSENT.** The SELLER consents to Dual Agency. Dual agency exists when an agent represents both buyer and seller in the same real estate transaction. The SELLER understands that the LISTING AGENT represents buyers and may represent a prospective buyer of SELLER's property which would create a dual agency. In such a case, the LISTING AGENT and LISTING BROKER shall be neutral between the parties when dealing with any conflicting interests. In a dual agency, the LISTING AGENT/BROKER's fiduciary duties will be limited, with the LISTING AGENT/BROKER only having the fiduciary duty of confidentiality of material information and a duty to account for funds, but will no longer have the duties of loyalty, full disclosure, reasonable care, and obedience to lawful instructions. Disclosure of material information provided by SELLER or BUYER to LISTING AGENT/BROKER is prohibited unless the agent or broker is authorized to disclose, the law requires disclosure, disclosure will help prevent illegal conduct, or disclosure is necessary to prosecute or defend a claim related to the parties. The duty of confidentiality remains after the relationship concludes. SELLER will be informed in writing if dual agency is created in a transaction.

THIS FORM IS FOR EXCLUSIVE USE BY MEMBERS OF THE CAPE COD & ISLANDS ASSOCIATION OF REALTORS® AND PARTICIPANTS AND SUBSCRIBERS OF THE CAPE COD & ISLANDS MULTIPLE LISTING SERVICE, INC. AND THE MARTHA'S VINEYARD MULTIPLE LISTING SERVICE, INC.



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**22. ADDITIONAL TERMS.**

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**SELLER has read this Agreement, understands its contents and understands that it is a legally binding Agreement.  
SELLER is advised to consult an Attorney before signing.**

**Seller:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Seller:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Seller:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Seller:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**LISTING BROKER/  
Authorize Representative:** \_\_\_\_\_ **Date:** \_\_\_\_\_