



REALTOR® North Carolina Association
of REALTORS®

**EXCLUSIVE RIGHT TO LEASE AND/ORSELL
LISTING AGREEMENT**

This Exclusive Right to Lease And/Or Sell Listing Agreement is by and between _____
(Name of Firm), hereinafter known as "Firm" and

hereinafter known as "Client".

In consideration of Firm's agreement to list the following described property, hereinafter known as "Property", for lease and/or sale and to use its efforts to find a buyer/tenant, Client agrees with Firm as follows:

1. EXCLUSIVE RIGHT TO LEASE AND/ORSELL: For a period extending until midnight on _____, Firm shall have the exclusive right to lease and/or sell the Property as agent of Client at the price and on the terms set forth below, or upon such other terms as may be agreed upon in writing by Client with any buyer/tenant. **Client represents that, as of the commencement date of this Agreement, Client is not a party to a listing agreement with any other firm.**

2. BROKER COOPERATION/AGENCY RELATIONSHIPS: Firm has advised Client of Firm's general company policy regarding cooperating with subagents, buyer/tenant agents or dual agents. Client has received and read the "Working with Real Estate Agents" publication and authorizes the Firm to compensate (subject to paragraphs 7c.(ii) and 7c.(iii)) and cooperate with the following (Firm agrees to inquire of all agents at the time of initial contact as to their agency status): (CHECK ALL APPLICABLE AGENCIES)

- subagents of Client
- buyer/tenant agents
- dual agents representing both Client and the buyer/tenant in the same transaction (subject to the terms of the attached Dual Agency Addendum).

3. PROPERTY:(Address) _____
(Legal Description/Description)

See attached Exhibit _____ for legal description/description of premises.

4. LISTING TERMS:

SALE

LEASE

Sales Price _____

Rental _____

Client Financing Terms _____

Taxes Paid By _____

Possession Delivered _____

Insurance Paid By _____

Utilities Paid By _____

Operating Expenses Paid By _____

Maintenance Paid By _____

Possession Delivered _____

Other Terms: _____

Other Terms: _____

See attached Exhibit _____ for additional listing terms.

ADVERTISING AND DATABASE LISTINGS: In connection with the marketing and lease/sale of the Property, Client authorizes and directs Firm: (CHECK ALL APPLICABLE SECTIONS)



- to place a sign on the Property. Client shall remove all other signs.
- to advertise the Property, including, but not limited to, placing information about the Property on the Internet either directly or through a program of any listing service and/or information exchange of which the Firm is a member.
- to permit other firms who belong to any listing service or information exchange of which the Firm is a member to advertise the Property on the Internet in accordance with the rules and regulations of the listing service or information exchange.
- to submit pertinent information concerning the Property to any listing service or information exchange of which Firm is a member and to furnish to such listing service or information exchange notice of all changes of information concerning the Property authorized in writing by Client. Client authorizes Firm, upon execution of a lease or sales contract for the Property, to notify the listing service or information exchange of the lease/pending sale, and upon lease execution or closing of the sale, to disseminate leasing/sales information, including rate/sales price, to the listing service or information exchange, appraisers and real estate licensees.

MARKETING EXPENSE: In the event that the Property does not sell or lease during the term of this Agreement, Client shall nonetheless be obligated to reimburse Firm for actual documented expenses incurred in marketing the Property up to the amount of \$ _____ .

5. SPECIAL PROVISIONS:

- See attached Exhibit _____ for special provisions.

6. COOPERATION WITH FIRM:

a. Exclusive Rights: Client agrees to cooperate with Firm to facilitate the leasing and/or sale of the Property. Property may be shown only by appointment made by or through Firm. Client immediately shall refer to Firm all inquiries or offers it may receive regarding the Property. Client agrees to cooperate with Firm in bringing about a lease or sale of the Property. All negotiations shall be conducted through Firm. Firm shall be identified as the contact firm with all state and local economic development agencies being notified of the Property's availability.

b. Services: No management services, repair services, collection services, notices, legal services or tax services shall be provided by Firm. In the event that Firm does procure any of these services at the request of Client, it is understood and agreed that Firm shall only be acting in the capacity of procurer for Client and shall accrue no liability or responsibility in connection with any services so obtained on behalf of Client. This exclusion of liability and responsibility shall not apply in the event that Firm directly contracts with Client to provide any such service.

7. COMMISSIONS: The amount, format or rate of real estate commission is not fixed by law. Commissions are set by each broker individually and may be negotiable between a firm and its client.

a. Sales Commissions:

(i) Commissions shall be earned when Seller accepts an unconditional offer from buyer or when all conditions have been met following Client's acceptance of a conditional offer from buyer whether buyer is procured by Firm, the Client or anyone else during the term of this Agreement. Client shall pay Firm a commission equal to _____ percent (_____ %) of the gross sales price of the Property, or the sum of _____ (\$ _____), whichever is greater, and/or other:

Commission shall be paid in cash or by bank check. Gross sales price includes any and all consideration received or receivable, in whatever form, by Client including, but not limited to, the assumption or release of existing liabilities. Client shall pay the commission upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Client shall pay the commission upon the signing of such installment contract. In the event of any breach by Client of any contract of purchase and sale, it is understood and agreed that the commission remains earned and payable upon notice given by Client to buyer of Client's intent not to proceed with such sale, notwithstanding the basis of such intent not to proceed. In the event Client contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the commission shall be calculated on the fair market value of the Property or interest therein contributed, conveyed, transferred or exchanged and is payable at the time of the contribution, conveyance, transfer or exchange. If Client is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a fee or commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Client at the time of the transfer.

If this box is checked, notwithstanding the foregoing, in the event that there is no cooperating agent involved in a sale transaction, the commission stated in (i) above shall be adjusted to _____ percent (_____ %) of the gross sales price of the Property or _____ (\$ _____), whichever is greater, and/or other:

For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm

below.

(ii) **Options:** _____ % of any option fees shall be paid to Firm at the time such monies are paid to Client, said amount to be applied to commissions payable pursuant to Paragraph 7.a.(i), provided, Firm shall not be paid, on account of this provision, an amount in excess of its entitlement pursuant to Paragraph 7.a.(i).

(iii) Should there be a forfeiture of earnest money, Firm shall be entitled to _____ % of same, provided that Firm shall not receive an amount in excess of the commission set forth in Paragraph 7.a.(i).

b. Lease Commissions:

(i) Commissions shall be earned when Client directly or indirectly leases or agrees to lease the Property, whether tenant is procured by Firm, the Client or anyone else during the term of this Agreement. Firm's commission shall be calculated according to the schedule in Paragraph 7.b.(ii). Commissions shall be paid in cash or by bank check.

(ii) **Schedule of Commissions:**

(complete both (a) and (b), only (a) will apply unless Firm elects in writing to have (b) apply)

(a) Commission Paid Upon Execution of Lease:

(i) _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term;

(ii) \$ _____ (flat fee);

payable in full upon execution of a lease by Client and tenant, unless otherwise provided here:

(b) Commission Paid Over the Term of Lease: In the event Firm elects in writing to collect a commission over the term of the lease, the commission is _____ percent (_____ %) of all rent collected from tenant or \$ _____ per collection period, whichever is more, payable within ten (10) days of the receipt of each lease payment by Client during the term of the lease.

If this box is checked, notwithstanding the foregoing, in the event that there is no cooperating agent involved in a lease transaction, the commission stated in (a) above shall be adjusted to _____ percent (_____ %) of the total rent for the first _____ months in which rent is to be paid, plus _____ percent (_____ %) of the total rent for the remainder of the term or \$ _____ (flat fee), or, if Firm elects in writing to have (b) above apply, the greater of _____ percent (_____ %) of all rent collected from tenant or \$ _____ per collection period.
For purposes of this subsection only, "cooperating agent" shall mean any agent other than the individual licensee signing on behalf of Firm below.

(iii) **Percentage Rent:** If a lease for which a commission is payable hereunder contains a percentage rent clause, Client shall pay a commission on the percentage rent payable by the tenant at the commission rate applicable to the period of the lease term for which the percentage rent is payable. This commission shall be payable within fifteen (15) days after receipt of each tenant payment to Client.

(iv) **Option(s) or Right(s) of First Refusal to Renew, Extend Lease or Occupy Additional Space:** If a lease for which a commission is payable hereunder contains (i) an option or right of first refusal to renew or extend, and a lease term is renewed or extended whether strictly in accordance with the terms of such option or right or otherwise and/or (ii) an option or right of first refusal to expand, and tenant occupies additional space whether strictly in accordance with the terms of such option or right or otherwise, then Client shall pay a commission in accordance with Paragraph 7.b. on the additional base rental to be paid, calculated at the commission rate applicable hereunder for the years of the lease in which the additional base rental is payable. Said commission shall be earned at the time the extended term commences or the additional space is occupied, as applicable.

(v) Commissions payable pursuant to this Agreement are leasing fees only and shall not be considered compensation for or an obligation to manage or sell the Property.

c. General Commissions Provisions:

(i) **Purchase of Property by Tenant:** If a tenant under a lease for which a commission is payable hereunder directly or indirectly purchases the Property, whether strictly in accordance with the terms of any option, right of first refusal, similar right or otherwise, within _____ years of the date of this Agreement, then a sales commission shall be calculated and paid in accordance with the provisions of Paragraph 7.a.(i).

(ii) Firm shall not be required to compensate or pay any commission to, either directly or indirectly, a buyer/tenant who seeks

to be compensated or paid a commission in connection with any transaction pursuant to this Agreement.

(iii) If Firm has worked directly with a buyer/tenant in connection with the Property, either as a client or a customer, and such relationship is evidenced in writing (either by a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 - or substantially similar registration document), then Firm may not compensate or pay any commission to another real estate agent (not associated with Firm) in connection with any transaction pursuant to this Agreement involving said registered buyer/tenant.

(iv) In the event Client fails to make payments within the time limits set forth in this Agreement, then the delinquent amount shall bear interest from the date due until paid at the maximum rate permitted in the state of North Carolina. If Firm is required to institute legal action (including mediation or arbitration) against Client relating to this Agreement, Firm shall be entitled to costs of such action.

(v) In the event Client sells or otherwise disposes of its interest in the Property, Client shall remain liable for payment of the commissions provided for in this Agreement, including, without limitation, the commission obligations set forth in Paragraph 7.a. or 7.b. unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.

(vi) "Buyer", "tenant" and "registered prospect" as used herein shall be deemed to include, but not be limited to, their successors or assigns, agents, principals, officers, directors, employees or shareholders thereof or any affiliate, alter-ego or commonly controlled entity of such buyer, tenant or registered prospect.

8. REGISTERED PROSPECTS:

a. Prior Listing Agreements: If the Property was exclusively listed for lease or sale with another agency prior to this Agreement, then Client shall provide Firm in writing the names of registered prospects and the duration of the protection period under the prior listing agreement. If Client provides such information to Firm within twenty (20) days of the date of this Agreement, then a direct or indirect lease or agreement to lease or sale or agreement to sell during such protection period to a registered prospect is excluded from this Agreement.

b. Later Lease Or Sale To Registered Prospect: If within _____ days after the expiration of this Agreement (the "Protection Period"), Client directly or indirectly leases or agrees to lease or sells or agrees to sell the Property to a party to whom Firm (or any other agent acting for or through Firm) has communicated concerning the Property during the term of this Agreement, Client shall pay Firm the same commission to which Firm would have been entitled had the sale or lease been made during the term of this Agreement; provided that names of prospects are delivered or postmarked to Client within fifteen (15) days after the expiration of the exclusive listing period. **In the event the Property is exclusively listed for lease or sale with another agency after the expiration of this Agreement and Client directly or indirectly leases or agrees to lease or sells or agrees to sell the Property to a registered prospect during the Protection Period, then Client shall pay to Firm the commission provided for in Paragraph 7.**

9. AUTHORITY: Client represents and warrants to Firm that it has the right to offer the Property for lease and/or sale. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

10. BANKRUPTCY: In the event that the Property comes under the jurisdiction of a bankruptcy court, Client shall immediately notify Firm of the same and, if Client is the subject of bankruptcy, shall promptly take all steps necessary to obtain court approval of Firm's appointment to sell or lease the Property, unless Firm shall elect to terminate this Agreement upon said notice.

11. INDEMNIFICATION: Client represents and warrants that the information set forth herein and any other information as may be furnished to Firm by Client, including information relating to environmental matters, is correct to the best of Client's knowledge. Firm shall have no obligation or responsibility for checking or verifying any such information, except as may be required by law. Client shall indemnify Firm for any and all loss or damage sustained by Firm as a result of (i) Firm's or Client's furnishing such information to a buyer or tenant or anyone else; and (ii) the presence of storage tanks on, or the presence or release of hazardous substances, materials and wastes on or from, the Property.

12. PARTIES AND BENEFITS: This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Client agrees that at any time during the term of this Agreement, Firm may either assign Firm's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Firm's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State of North Carolina. In the event of any such assignment or transfer, Client may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Client's intent to terminate this Agreement.

13. ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; GOVERNING LAW: This Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included. It shall not be

deemed a breach of this Agreement for Firm to comply with an order resulting from an arbitration conducted by a REALTOR® association or issued by a court of competent jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

14. EIFS/SYNTHETIC STUCCO: To the best of Client's actual knowledge, the Property has not been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco", unless disclosed as follows: (If the Client does not wish to disclose, please note "No Representations"):

15. INTELLECTUAL PROPERTY RIGHTS: Client grants to Firm and any listing or commercial database service in which Firm or its agents participate a non-exclusive, perpetual license to use any information, photographs, drawings or other intellectual property that Client provides to Firm, including the rights to display, reproduce or make derivative works from the intellectual property.

THE AGENT SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

CLIENT:
Individual

CLIENT _____ DATE _____

CLIENT _____ DATE _____

(SEAL)

Business Entity

FIRM:

(Name of Entity)

(Name of Firm)

By: _____ (SEAL)

By: _____ (SEAL)

Name: _____

Name: _____

Title: _____

Individual License #: _____

Date: _____

Date: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

E-mail: _____

E-mail: _____