



# OPEN LISTING AGREEMENT

1. **THE PARTIES.** This Open Real Estate Listing Agreement (the "Agreement") made on \_\_\_\_\_ (mm/dd/yyyy), is between:

**Seller (Owner)**

Seller name: \_\_\_\_\_ (the "Seller"), with a mailing address of  
Street: \_\_\_\_\_,  
City: \_\_\_\_\_, State of \_\_\_\_\_.

AND

**Agency**

Broker name: \_\_\_\_\_ (the "Broker"), of  
Agency: \_\_\_\_\_ (the "Agency"), with a mailing address of  
Street: \_\_\_\_\_,  
City: \_\_\_\_\_, State of \_\_\_\_\_.

Collectively, the Seller and Agency shall be referred to as the "Parties".

If for any reason the Broker is not able to fulfill their duties under the terms and conditions of this Agreement, another agent from the Agency may be appointed during the term of this Agreement.

2. **REAL PROPERTY.** The real property, that is the subject of this Agreement, is located at the street address of \_\_\_\_\_.

a) **Legal Description.**

Tax Map/Lot: \_\_\_\_\_  
Deed Book/Page: \_\_\_\_\_  
Other: \_\_\_\_\_

b) **Fixtures.**

The Seller agrees that all fixtures shall be included as part of the sale,  
EXCEPT: \_\_\_\_\_.

c) **Personal Property.**

The Seller agrees that ONLY the following personal property shall be included as part of the sale: \_\_\_\_\_.

The aforementioned real property, personal property, and included fixtures shall be hereinafter referred to as the "Property".

3. **OPEN LISTING.** The Seller grants the Agency the general non-exclusive right to sell, trade, convey, or exchange the Property during the Listing Period in accordance with the terms and conditions set forth in this Agreement. The Seller hereby appoints the Agency to represent the Seller as their client ONLY if a potential Buyer is produced by the Agency. The Seller retains the right to sell the Property directly, on their own behalf, with no commission due to the Agency. In addition, the Seller reserves the right to enter into similar arrangements with other real estate agents.

4. **PERIOD OF AGREEMENT.** This Agreement shall start on \_\_\_\_\_ (mm/dd/yyyy) (the "Effective Date"), and end on \_\_\_\_\_ (mm/dd/yyyy) at 12:00 midnight (the "Listing Period"), unless the expiration date is extended in writing.

a) **Listing Period Extension.** The Commission shall be due if the Property is sold, conveyed, exchanged, optioned, or otherwise transferred within \_\_\_\_\_ (#) days (the "Extension Period") after the expiration of the Listing Period to anyone with whom the Broker or the Agency has negotiated unless the Property is listed, in good faith, with another real estate agency. The term "negotiation" shall include providing information about the Property, showing the Property, or presenting an offer on the Property. All rights under this Section shall terminate upon the expiration of the Extension Period.

5. **COMMISSION.** The Agency, as compensation for finding a Buyer that is ready, willing, and able to purchase the Property upon the terms and conditions mentioned herein or at any price or terms acceptable to the Seller, shall receive: (check one)

- **Percentage (%) Commission:** A percentage based on the sales price, as stated in the purchase contract between the Buyer and the Seller, in the amount of \_\_\_\_\_ percent (\_\_\_\_%) (the "Commission").

- **Fixed Payment Commission:** A fixed payment in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Commission").

The Commission is due and payable at closing by the Seller. The amount or rate of real estate commissions is not fixed by law. The commission is set by each Broker individually and may be negotiable between the Seller and the Broker.

a) **Leasing.** During the Listing Period, if the Agency finds a ready, willing, and able Tenant that agrees to rent the Property, the Agency shall be due \_\_\_\_\_ percent (\_\_\_\_%) of the total rent amount stated in the rental agreement for the lease term. The lease term shall be defined as the period between the start and end dates listed in the rental agreement, not including any renewal period(s). If the Tenant agrees to rent the Property on a month-to-month basis, the Agency shall be due the equivalent of one (1) month's rent (the "Commission").

b) **Deed Type.** The Seller agrees to convey the Property by \_\_\_\_\_ deed.

c) **Ready, Willing, and Able Buyer.** Under this Agreement, the Commission shall be owed to the Agency if a ready, willing, and able Buyer is produced and refused by the Seller. The definition of a ready, willing, and able buyer shall include, but not be



limited to, a purchase contract that meets or exceeds the Purchase Price and does not contain contingencies or terms that are unreasonable or outside of industry standards. The Seller has an obligation to negotiate all offers presented by the Agency in "good faith".

d) **Litigation.** If a suit is brought against the Seller to collect compensation provided herein, or if the Agency successfully defends any action brought against the Broker by the Seller relating to this Agreement or under any purchase contract relating to the Property, and the Agency prevails, the Seller agrees to pay all costs incurred by the Agency in connection with such action, including reasonable attorneys' fees.

6. **NON-REFUNDABLE PAYMENTS.** If the Seller accepts non-refundable payment(s) from a prospective Buyer through a purchase contract, and said Buyer does not complete the purchase of the Property, such non-refundable payment(s) shall be distributed equally between the Seller and the Agency up to the commission amount the Agency would have collected if the Property had sold under the agreed upon terms. If the Property is sold afterward to the same or different Buyer, the Agency shall be entitled to a Commission less payments received under this Section.

7. **FAIR HOUSING.** The Agency is committed to compliance with all laws as well as the philosophy of fair housing for all people. The Agency will present the Property to all prospective Buyers in compliance with local, State, and Federal Fair Housing laws against discrimination on the basis of race, color, religion, sex, national origin, handicap, age, marital status and/or familial status, children, or other prohibited factors.

8. **OWNERSHIP.** The Seller warrants and acknowledges to be the owner of the Property and that no other individuals or entities have title. The Seller has the authority as owner to execute this Agreement and sell the Property.

9. **SELLER ACKNOWLEDGMENTS.** The Seller represents, warrants, and guarantees that the Seller has complete authority to sell the Property and convey title. The Seller has personally reviewed this Agreement, including any Property Disclosure Statement, and any other addendums, exhibits, or attachments relating to the description and physical condition of the Property were provided by the Seller and are accurate and complete to the best of the Seller's knowledge.

a) **Other Acknowledgments.** The Seller acknowledges, unless otherwise stated in this Agreement or other written statement, that the Seller is unaware of the following:

- i) Any type of default that has been recorded against the Property;
- ii) Any type of financial delinquency which used the Property as security;
- iii) Any type of bankruptcy or insolvency involving the Seller or affecting the Property; and
- iv) Any type of mediation, arbitration, litigation, or any proceeding where an institution, public or private, has action pending against the Property which includes the Seller's ability to sell the Property.

The Seller agrees to notify the Agency immediately if any of the aforementioned issues should arise during the Listing Period.



- 10. BROKER'S DUTIES.** The Broker agrees to exercise all reasonable efforts while providing a fiduciary duty to act in the best interests of the Seller. The Broker shall market the Property to the best of their abilities in order to achieve the highest sales price feasible for the Seller. The Broker shall make all attempts to transfer the Property to a qualified Buyer and shall follow-up with every effort to ensure such result is to the benefit of the Seller.
- 11. SELLER'S DUTIES.** The Seller agrees to make a reasonable effort to accommodate the Broker, including, but not limited to, open houses, showings, Buyer appointments, inspections, testing, and any other requests regarding the use of the Property. When receiving offers, the Seller agrees, in good faith, to consider all proposals, letters, or similar contracts presented by the Broker. The Seller shall be the only party responsible for determining the Purchase Price or any price for the sale of the Property.
- 12. INDEMNIFICATION.** The Seller agrees to indemnify the Agency and hold harmless from any and all claims, which may lead to a dispute, due to any false information provided. Such indemnification shall include the Seller's reimbursement to the Agency for any attorneys' fees arising from any dispute brought against the Agency.
- 13. EARNEST MONEY.** The Seller authorizes the Agency to handle Buyer's funds and deposit in an escrow account in accordance with State law (the "Earnest Money"). The Agency is authorized to act as a third (3<sup>rd</sup>) party when accepting or holding, on the Seller's behalf, deposits made on behalf of a prospective Buyer. In the event a counteroffer is not accepted, the Earnest Money shall be returned to the Buyer without a signed release. If a purchase contract is signed and accepted by the Buyer and the Seller without a closing or transfer and recording of the deed, a separate mutual release signed by the Buyer and the Seller will be required before the Earnest Money is disbursed. In the event of a disagreement by either the Buyer or the Seller in regard to the release of Earnest Money, the Agency must withhold its release until there is mutual agreement or an order has been administered of proper jurisdiction.
- 14. PROPERTY DISCLOSURE STATEMENT.** In accordance with State law, it may be required that the Seller complete the Property Disclosure Statement to the best of their ability and provide true, factual, and accurate information. If required, the Agency shall be required to disclose any information provided in the Property Disclosure Statement to any prospective Buyer or their agent including facts that may materially affect the value of the Property.
- a) **Property Condition.** The Seller hereby authorizes the Agency and all cooperating licensees to disclose to a prospective Buyer, to the extent as required by law, any defects known to them, latent or otherwise. The Seller acknowledges that licensees do not have the responsibility to discover latent defects on the Property or to advise on matters outside the scope of their licenses.
- 15. LEAD-BASED PAINT.** The Seller represents that, to the best of their knowledge, the structure on the Property or any portion thereof, was not constructed before January 1, 1978. The Seller acknowledges that, if the residence was constructed prior to January 1, 1978, there is a requirement to provide any Buyer an EPA-approved lead hazard information pamphlet making certain disclosures regarding the presence of any known lead-based paint or other lead-based paint hazards on the Property, unless the Buyer waives their rights in writing. If any structure was constructed prior to January 1, 1978, the Buyer shall have a ten (10) day period to conduct a risk assessment or inspection of the Property to seek any presence of lead-based paint or any lead-based paint hazards.



**16. INSURANCE.** The Seller agrees to maintain hazard or other insurance, current as of the Effective Date, during the course of this Agreement until the Property is sold.

**17. BINDING EFFECT.** This Agreement shall be binding upon the Seller's successors, assigns, heirs, and beneficiaries.

**18. DISPUTE RESOLUTION.** Any dispute arising from this Agreement shall be required to be resolved by binding arbitration of the Parties hereto. If the Parties cannot agree on an arbitrator, each party shall select one arbitrator, and both arbitrators shall select a third (3<sup>rd</sup>) to handle the dispute. The arbitration shall be governed by the rules of the American Arbitration Association in full force and effect.

**19. GOVERNING LAW.** This Agreement shall be governed under the laws located in the State of \_\_\_\_\_.

**20. SEVERABILITY.** This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

**21. ADDITIONAL TERMS AND CONDITIONS.**

**22. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Seller and the Agency and supersedes all prior discussions, negotiations, and agreements between the Parties whether oral or written. Any understanding, agreement, or promise not specified herein, whether expressed or implied, shall bind neither the Seller nor the Agency. This Agreement is intended to be the legal and binding agreement of the Seller and the Broker. The Parties acknowledge receipt of a signed copy of this Agreement.

**Seller's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Seller's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Broker's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Print Name: \_\_\_\_\_

Agency: \_\_\_\_\_