



EXCLUSIVE RIGHT TO BUY TRANSACTION BROKERAGE AGREEMENT

1. **PARTIES:** This legally binding Agreement ("Contract:") is entered into by Buyer(s), _____
_____ ("Buyer") and

_____ ("Broker") as Buyer's
exclusive transaction broker, subject to the terms and conditions stated in this Contract.

Buyer agrees to conduct all transactional dealings (showings, discussions, communications, facilitations, information regarding the Property described in Section 2 below, etc.) through Broker, and refer to Broker all inquiries made to Buyer about such Property from other brokers, salespersons, buyers and other persons/organizations during the term of this contract.

"Broker" is defined as a licensed South Carolina real estate broker-in-charge which includes the broker's associated real estate licensees.

2. **PURPOSE OF TRANSACTION BROKERAGE RELATIONSHIP:** Buyer desires to purchase or lease real property (which may or may not include items of personal property) described as follows:

Type: Residential Commercial Industrial Vacant Land Other _____

General Description: _____

Approximate Price Range: \$ _____

General Location: _____

Preferred Terms: _____

Other: _____

3. **BROKER'S DUTIES:** (a) The Broker shall provide to Buyer a meaningful explanation of brokerage offered duties and shall use Broker's professional real estate knowledge and skills to work with and facilitate the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) if the Broker represents the seller, the Broker shall **not** disclose to the Buyer information obtained within the confidentiality and trust of the agency relationship with the seller, nor disclose to the seller information within the confidentiality of this transaction brokerage agreement with the Buyer, without the consent of the party adversely affected by the disclosure. Upon the termination or completion of this agreement, Broker shall keep confidential information received during the course of this agreement that was made confidential by written request or instructions from the Buyer, except as provided for under South Carolina law or this Contract.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts to locate property of the type described in Section 2 of this contract and to present any offers by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

Broker who represents one party or no parties to a real estate transaction may provide assistance to other parties to the transaction by performing ministerial duties (e.g. writing and conveying offers, providing information and aid concerning other professional services not related to the real estate brokerage services being performed). Performing ministerial duties does not create an agency relationship.

Broker may offer transaction brokerage to potential Buyers and sellers. During the transaction, the Broker may represent sellers in an agency relationship while acting as Buyer's transaction brokerage giving Buyers customer service. Broker may facilitate the transaction giving customer service to both Buyers and sellers without any agency relationship.

Buyers and sellers who do not establish an agency relationship with a Broker and use the services of the Broker are customers. Buyer and Broker agree that Broker shall provide the following customer services to Buyer. The Broker shall:

1. Use skill, care, and diligence to facilitate the transaction;
2. Be honest, fair and provide accurate information;
3. Account in a timely manner for all funds received by the Broker on behalf of a party to a real estate transaction;
4. Disclose material adverse facts actually known by the Broker that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;

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5. Promptly present all written offers and counteroffers involving the sale, lease or exchange of property even when the property is subject to a contract of sale;
6. Keep information confidential as requested in writing by the Buyer.

4. BUYER'S DUTIES. BUYER AGREES TO:

- (A) Work exclusively with Broker during the term of this agreement by: (1) viewing any property (previewing, etc.) only with Broker and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker to identify property, facilitate the transaction for the Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker; and
- (B) Assist Broker in the process of identifying, facilitating and contracting to purchase, lease or otherwise acquire by: (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of this agreement; and
- (C) Provide Broker the following information: (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property; and
- (D) Authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final settlement statement and other closing documents for the transaction prior to the closing date; and
- (E) Waive all confidentiality except for that information the Buyer requests, in writing, be kept confidential.

Buyer further agrees that Broker is not an agent of the Buyer, Buyer has not established a client relationship with the Broker, and that the Broker is not acting in a fiduciary capacity. Buyer agrees that the Broker is not an advocate for the interests of the Buyer. Buyer agrees to be responsible for verifying wiring instructions.

5. COMPENSATION OF BROKER: Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): **(CHECK ALL APPLICABLE SECTIONS)**

- a. **Retainer Fee:** Buyer will pay Broker a nonrefundable retainer fee of \$ _____ due and payable upon the signing of this contract. This fee shall or shall not be credited against the Brokerage fee.
- b. **Service Fee:** Buyer shall pay Broker a Service Fee of \$ _____ to be paid on _____, _____, whether or not Buyer purchases any property. **(Check applicable sub-section.)**
- This Service Fee shall be the only fee due Broker from Buyer under the terms of this Contract.
- This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned.
- This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters in to a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Service Fee will be credited against the Brokerage Fee as defined below.
- c. **Brokerage Fee:** Buyer shall pay Broker a Brokerage Fee which is the greater of \$ _____ or _____ % of the purchase or total lease price (renewal, if applicable) of any property purchased or leased by Buyer, including "For Sale by Owner" properties. If within _____ days after the expiration of this Contract Buyer purchases or leases any property which Broker has facilitated during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. Broker shall use his best efforts to obtain payment of the Brokerage Fee out of the transaction, but Buyer shall have the obligation to pay Broker the Brokerage Fee set forth in this Contract if Broker cannot obtain payment of such fee out of the transaction. Any fees paid by the seller or seller's agent to Broker shall be credited against the Brokerage fee.
- d. **Brokerage Fee:** Broker shall obtain payment of the Brokerage Fee out of the transaction. Broker shall be paid by the cooperating broker as stated in the Multiple Listing Service or as agreed to by the Broker and cooperating

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broker, or as agreed to by the Broker and a seller in a "For Sale By Owner" transaction. Buyer shall not be responsible for paying Broker the Brokerage fee.

Broker shall not accept any commission, rebate, or profit on expenditures made for the Buyer without the Buyer's knowledge and consent. Buyer agrees that Broker is entitled to receive additional compensation, bonuses, and incentives paid by listing broker or seller. Broker will inform Buyer of the compensation to be paid to Broker and if there is a written agreement, Broker will supply a copy to Buyer upon Buyer's written request.

6. TERM OF AGREEMENT: Broker's authority to act as Buyer's exclusive transaction brokerage under the terms of this Contract shall begin on _____, _____ and shall end at 11:59 p.m. on _____, _____.

7. OTHER POTENTIAL BUYERS: Buyer understands that other potential buyers may have entered into similar agency or transaction brokerage contracts or non-agency relationships with Broker that may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation and or facilitation of such other buyers.

8. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Buyer or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

9. INDEMNIFICATION OF BROKER: Buyer agrees to disclose immediately to Broker whether Buyer has signed any agency agreement or transaction brokerage agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages and attorney's fees incurred by Broker because of such claim.

10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY: The Broker does or does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent or seller's transaction brokerage may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

11. BROKER LIABILITY LIMITATION: *Buyer agrees Broker provided Buyer with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Broker, Buyer agrees that he shall pay Broker's attorney fees and that Broker, shall not be liable to Buyer, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omission, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of Broker shall not exceed the amount set forth herein. Buyer will indemnify and hold harmless and pay attorneys fees for Broker from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Broker. Buyer agrees that there is valid and sufficient consideration for this limitation of liability and that Broker is the intended third-party beneficiary of this provision.*

12. NONDISCRIMINATION: Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination including on the basis of race, color, religion, sex, national origin, familial status, marital status, age, disabilities/handicap, sexual orientation, or gender identity.

13. PROFESSIONAL COUNSEL: Buyer acknowledges that Broker is being retained solely as a transaction broker as defined by South Carolina law and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

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BUYER ACKNOWLEDGES RECEIVING, READING, REVIEWING, AND UNDERSTANDING: THIS CONTRACT, THE SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSE AND REGULATION'S "SOUTH CAROLINA DISCLOSURE OF REAL ESTATE RELATIONSHIPS", ANY AGENCY OR TRANSACTION BROKERAGE AGREEMENTS, AND COPIES OF THESE DOCUMENTS. PARTIES ACKNOWLEDGE HAVING TIME AND OPPORTUNITY TO REVIEW ALL DOCUMENTS AND RECEIVE LEGAL COUNSEL FROM THEIR ATTORNEYS PRIOR TO SIGNING THIS CONTRACT.

BUYER: _____ **Date:** _____ **Time:** _____

BUYER PHONE/ADDRESS/EMAIL/FAX: _____

BUYER: _____ **Date:** _____ **Time:** _____

BUYER PHONE/ADDRESS/EMAIL/FAX: _____

BROKER: _____ **Date:** _____ **Time:** _____

BY (BROKER IN CHARGE OR ASSOCIATED LICENSEE): _____

BROKER PHONE/ADDRESS/EMAIL/FAX: _____

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