



## EXCLUSIVE RIGHT TO SELL AGREEMENT

I/WE \_\_\_\_\_ ("OWNER") the OWNER of property located at \_\_\_\_\_ ("PROPERTY") do hereby give you, \_\_\_\_\_ ("LISTING BROKER") the exclusive right to sell the PROPERTY for \$ \_\_\_\_\_ from 12:01 A.M. on \_\_\_\_/\_\_\_\_/20\_\_\_\_ until 11:59 P.M. on \_\_\_\_/\_\_\_\_/20\_\_\_\_ ("LISTING PERIOD").

OWNER and LISTING BROKER agree that they are contractually bound by this AGREEMENT as of the Effective Date.

Further, OWNER and LISTING BROKER agree that no marketing, promotion, sales activity, or showing of the PROPERTY shall take place until the LISTING CONTENT is entered into the OneKey® MLS system and made available to other OneKey® Participants on \_\_\_\_\_ (insert date).

No provision of this AGREEMENT is intended to nor shall be understood to establish or imply any contractual relationship between the OWNER and OneKey® MLS and/or any REALTOR® Associations nor has OneKey® MLS and/or any REALTOR® Associations in any way participated in any of the terms of this AGREEMENT, including any compensation to be paid.

### 1. LISTING BROKER FEE.

**THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER COMPENSATION IS NOT SET BY LAW OR BY ANY REALTOR® ASSOCIATION OR ONEKEY® MLS AND IS FULLY NEGOTIABLE BETWEEN OWNER AND THE LISTING BROKER.**

X

OWNER INITIAL

**Listing Broker Fee ("Broker Fee"):** The OWNER hereby agrees to pay the LISTING BROKER a total fee in the amount of \_\_\_\_\_% of the selling price; \$ \_\_\_\_\_ or Other (please specify) \_\_\_\_\_. The Broker Fee is exclusively for LISTING BROKER'S services and is not subject to sharing, splitting, or otherwise paying to a buyer's broker or agent.

X

OWNER INITIAL

**2.REQUEST BY BUYERS FOR PAYMENT OF BUYER'S BROKER FEES.** LISTING BROKER has explained and advised OWNER that OWNER is not required to offer compensation to other brokers or agents representing buyers ("Buyer Brokers") that procure a buyer for the PROPERTY ("Buyer's Broker Fees"). An OWNER may receive requests from a buyer to pay Buyer's Broker Fees as part of the purchase offer or separately. The OWNER can accept, deny or negotiate the amount of Buyer's Broker Fees being requested by the Buyer. LISTING BROKER will disclose in writing to OWNER, and obtain OWNER's authority, for any offer to pay Buyer's Broker Fees made to another Buyer Broker. This disclosure will include the amount or rate of any such offer to a Buyer Broker and will be made in advance of any payment or agreement to pay. Any agreement to pay Buyer Broker's Broker Fees will be memorialized in a Confirmation of Seller's Agreement to Pay Buyer's Broker signed by the parties and/or the binding contract of sale.

X

OWNER INITIAL

**3. ADDITIONAL LISTING BROKER FEE FOR UNREPRESENTED BUYER (CHECK IF APPLICABLE)**

☐ If LISTING BROKER produces a buyer ready, willing, and able to buy the PROPERTY, and such buyer is not represented by a broker at the time of ratification of the contract of sale, in addition to the Listing Broker Fee specified in paragraph 1, the Broker Fee shall also include the following: \_\_\_\_\_% of the selling price; \$\_\_\_\_\_ or Other (please specify). \_\_\_\_\_.

X  
OWNER INITIAL

**4. ADDITIONAL PROFESSIONAL SERVICES FEE PROVISIONS (IF ANY).**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

X  
OWNER INITIAL

**5. BROKER FEE EARNED AND OWNER(S) OBLIGATIONS AFTER THE EXPIRATION/TERMINATION OF AGREEMENT.**

The above Broker Fee to Listing Broker shall be earned and payable under any of the following conditions:

- (a) If the LISTING BROKER procures a buyer ready, willing and able to purchase the PROPERTY on such terms and conditions acceptable to the OWNER;
- (b) If through the LISTING BROKER's efforts, a buyer and the OWNER reach an agreement upon all the essential terms of a transaction;
- (c) If the PROPERTY is sold or transferred during the term of this AGREEMENT whether or not the sale or transfer is a result of the LISTING BROKER's efforts and even if the PROPERTY is sold or transferred as a result of the efforts of the OWNER or any other person, broker or agent not acting under this AGREEMENT;
- (d) if the property is sold by LISTING BROKER, or through any other person, including OWNER, on the above terms or any other price and terms acceptable to OWNER during the above time period or any extension of such time period;
- (e) If within \_\_\_\_\_ days after the expiration or termination of the LISTING PERIOD, OWNER accepts a purchase offer on the PROPERTY from any person to whom the PROPERTY has been shown during the LISTING PERIOD. OWNER will pay LISTING BROKER the Broker Fee as if LISTING BROKER had made the sale provided the PROPERTY goes to closing. The preceding sentence shall not apply if OWNER in good faith enters into a valid listing agreement for the PROPERTY with another New York State licensed real estate broker after the expiration or termination of this AGREEMENT.

**6.SELLER'S CONCESSION.** A Seller's Concession is a monetary contribution given by OWNER to a buyer to use towards the buyer's closing costs.

The OWNER ☐ does / ☐ does not elect to authorize LISTING BROKER to advertise that OWNER is offering a Seller's Concession at closing as a credit toward a buyer's closing costs.

X  
OWNER INITIAL

If the OWNER authorizes LISTING BROKER to advertise that OWNER is offering a Seller's Concession at closing as a credit toward a buyer's closing costs, OWNER also authorizes LISTING BROKER to advertise that OWNER is offering a Seller's Concession in the whole amount of \$\_\_\_\_\_.

X  
OWNER INITIAL

**7.POTENTIAL FOR DUAL AGENCY.** In certain circumstances, Dual Agency may occur. This happens when a Buyer of real property is also represented by the LISTING BROKER , or by a licensee in the LISTING BROKER's firm, who is representing the Seller. In such cases, the LISTING BROKER shall disclose the Dual Agency situation to OWNER. At the time of this disclosure, OWNER can consent to Dual Agency by executing the New York State Agency Disclosure Form which defines the concept of Disclosed Dual Agency, or Buyer and LISTING BROKER will dissolve their relationship. If the OWNER does consent to Dual Agency at the time of disclosure, the LISTING BROKER may collect professional services fees from the Buyer or other parties for professional services LISTING BROKER provides to Buyer, and such compensation will be disclosed to OWNER.

The parties acknowledge that the OWNER has been presented with a New York State Agency Disclosure Form which defines the concept of Disclosed Dual Agency.

**8.MARKETING.** OWNER grants to the LISTING BROKER full discretion to determine the appropriate marketing approach for the PROPERTY. LISTING BROKER will undertake to find a ready, willing, and able purchaser and in order to do so will engage in marketing activity which may include all forms of advertising.

**9.AUTHORIZATION FOR "FOR SALE" SIGN AND OTHER SERVICES.**

LISTING BROKER ☐ (is) ☐ (is not) authorized to place a "For Sale" sign on the PROPERTY. (Check one)

LISTING BROKER ☐ (is) ☐ (is not) authorized to use a lockbox. (Check one)

OWNER ☐ (gives permission) ☐ (does not give permission) to the LISTING BROKER to share keys to the PROPERTY with other licensed real estate professionals to show the property. (Check one)

**10.RENTAL OF PROPERTY.** Should the OWNER desire to rent the property during the period of this agreement, LISTING BROKER is granted the sole and exclusive right to rent the PROPERTY. OWNER agrees to pay LISTING BROKER a rental fee of \$ \_\_\_\_\_. The rental fee for the lease term is due and payable (check one):

- ☐ upon the execution of the lease  
☐ upon the date of occupancy.

The rental fee for any renewal thereof, is due and payable upon the commencement of each renewal term. In the event the Property is sold during the term of the lease, the OWNER shall owe the LISTING BROKER the Broker Fee as set forth in this Agreement.

**11.USE OF AUDIO RECORDING DEVICES.** OWNER is advised that it is in violation of New York State Law to mechanically overhear a conversation by having any device (or devices) recording, streaming, or otherwise documenting the conversation of an individual during real estate-related activities at the property (open houses, showings etc.) if you are not a party to that conversation. If such a device is present and will be operating at any time a potential Buyer is viewing the property, the OWNER understands that the LISTING BROKER must disclose the presence of the device. The property (check one)  
☐ does ☐ does not have a device that can mechanically overhear a conversation.

**12.ADDITIONAL TERMS**

Additional Terms of Agreement, if any:

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**13.ALL MODIFICATIONS TO BE MADE IN WRITING.** OWNER and LISTING BROKER agree that no change, amendment, modification or termination of this AGREEMENT shall be binding on any party unless the same shall be in writing and signed by the parties.

**14.MAINTENANCE OF PROPERTY.** OWNER is responsible for the condition, maintenance and/or utilities for the PROPERTY including snow removal and lawn maintenance. OWNER agrees to indemnify and hold harmless the LISTING BROKER from any claim arising out of personal injuries to any persons injured on the PROPERTY and/or loss or damage to personal property except if caused by the gross negligence of the LISTING BROKER. OWNER shall have the right to select counsel in such event, subject to the approval of the LISTING BROKER, which approval shall not be unreasonably withheld.

**15.HOME EQUITY THEFT PROTECTION ACT.** OWNER acknowledges that OWNER is aware of the New York Law called Home Equity Theft Prevention Act. In order to ensure compliance with same, OWNER warrants and represents that:

- (a) OWNER is not in default of any mortgage affecting real property by reason of there being payments due and unpaid on any mortgage for two (2) months or more;
- (b) there are no actions pending against the real property to foreclose a mortgage; and
- (c) the PROPERTY is not shown as an active property on a tax lien sale list and all real estate taxes have been paid through the next lien date.

By checking any of the following, Owner represents that ☐ (a), ☐ (b) and/or ☐ (c) above is/are untrue statements and LISTING BROKER must notify OWNER'S attorney prior to the issuance of a sales contract.

In the event that Owner has not checked off (a), (b) or (c) above, and any of the above circumstances change after the Effective Date of this AGREEMENT, OWNER agrees that OWNER will communicate with LISTING BROKER regarding any of the matters referred to above in subparagraph (a), (b) or (c) and to keep LISTING BROKER fully apprised of same.

## **16.ESCROW AND RECOVERY OF FEES**

(a) Escrow. If, for any reason, LISTING BROKER is not paid the Broker Fee on the due date, OWNER shall establish an escrow account with a party mutually agreeable to LISTING BROKER and OWNER or a title insurance agent or company, and shall place into the escrow account an amount equal to the Broker Fee. The escrow monies shall be paid by OWNER to the escrow agent and shall be held in escrow until the parties' rights to the escrow monies have been determined (i) by the written agreement of the parties; (ii) pursuant to an arbitration award; (iii) by order of a court of competent jurisdiction; or (iv) some other process to which the parties agree to in writing.

(b) Commission Escrow Act. Alternatively, LISTING BROKER shall have the right to exercise LISTING BROKER's rights under the Commission Escrow Act and specifically, Real Property Law Section 294-b. The provisions of this law may require the deposit of the Broker Fee claimed by LISTING BROKER, with the County Clerk in the County in which the property is located. Notice is hereby given in accordance with Section 294-b(5)(j) as follows:

**AT THE TIME OF CLOSING, YOU MAY BE REQUIRED TO DEPOSIT THE BROKER'S COMPENSATION WITH THE COUNTY CLERK IN THE EVENT THAT OWNER DOES NOT PAY THE BROKER THEIR COMMISSION AS SET FORTH HEREIN. YOUR OBLIGATION TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK MAY BE WAIVED BY THE BROKER.**

**17.INDEMNITY.** In the event any claim or action is commenced against the LISTING BROKER as a result of the LISTING BROKER obeying the lawful instructions of the OWNER, then, and in such event, the OWNER agrees to defend, indemnify and hold harmless the LISTING BROKER in any such claim or action. OWNER shall have the right to select counsel in such event, subject to the approval of the LISTING BROKER, which approval shall not be unreasonably withheld.

**18.PROPERTY CONDITION DISCLOSURE.** As the owner of residential real property, OWNER must complete and sign a Property Condition Disclosure Statement as required by Real Property Law §462(2) and cause it, or a copy thereof, to be

delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. A copy of the Property Condition Disclosure Statement containing the signatures of both the buyer and the OWNER must be attached to the real estate purchase contract. If OWNER acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement previously provided, OWNER must deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. In no event, however, will OWNER be required to provide a revised Property Condition Disclosure Statement after the transfer of title from OWNER to the buyer or after the buyer has commenced occupancy of the PROPERTY. OWNER should seek the advice of their attorney regarding the filling out and exchange of the Property Condition Disclosure Statement or any questions as to OWNER's obligations under the law.

**19.COPYRIGHT NOTICE.** The OWNER authorizes the LISTING BROKER to enter information and any photograph, image, graphics or video recording, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to the PROPERTY whether taken by the LISTING BROKER's agent, supplied by OWNER, or otherwise ("LISTING CONTENT"), into a listing content compilation owned by OneKey® MLS. The OWNER understands and agrees that said compilation is exclusively owned by OneKey® who alone possesses the right to publish said compilation in any media form it deems appropriate. LISTING CONTENT may be aggregated with that of other properties listed by participants in OneKey® MLS, computer online networks and websites and become copyrightable data pursuant to agreements with LISTING BROKER and such other third parties. By the act of submitting any LISTING CONTENT to OneKey® MLS, the LISTING BROKER has been authorized to grant and also thereby does grant authority to OneKey® MLS to include the LISTING CONTENT in its copyrighted MLS compilation and also in any statistical report. OneKey® MLS may license, sell, lease, and commercially utilize its compilation. Among other uses OneKey® MLS may license or sell the LISTING CONTENT to aggregators who will aggregate the LISTING CONTENT and resell the same. If any LISTING CONTENT is delivered by OWNER to the LISTING BROKER for use in the OneKey MLS compilation, by virtue of such delivery and the execution of this AGREEMENT, the OWNER hereby represents and warrants that the OWNER either: (1) holds all intellectual property rights including the copyrights of the LISTING CONTENT; or (2) has a nonexclusive, perpetual, royalty-free, worldwide license to copy, distribute, display, create derivative works, and publicly perform the LISTING CONTENT and the right to grant sublicenses through multiple tiers.

OWNER hereby grants to LISTING BROKER a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish, display, reproduce and distribute the LISTING CONTENT or any derivative works thereof. OWNER agrees to indemnify LISTING BROKER from any claim of infringement relating to the same. OWNER acknowledges and agrees that as between OWNER and LISTING BROKER, all LISTING CONTENT developed by either the OWNER or the LISTING BROKER is deemed owned exclusively by LISTING BROKER, and OWNER has no right, title or interest in it.

**20.PENDING CONTRACT PRICE.** OWNER hereby authorizes LISTING BROKER to provide OneKey® MLS with the pending contract price for their property at the time when the subject property status is marked "Pending" on OneKey® MLS for the sole purpose of aggregating this information with similar data for statistical purposes only. Individual pending contract data shall not be accessible by OneKey® MLS Participants, Subscribers or consumers and only aggregated data reports shall be made available. No individual pending contact data shall be shared, sold or distributed to any person or source.

**21.ACKNOWLEDGEMENT.** OWNER has read and understands this AGREEMENT and acknowledges receipt of a copy of it. ALL ORAL OR PRIOR AGREEMENTS BETWEEN THE PARTIES ARE MERGED INTO THIS AGREEMENT AND THE PARTIES AGREE THAT THEIR RELATIONSHIP SHALL BE GOVERNED SOLELY BY THIS AGREEMENT. This AGREEMENT is the entire agreement between the parties and may **not be changed except in a writing** signed by both parties. This AGREEMENT shall be binding upon the parties hereto, and their respective heirs, successors, or assigns as of the EFFECTIVE DATE. For purposes of this AGREEMENT, "OWNER" refers to each and all parties who have an ownership interest in the PROPERTY and the undersigned OWNER represents that he/she is/are the sole and exclusive owner and is fully authorized to enter into this AGREEMENT. As used in this AGREEMENT, the neuter includes the masculine and feminine, the singular includes the plural and the plural includes the singular, as the context may require. OWNER and LISTING BROKER understand that all extensions of this AGREEMENT must be done in writing and automatic renewals are specifically prohibited under New York Law. Any change to the AGREEMENT which would make the PROPERTY unavailable for sale through the


OneKey® MLS, including but not limited to any withdrawal, cancellation, reduction in term of listing or termination thereof, must be in writing signed by the LISTING BROKER or authorized representative/manager in order to have any binding legal force and effect.

**22.EQUAL OPPORTUNITY IN HOUSING.** OWNER and LISTING BROKER agree that the above listed property is to be listed and marketed in compliance with all Federal, State, Municipal and Local fair housing, human rights and civil rights laws concerning discrimination in the sale/rental of properties. OWNER and LISTING BROKER agree not to discriminate against any Protected Class in the sale/rent of the Property.

**23.DISPUTE RESOLUTION.** The Parties agree that any dispute concerning the terms and conditions of this AGREEMENT that cannot be reasonably resolved between them can be submitted to voluntary mediation proceedings conducted in accordance with the rules of the local REALTOR® association in which the PROPERTY is located. Mediation fees and costs, if any, shall be divided equally among the parties involved.

In any action, proceeding or arbitration to enforce any provision of this AGREEMENT, or for damages caused by default, the prevailing party shall be entitled to reasonable attorney fees, costs and related expenses.

**24. PLEASE INITIAL BELOW**

        /        **EXPLANATION:** An “exclusive right to sell” listing means that if you, the OWNER of the PROPERTY, find a buyer for your house, or if another broker finds a buyer, you must pay the agreed commission to the present broker. An “exclusive agency” listing means that if you, the OWNER of the PROPERTY, find a buyer, you will not have to pay a commission to the broker. However, if another broker finds a buyer, you will owe a commission to both the selling broker and your present broker.

**PARTIES SIGNATURE**

OWNER  \_\_\_\_\_ Date: \_\_\_\_\_

OWNER  \_\_\_\_\_ Date: \_\_\_\_\_

LISTING BROKER (Auth. Rep) \_\_\_\_\_ Date: \_\_\_\_\_

LISTING AGENT \_\_\_\_\_ Date: \_\_\_\_\_

The “EFFECTIVE DATE” of this Agreement shall be latest date entered alongside the parties’ signatures