



NEW MEXICO ASSOCIATION OF REALTORS® — 2025  
LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL



**ATTENTION SELLER**



**BEFORE ENTERING INTO THIS AGREEMENT, PLEASE REVIEW NMAR FORM 1100 - INFORMATION SHEET - BROKERAGE COMPENSATION.**

**THE LISTING AGREEMENT-EXCLUSIVE RIGHT TO SELL IS BY AND BETWEEN BROKERAGE FIRM,** \_\_\_\_\_ ("Brokerage")  
**AND** \_\_\_\_\_ ("Seller").

**1. EXCLUSIVE SERVICES.** Seller grants to Brokerage the exclusive right to sell the real property described in Para. 2. Unless otherwise provided in an addendum hereto, Listing Broker ("Broker") shall act as Seller's Transaction Broker and **NOT as Seller's Agent**; therefore, Broker shall owe Seller the Broker Duties set forth on Cover Page I, but shall **NOT** owe Seller fiduciary duties. It is the parties' intention to minimize the likelihood that Seller shall be held liable for the acts and omissions of the Broker and to eliminate the possibility that Broker is held liable to Seller under agency law. Broker shall not serve as a property manager under this agreement. If a property management relationship is desired, such relationship must be established through a separate agreement between Seller and Broker.

**2. PROPERTY.**

**A.**

Address (Street, City, State, Zip Code) \_\_\_\_\_

Legal Description \_\_\_\_\_

Or see metes and bounds description attached as Exhibit \_\_\_\_\_,

County(ies), New Mexico.

**B. Type:**

☐ **RESIDENTIAL:**

☐ Resale ☐ New Construction ☐ Site Built ☐ Manufactured Housing ☐ Modular ☐ Off-Site built

☐ **COMMERCIAL:**

☐ Office ☐ Industrial ☐ Warehouse ☐ Specialty Retail ☐ Residential Investment (Rental) ☐ Shopping

☐ **VACANT LAND**

☐ **FARM AND RANCH**

☐ **OTHER:** \_\_\_\_\_

**C. OTHER RIGHTS.** Unless otherwise provided herein, Seller shall convey to Buyer all existing wind, solar, water and mineral rights appurtenant to the Property. Is Seller aware of any wind, solar, water or mineral rights that have been severed from the Property ☐ Yes ☐ No If "Yes", explain \_\_\_\_\_

**D. FIXTURES, EXCLUSIONS AND PERSONAL PROPERTY.**

**i. FIXTURES.** The Property shall include all Fixtures, free of all liens, including, but not limited to, the following Fixtures if such Fixture exists on the Property, unless otherwise excluded as stated in Para. 2(D)(ii). A Fixture is defined as an article, which was once personal property, but which has now become a part of the Property because the article has been fastened or affixed to the Property. Fastened/affixed means that removal of the article causes damage to the real property, even if such damage is minor and/or can be repaired. If a unit contains components, some of which are Fixtures and some of which are Personal Property, and a Fixture component of the unit relies on one or more Personal Property components to function as it is intended to do so, then **ALL** components together are considered a Fixture and shall remain together, unless otherwise provided herein.

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- Attached fireplace grate(s) & screen(s)
- Attached floor covering(s)
- Attached mirror(s)
- Attached outdoor lighting & fountain(s)
- Attached pot rack(s)
- Attached window covering(s) & rod(s) (**NOT** including curtains, unless otherwise indicated below)
- Awning(s)
- Built in/attached speaker(s) & subwoofer(s)
- Built-in Murphy bed(s) (**INCLUDING** mattress)
- Dishwasher(s)
- Fire Alarm(s) (if owned by Seller)
- Garbage disposal(s)
- Garage door opener(s)
- Heating system(s)
- Landscaping
- Light fixture(s)
- Mailbox(es)
- Outdoor plant(s) & tree(s) (other than those in moveable containers)
- Oven(s)
- Pellet, wood-burning or gas stove(s)
- Range(s)
- Window/door screen(s)
- Ceiling fan(s)
- Central vacuum, to include all hoses & attachments
- Security System(s) (if owned by Seller)
- Smoke Alarm(s) (if owned by Seller)
- Solar Power System(s)/Panels (**If leased by Seller, lien may exist**)
- Sprinkler(s)/irrigation equipment
- Storm window(s) & door(s)
- TV antenna(s) & satellite dish(es)
- Ventilating & air conditioning system(s)
- Water conditioning/filtration/ water softener/purification system(s) (if owned by Seller)
- TV Wall Mounts (**NOT** including TVs, unless otherwise indicated below)

ii. **EXCLUSIONS. IT IS THE SELLER'S RESPONSIBILITY TO ENSURE THAT THESE EXCLUSIONS ARE CONTAINED IN THE FINAL PURCHASE AGREEMENT.** The following items are excluded from the sale: \_\_\_\_\_

iii. **PERSONAL PROPERTY.** The following existing Personal Property, if checked, shall remain with the Property, shall be the actual Personal Property that is present as of the date Buyer submits his offer, shall not be considered part of the premises, and shall be transferred with no monetary value, free and clear of all liens and encumbrances. Personal Property is defined as a moveable article that is NOT affixed or attached to the Property.

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Unattached window covering(s)            | <input type="checkbox"/> Freestanding Range(s)  | <input type="checkbox"/> Storage Shed(s)   |
| <input type="checkbox"/> Audio component(s)                       | <input type="checkbox"/> Kitchen Refrigerator(s)  | <input type="checkbox"/> Unattached fireplace grate(s)   |
| <input type="checkbox"/> Video component(s)                       | <input type="checkbox"/> Other Refrigerator(s)  | <input type="checkbox"/> Unattached fireplace screen(s)  |
| <input type="checkbox"/> Decorative mirror(s) above bath vanities | <input type="checkbox"/> Garage door remote(s) # _____  | <input type="checkbox"/> Unattached outdoor fountain(s) & equipment                                |
| <input type="checkbox"/> Dryer(s)                                 | <input type="checkbox"/> Microwave(s)   | <input type="checkbox"/> TV(s)   |
| <input type="checkbox"/> Washer(s)                                | <input type="checkbox"/> Freezer(s)   | <input type="checkbox"/> Unattached Hot Tub(s)   |
| <input type="checkbox"/> Unattached outdoor lighting              | <input type="checkbox"/> Satellite receiver(s) with access cards (if owned by Seller and if transferable) | <input type="checkbox"/> Pool & spa equipment including any mechanical or other cleaning system(s) |
| <input type="checkbox"/> OTHER: _____                             |   |  |

3. **TERM.** The term of this Agreement shall begin on \_\_\_\_\_ and terminate at 11:59 p.m. Mountain Time on \_\_\_\_\_. If a property is under contract or the Seller is negotiating a written offer with a Buyer on the date this Agreement would otherwise terminate, the term shall automatically be extended through closing or other final disposition of the Property. The word "Term" as used in this Agreement shall include all extensions.

4. **LISTING PRICE.** The listing price shall be \$ \_\_\_\_\_  
Other terms and conditions: \_\_\_\_\_





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## 5. DUAL REPRESENTATION AND UNREPRESENTED BUYERS.

**A. DUAL REPRESENTATION.** For purposes of this Agreement, the term Dual Representation and Unrepresented Buyer have the following meanings: *Dual Representation* means Broker is directly providing real estate services to Seller and to the Buyer in the transaction equally and owes both Seller and the Buyer all the Broker Duties on Cover Page 1. *Unrepresented Buyer* means a Buyer in the transaction who is not working with Broker or with any other Buyer's broker in the transaction.

i. **Broker.** Broker ☐ **WILL** or ☐ **WILL NOT** provide Dual Representation in a transaction. If Broker is willing to provide Dual Representation, then in order for Broker to provide Dual Representation, Seller would have to consent to Dual Representation below. If Broker will not provide Dual Representation, then Broker will inform a buyer who is not working with a buyer's broker that either the buyer will need to obtain their own buyer's broker to assist them in the transaction or the buyer will need to proceed as an Unrepresented Buyer in the transaction.

ii. **Seller.** Seller ☐ **DOES** or ☐ **DOES NOT** or ☐ **NOT APPLICABLE** consent to Dual Representation in a transaction. **IMPORTANT NOTE TO SELLER:** If both Seller and Broker agree to Dual Representation, Broker may learn of adverse material facts related to the Property in the course of representing the buyer in the transaction. In this event, if that transaction should terminate, Broker is required by law to disclose those adverse material facts to subsequent potential buyers.

**B. UNREPRESENTED BUYERS.** An *Unrepresented Buyer* is a buyer in the transaction who is not working with Broker or with any other buyer's broker in the transaction.

i. **Listing Broker** ☐ **WILL** or ☐ **WILL NOT** show/open the Property to Unrepresented Buyers. Per MLS Rules, if Broker is strictly working on behalf of Seller when showing the Property, Broker is not required to have a Buyer Broker Agreement with the buyer; however, if Broker is also representing the Buyer, Broker is required to have a Buyer Broker Agreement with the buyer.

**IMPORTANT NOTE TO SELLER:** If Broker is not willing to open/show the Property for/to an Unrepresented Buyer, Seller understands that the Unrepresented Buyer will have **no access** to the Property.

By selecting "WILL NOT" and signing this Agreement, Seller is agreeing that Broker is **NOT** obligated to open/show the Property for/to an Unrepresented Buyer.

ii. **Listing Broker** ☐ **WILL** or ☐ **WILL NOT** provide NMAR Forms to an Unrepresented Buyer. **IMPORTANT NOTE TO SELLER:** If Broker is not willing to provide NMAR forms to an Unrepresented Buyer, Broker will likely not be familiar with the forms used by the buyer, including, but not limited to, the offer to purchase; and unless Broker is also a licensed New Mexico attorney, Broker is prohibited by New Mexico law from providing Seller with legal advice regarding the offer/forms buyer presents. Seller will need to seek legal advice on such forms from a licensed New Mexico real estate attorney.

By selecting "WILL NOT" and signing this Agreement, Seller warrants they agree that Broker is **NOT** obligated to provide NMAR forms to an Unrepresented Buyer.

If Broker is willing to provide NMAR forms for use by a buyer who would not otherwise have access to NMAR forms, See – NMAR Form 1208 – Notice to Unrepresented Buyer; and NMAR Form 1208A - Use of NMAR Forms by Unrepresented Party

**6. COMPENSATION.** New Mexico Gross Receipts Tax ("GRT") shall be added to all amounts set forth herein. In accordance with New Mexico law, the GRT Rate shall be based on the location of the Property.

GRT Location Code \_\_\_\_\_ (to be completed by Broker).

**ACKNOWLEDGMENT BY SELLER:** By signature to this Agreement, Seller understands the amount of compensation paid by a Seller to the Listing Brokerage or any amount that Seller has agreed to pay to a buyer's brokerage, is **NOT** dictated by MLS rules, the local, state or National Association of REALTORS® or local, state or national law. Seller agrees that the Listing Brokerage Sales Compensation and any buyer brokerage compensation agreed to in this Para. 6 is an amount that the Seller and Listing Brokerage have freely negotiated and agreed upon.

Seller's Initials: \_\_\_\_\_

**A. TO LISTING BROKERAGE IN THE EVENT OF SALE.** If during the term of this Agreement, the Property is sold through Brokerage, Seller, or any other source, Seller agrees to pay Brokerage the following compensation ("Listing





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Brokerage Sales Compensation"). The term "sale" and "sell" or any conjugation thereof shall include Seller's grant of an option to purchase the Property, an exchange of the Property and all other transfers of any interest in the Property.  
\$ \_\_\_\_\_; or \_\_\_\_\_ % of sales price of Property; or Other: \_\_\_\_\_.

**ONLY Check the Following if Applicable**

☐ **UNREPRESENTED BUYER.** An *Unrepresented Buyer* is a buyer in the transaction who is not working with a Broker or with any other buyer's broker in the transaction. In the event of an Unrepresented Buyer, Seller agrees that **IN ADDITION** to the above Compensation, Seller shall pay Brokerage:  
\$ \_\_\_\_\_; or \_\_\_\_\_ % of sales price of Property or Other: \_\_\_\_\_.

**B. TO BUYER'S BROKERAGE IN THE EVENT OF SALE.** Seller is under **NO** obligation to compensate the buyer's brokerage that represents the buyer in the sale of the Property.

Seller ☐ IS willing ☐ IS NOT willing to compensate the buyer's brokerage.

If Seller is willing to compensate a buyer's brokerage, Seller ☐ IS willing ☐ IS NOT willing to commit to an amount of compensation before receiving/reviewing the offer. If Seller is willing to commit to paying a buyer's brokerage prior to receiving/reviewing an offer, then Seller and the buyer's brokerage would execute NMAR Form 4660 – Seller's Compensation to Buyer Brokerage – PRIOR to the buyer submitting an offer. Listing Broker is authorized to disclose Seller's directive to the Buyer's Brokers/Brokerages in accordance with this Paragraph.

**IMPORTANT NOTE:** A buyer's brokerage may not receive from an individual source or multiple sources (Listing Broker, Seller and/or Buyer) more than the amount the buyer agreed to pay the buyer's brokerage in the Buyer Brokerage Agreement.

**C. TO LISTING BROKERAGE DURING PROTECTION PERIOD.** Brokerage shall be entitled to the Listing Brokerage Sales Compensation if the sale of the Property is made by Seller within \_\_\_\_\_ days after the Term of this Agreement (the "Protection Period") to persons who were introduced to the Property during the Term of this Agreement, PROVIDED that Broker submits to Seller a notice or other writing, either before or within five (5) days after the end of the Term, which discloses the names of the prospective buyers or their brokers. Notwithstanding, it shall not be necessary to provide the name(s) of any buyer who has made an offer to purchase the Property. Except as otherwise provided herein, the Protection Period shall terminate upon Seller entering into a written exclusive listing agreement with another licensed New Mexico real estate broker. If at ANY time, a Buyer who obtained an option to purchase during the term of this Agreement exercises that option, Seller shall pay Brokerage the Listing Brokerage Sales Compensation; **this provision WILL CONTINUE TO APPLY even if Seller enters into a written exclusive listing agreement with another licensed real estate broker.**

**D. TO LISTING BROKERAGE FOR OTHER EVENTS.** The parties agree that if any of the following events shall occur, that actual damages suffered by the Brokerage will be difficult to determine with certainty; therefore the parties agree that Seller shall pay Brokerage compensation as follows: \_\_\_\_\_ PLUS New Mexico GRT. If amount is based on a percentage, the percentage shall be based on the Listing Price or other amount as set forth below.

i. If during the term of this Agreement, Brokerage, Seller or anyone else produces or finds a buyer ready, willing and able to purchase the Property at the price offered in this Agreement and on terms reasonable and customary for a sale of this type AND Seller refuses to contract with the potential Buyer;

ii. If during the term of this Agreement, Brokerage, Seller or anyone else produces or finds a buyer ready, willing and able to purchase the Property at a price and on terms acceptable to Seller as evidenced by Seller's acceptance of the buyer's offer AND Seller defaults on the purchase agreement by refusing to close on the sale of the Property, Compensation shall be based on sales price as set forth in contract for sale signed by Seller;

iii. If during the term of this Agreement, Property is made unmarketable by Seller's voluntary act;

iv. If during the term of this Agreement, the Property is withdrawn from sale (not to include temporary withdrawal from MLS/marketing, not to exceed 30 days);

v. If during the term of this Agreement, Seller otherwise breaches this agreement in a manner including, but not limited to refusing to cooperate with Broker/Brokerage or unilaterally terminating this Listing Agreement.

**E. ☐ FORFEITURE OF EARNEST MONEY (Check if applicable.)** Notwithstanding the foregoing, upon forfeiture of Earnest Money by a prospective buyer, Brokerage shall be entitled to one-half the earnest money, not to exceed Brokerage's compensation set forth above.





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7. **SELLER ASSISTANCE/CONCESSIONS.** ☐ Does Apply ☐ Does Not Apply

**IMPORTANT NOTE TO SELLER:** Seller is under NO obligation to offer Seller Assistance/Concessions to a buyer. If Seller is offering Seller assistance/concessions to buyer, this assistance/these concessions are:

☐ In ADDITION to compensation the Seller will pay the Buyer's Brokerage

☐ In LIEU OF (instead of) any compensation Seller will pay the Buyer's Brokerage

Seller will offer Seller Assistance/Concessions to buyer in the amount of \$ \_\_\_\_\_ or \_\_\_\_\_ % of sales price of Property or Other: \_\_\_\_\_. Buyer may use Seller Assistance/Concessions towards buyer closing costs including, but not limited to, recording fees, the appraisal fee, inspection costs, loan origination fees, property improvements and buyer brokerage compensation. If Seller offers Seller Assistance/Concessions, Broker is authorized to promote the Assistance/Concessions in any and all advertising, including the MLS, subject to the rules of the applicable MLS.

8. **COMPENSATION FOR LEASE.** ☐ Does Apply ☐ Does Not Apply

A. In the event Seller elects to lease the Property, Seller agrees to pay Brokerage the following amount as compensation for the lease of the property: \_\_\_\_\_

PLUS New Mexico GRT upon the occurrence of any of the following. In accordance with New Mexico law, the GRT shall be based on the location of the Property. For GRT Location Code, See Para. 11.

i. If during the term of this Agreement, the Property is leased through Brokerage, Seller or any other source; OR

ii. The lease of the Property is made by Seller within \_\_\_\_\_ days after the term of this Agreement (the "Protection Period") to persons who are introduced to the Property during the term, PROVIDED HOWEVER, that Brokerage submits to Seller a notice or other writing, either before or within five (5) days after the end of the Term, which discloses the names of prospective tenants or their brokers. It shall not be necessary to provide the name(s) of any buyer or tenant who has offered to buy or lease the Property. Except as provided in Para. 6(C), the Protection Period shall terminate upon Seller entering into a written exclusive listing or property management agreement with another licensed real estate broker to lease the Property.

B. If Seller enters into a lease agreement during the term of this Agreement or the Protection Period, with respect to any holdovers or renewals of the lease, regardless of whether this Listing Agreement or the Protection Period has expired, Seller agrees to pay a compensation of \_\_\_\_\_. In the event this paragraph is left blank, the compensation shall be the lease compensation as set forth in Para. 8(A) above. **This Para. 8(B) shall NOT terminate upon Seller entering into a written exclusive listing agreement with another licensed real estate broker.**

C. Notwithstanding the foregoing, nothing herein creates a property management agreement with Seller, and Brokerage assumes NO property management responsibilities. If a property management relationship is desired, such relationship must be established through a separate agreement between Seller and Broker.

9. **BROKER OBLIGATIONS.** Broker will use diligence in effecting the sale of the Property, to include the following:

A. Assist Seller in locating qualified buyers;

B. Assist Seller in completing any necessary paperwork for the purchase or lease (as applicable) of the Property, including, but not limited to counteroffers, addenda and responses to buyer objections;

C. Assist Seller in monitoring pre-closing and closing procedures;

D. Unless otherwise waived by Buyer, prior to accepting an Offer to Purchase; (1) request from the County Assessor the Estimated Property Tax Levy with respect to the Property, specifying the listed price as the value of the Property to be used in the estimate, and; (2) provide a copy of the Assessor's response in writing to the prospective Buyer(s) or the Buyer's Broker.

10. **SELLER OBLIGATIONS.** Seller agrees to the following:

A. To provide to Brokerage all available data, records, and documents relating to the Property;

B. To allow Broker or cooperating Brokers to show the Property at reasonable times and upon reasonable notice;

C. To refer to Broker all inquiries relating to the sale/lease of the Property;

D. To respond to all offers presented. If Seller is rejecting an offer, Seller agrees to complete the "Rejects Offer" box on the offer, if such a provision exists on the offer or to otherwise provide some written rejection of the offer;

E. To commit no act which might tend to obstruct Broker's performance under this Agreement;

F. In the event of a sale, to provide all documents necessary to complete the sale;





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- G. To provide an Adverse Material Facts Disclosure Statement (NMAR Form 1110). Per the NMAR Form 2104 — Purchase Agreement — Residential Resale, Seller is required to disclose known adverse material facts concerning the property;
- H. To inform Broker if Seller is or begins using any audio or video surveillance systems in/on the Property. Seller ☐ IS ☐ IS NOT using any audio or video surveillance in/on the Property. If applicable, type of surveillance ☐ audio ☐ video; and
- I. To secure all pets, valuables, medication, and weapons accordingly when the Property is made available for showings; Broker does not guarantee the security of any of the foregoing against acts of third parties. See Release of Liability, Para. 16.

## 11. OFFERS.

- A. **Oral Offers.** Broker shall NOT be required to submit to Seller **ORAL** offers to purchase or lease the Property.
- B. **Offers Received After Contract.** If Seller enters into a written agreement for the sale or lease of the Property, unless that agreement is terminated, or the interest of the Buyer is forfeited, Broker ☐ shall ☐ shall not be required to submit additional offers to Seller.
- C. **Offer Letters.** An Offer Letter is a letter written by a buyer interested in purchasing a home that often provides personal information about the buyer and includes reasons why the buyer wishes to purchase the home and/or reasons why, from the buyer's perspective, the seller should sell the home to that particular buyer. In a competitive market, with multiple buyers interested in a home, Offer Letters may assist a seller in determining to whom the seller wishes to sell. **However, sellers should be cautious in accepting Offer Letters from buyers, as Offer Letters have the potential to expose a seller to a claim of discrimination under the Federal Fair Housing Act, as well as the New Mexico Human Rights Act.** Both of these Acts prohibit discriminating against buyers based on their inclusion in certain protected classes (See, Para. 21). Offer Letters may include personal facts about a Buyer that would indicate to a seller that the buyer falls into one of these protected classes. If/When a seller decides not to sell their home to the buyer who wrote the Offer Letter, that buyer may believe, and therefore claim the reason the Seller rejected the buyer's offer was because the buyer was a member of one of those protected classes.  
Seller ☐ **WILL** ☐ **WILL NOT** accept Offer Letters from buyers.

### **MLS ENTRY RULE**

All Multiple Listing Services ("MLS") require Brokers to enter residential listings into the MLS for dissemination within one (1) business day of conducting any public marketing of the Property. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. If/While Property listing is withheld from dissemination through the MLS, Broker may **ONLY** market the Property within the Broker's brokerage. This is referred to as an "Office Exclusive". NMAR Form 1820 — Information Sheet – Multiple Listing Service.

## 12. SELLER AUTHORIZATIONS

- A. **AUDIO/VIDEO SURVEILLANCE.** In the event Seller is using or begins to use audio or video surveillance, Broker is authorized to notify other brokers and/or buyers of such use by any means appropriate as determined by Broker in Broker's sole discretion.
- B. **USE OF LISTING CONTENT; INTELLECTUAL PROPERTY LICENSE**
- i. If Seller(s) authorizes Broker to submit the Property's listing information to the MLS, Seller understands and agrees that all content relating to the Property provided by Seller to Broker, including, but not limited to photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information and other copyrightable elements ("Seller Listing Content"), or any content otherwise obtained or produced by Broker in connection with this Agreement ("Broker Listing Content"), and any changes to the Seller Listing Content or the Broker Listing Content, may be filed with one or more MLSs and be included in compilations of listings; and





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- ii. Seller(s) understand(s) and acknowledges that the MLS will disseminate the Property's listing information to all MLS Brokers who operate Internet web-sites, as well as on-line providers such as [www.realtor.com](http://www.realtor.com) and that the information on those web-sites may generally be available to the public, further distributed and reproduced; and
- iii. Seller hereby grants to Broker a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish, display and reproduce the Seller Listing Content, to prepare derivative works of the Seller Listing Content and to distribute the Seller Listing Content or any derivative works thereof. This non-exclusive license shall survive the termination of this Agreement.
- C. BUYER BROKERS/BUYERS ACCESS TO PROPERTY.** Subject only to the restrictions listed below, Seller authorizes Broker to allow buyer brokers and/or buyers access to the interior and exterior of the Property. **Broker is NOT responsible for verifying that a buyer has a Buyer Broker Agreement with a brokerage. Restrictions:**
- ☐ NONE
- ☐ If Tenant Occupied, subject to required notice under the law. Name and Contact Information of Property Manager, if applicable: \_\_\_\_\_
- ☐ List Restrictions: \_\_\_\_\_
- D. BROKER CONSENT REQUIRED TO MODIFY.**
- The following Seller's authorizations serve as material inducement for formation of this agreement and may not be withdrawn without Broker's written consent. Seller's attempt at non-compliance with this provision constitutes interference with Broker's ability to perform under this Agreement and a material default of this Agreement, which entitles Broker to all remedies available through law and/or equity.
- SELLER AUTHORIZES:**
- i. **MLS.** ☐ YES ☐ NO Unless otherwise provided in Para. 13, Brokerage to list the Property with the MLS, or LISTING EXCHANGE (LEX), if any, of the local Board or Association of REALTORS®. Seller acknowledges that by placing the Property in the MLS, Broker is required to adhere to all MLS Rules and Regulations, which includes reporting the terms of the sale to the MLS; NMAR Form 1820 — Information Sheet – Multiple Listing Service.
- ii. **INTERNET.** ☐ YES ☐ NO Broker to place Property and/or allow the MLS to place Property for display on the Internet. If Seller does not want the Property to be displayed on the Internet, then Seller acknowledges that the listing will not appear on ANY Internet sites, including, [www.realtor.com](http://www.realtor.com) or the listing Brokerage's website and that consumers who conduct searches for listings on the Internet will not see information about the Property in response to their searches. With the exception of removal from other MLS participants' Internet websites, under NO circumstances shall Broker be responsible for removing the listing from Internet websites of online providers once Seller has authorized Broker and/or MLS to place Property on the Internet.
- iii. **SIGNAGE.** ☐ YES ☐ NO Broker to place a "For Sale" sign on the Property, if not otherwise prohibited;
- iv. **KEYS.** ☐ YES ☐ NO Broker to provide keys to other Brokers and Agents and other authorized personnel to show the Property and to permit access for marketing and inspections;
- v. **PROPERTY INFORMATION.** ☐ YES ☐ NO Broker to obtain information about the Property, such as utility bills, loan information, documents, surveys or ILR's, appraisals, etc.;
- vi. **LOCKBOX.** ☐ YES ☐ NO Installation of a lockbox on the Property to show the Property. A lockbox is a locked container on the Property in which a key is placed. The lockbox may be opened by a key, combination or programmer key, permitting access to the Property. Seller acknowledges that a lockbox and any other keys left with or available to Broker will permit access to the Property by Broker or any other broker, with or without potential purchasers or tenants, even when Seller or occupant is absent. Seller further acknowledges that, from time to time, unauthorized persons may have gained access to properties using lockboxes. Seller acknowledges that neither the Brokerage, Broker, nor any Board or Association of REALTORS® is insuring Seller or occupant against theft, loss or vandalism resulting from any such access.
- vii. **PHOTOGRAPHY.** ☐ YES ☐ NO In accordance with state and federal law, Broker to take and/or contract with a third-party vendor to take photographs and/or video ("Images") of the Property, including aerial (drone) Images, and to use such Images to market the Property as Broker deems appropriate. **SELLER BE AWARE: Other brokers and/or buyers viewing the home may take photographs and/or videos of the home, both inside and**





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outside. Seller is advised to remove from view any items that Seller does not wish to be photographed or videoed.

viii. OTHER: \_\_\_\_\_

E. **NO BROKER CONSENT REQUIRED TO MODIFY.** Seller may modify Seller's authorization below at any time with written notice to Broker.

i. **OFFERS.** Broker to divulge ☐ terms ☐ existence of offers on the Property in response to inquiries from buyers or cooperating brokers.

ii. **OPEN HOUSES BY OTHER BROKERS.** (check all that apply). Broker to authorize ☐ Associate and Qualifying brokers within Broker's Brokerage\* and/or ☐ Qualifying Brokers outside Brokers Brokerage to hold an Open House of Property. **\*IMPORTANT NOTE TO BROKERS:** Per NMREC rules, associate brokers ("AB") under the same qualifying broker ("QB") can hold open houses for one another. ABs under different QBs **WITHIN THE SAME BROKERAGE** can hold open houses for one another IF the independent contractor agreement between the AB holding the open house and his/her QB allows the AB to conduct work for other QBs within the brokerage. **Only QBs can hold open houses for brokerages other than their own and ABs engaging a QB from another brokerage to hold an Open House should notify his/her QB.**

iii. **PROPERTY ADDRESS; AVMS; BLOGGING. THIS SECTION ONLY APPLIES IF SELLER HAS AUTHORIZED BROKER TO PLACE PROPERTY ON THE INTERNET.** Upon written notice to Broker of any change in Seller's authorizations, Broker shall transmit the request to the MLS. If Seller(s) authorizes Broker to submit the Property's listing information to the MLS in which Broker participates, some, but not necessarily all, websites to which the listing is disseminated may have features that either allow viewers to make comments about the Property that can be seen by others viewing the Property listing (blogging) or that provide a link to comments made by others about the Property. Additionally, those websites may include with the Property Listing an automated estimate of the market value of the Property or a link to the estimate.

a. Seller(s) ☐ does ☐ does not want the address of the listed Property to be displayed on the Internet. If Seller(s) indicates that he/she does not want the Property address to be displayed on the Internet, then the Property will be disseminated via the Internet, but the Property address will not appear in conjunction with the listing.

b. Seller(s) ☐ does ☐ does not want the viewers of the Property to have the capability to provide comments (blog) about the Property. If Seller(s) indicates that he/she does not want the blogging feature activated, then this feature will be disabled on all MLS participants' Internet websites. **However, this feature may still appear on the Internet websites of other on-line providers that are not MLS participants.**

c. Seller(s) ☐ does ☐ does not want the site operator to allow/provide an automated estimate of the value of the Property (AVM) or a link to the same. If Seller(s) indicates that he/she does not want the AVM feature activated, then this feature will be disabled on all MLS participants' Internet websites. **However, this feature may still appear on the Internet websites of other on-line providers that are not MLS participants.**

d. OTHER: \_\_\_\_\_

F. **REPORTING FALSE INFORMATION.** If Seller(s) believes that information about the Property appearing on another MLS participant's website is false, they should notify the listing Broker who shall bring the false information to the specific website operator, along with an explanation as to why the information is false. The website operator shall have the obligation under MLS Policy to remove any false information. **Information found on some public-facing websites may be inaccurate; however, Broker has limited and in some cases no ability to remove false information from non-MLS participants' websites.**

13. **WAIVER OF MARKETING THROUGH OR DELAYED ENTRY INTO THE MLS.** This section to be completed only if Property will not be entered into the MLS within 48 hours of the beginning Term Date set forth in Para. 3. Due to MLS rules, if/while listing is withheld from dissemination through the MLS, broker may not conduct any public marketing of the property, broker may only market the property within the Brokerage. NMAR Form 1820 – Information Sheet – Multiple Listing Service. **IMPORTANT NOTE TO SELLER:** Brokerage's MLS may also require Seller to complete a Waiver Form if/while the Property is not being marketed through the MLS. Check applicable provision.

A. ☐ Broker shall not market Property through the MLS. **Seller acknowledges he/she has been informed of the marketing benefits of the MLS and Seller hereby waives such marketing benefits.**





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- B. ☐ Broker shall begin marketing the Property in the MLS within 48 hours of \_\_\_\_\_ (DATE)  
or \_\_\_\_\_ (EVENT).

**14. TENANT OCCUPIED PROPERTY.** If Property is currently tenant-occupied, then Seller must obtain written consent from Tenant for the following and provide such consent to Broker: NMAR Form # 2110 – Tenant's Consent to Photograph Videograph:

- A. To photograph/videograph the inside of the Property. If Seller is unable to obtain such authorization, Broker shall not photograph or videograph the inside of the Property; Broker shall only photograph/videograph the Property from the public street;
- B. To hold an "Open House" to allow prospective Buyers to inspect the Property. If Seller is unable to obtain such authorization, Broker shall not hold an "Open House" of the Property. **IMPORTANT NOTE TO SELLER:** Tenant's grant of consent allowing Broker to hold an "Open House" does **not** obligate Broker to do so.

**15. SELLER WARRANTIES; REPRESENTATIONS.**

**A. WARRANTIES.**

- i. **AUTHORITY/OWNER OF RECORD:** Except as otherwise disclosed to Broker in writing, the person or persons designated as Seller above and in the signature block of this Agreement is owner of record of the Property and has the authority to enter into this Agreement. Seller further warrants that there are no other owners of record of the Property, unless otherwise indicated: \_\_\_\_\_
- ii. **INSURANCE:** Seller has and shall maintain insurance covering personal injury on and property damage to the Property and shall continue to do so during the Term of this Agreement. In the event the Property is or becomes vacant during the term of this Agreement, Seller shall notify Seller's casualty insurance company and obtain any endorsement necessary to maintain insurance coverage.
- iii. **SELLER PROVIDED INFORMATION:** Seller has accurately disclosed to Broker all adverse material facts and information concerning the Property known to Seller, including, but not limited to: all material information relating to the connection to a public sewer system, septic tank or other sanitation system; the existence of any tax, judgment or other type of lien; the presence of any infestation by wood-destroying pests or organisms; and any current damage to any portion of the Property, such as the roof, electrical, plumbing, etc.. During the term of this Agreement, Seller agrees to continue disclosing to Broker all additional information of the type required by the preceding sentence promptly after Seller becomes aware of any such information.
- iv. **INTELLECTUAL PROPERTY LICENSE.** Seller Listing Content, and the license granted to Brokerage for the Seller Listing Content, do not violate or infringe upon the rights, including any copyright rights, of any person or entity. Seller acknowledges and agrees that as between Seller and Brokerage, all Broker Listing Content is owned exclusively by Brokerage, and Seller has no right, title or interest in or to any Brokerage Listing Content.

**B. REPRESENTATIONS.**

- i. Unless otherwise provided herein, there are no delinquencies or defaults under any Deed of Trust, Mortgage, or other Encumbrance on the Property and the Property is not subject to any current litigation: Explain Defaults/Delinquencies: \_\_\_\_\_
- ii. Is this a Short Sale? ☐ YES ☐ NO If yes, attach NMAR Form 2109 — Short Sale Addendum to Listing Agreement.
- iii. Is Seller currently involved in any bankruptcy proceedings? ☐ YES ☐ NO If yes, Seller should determine what, if any implications, such bankruptcy may have on the sale of the Property.
- iv. Is Seller currently involved in a loan modification? ☐ YES ☐ NO. If yes, Seller should determine what, if any implications, such loan modification may have on the sale of the Property.
- v. Is the Seller receiving benefits from any employer, relocation company or other entity that provides benefits to Seller when selling the Property ☐ YES ☐ NO. If yes, provide name. \_\_\_\_\_
- vi. Does any person/entity have an Option or a Right of First Refusal ("RFR") to Purchase the Property?  
☐ YES ☐ NO. If yes, provide a copy of the Option or RFR to Purchase.

**16. HOLD HARMLESS; INDEMNIFICATION; RELEASE.**

- A. HOLD HARMLESS AND INDEMNIFICATION.** Seller shall hold harmless and indemnify Brokerage and Broker from any liability or damages, including attorneys' fees, arising out of the following:

- i. incorrect or undisclosed information about the Property which Seller knew or should have known;





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- ii. claims for any personal injury to third-parties or damage to the personal property of third parties occurring on the Property, provided such injury and/or damage is not due to Broker or Brokerage's own negligent, reckless or intentional actions. Such damages or claims to include costs and attorney's fees;
  - iii. infringement of any copyright arising out of Brokerage's use of Seller Listing Content.
- B. SELLER RELEASE.** Provided the following damages, claims or liability do not arise from the intentional, reckless or negligent acts of Brokerage, Broker or cooperating Broker, Seller agrees that neither Brokerage, Broker, nor any cooperating Broker shall be liable for any damages or claims for any personal injury or damage to real or personal property caused by acts of third parties, including, but not limited to, vandalism and theft or to acts outside of the parties' control, including, but not limited to, acts of God and freezing water pipes. The Brokerage shall not be responsible for maintenance of the Property unless otherwise agreed to in writing.
- 17. AUTHENTICITY/VERACITY OF PRE-QUALIFICATION LETTER/PROOF OF FUNDS** Neither Broker, nor Brokerage is responsible for verifying authenticity/veracity of a buyer's pre-qualification letter or a buyer's proof-of-funds letter or for determining buyer's creditworthiness.
- 18. SERVICE PROVIDER RECOMMENDATIONS.** If Broker/Brokerage recommends a builder, contractor, escrow company, title company, pest control service, appraiser, lender, attorney, accountant, home inspection company or home warranty company or any other person or entity to Seller for any purpose, such recommendation shall be independently investigated and evaluated by Seller, who hereby acknowledges that any decision to enter into any contractual arrangement with any such person or entity recommended by Broker/Brokerage shall be based solely upon such independent investigation and evaluation.
- 19. INSPECTION REPORTS.** The NMAR Residential Purchase Agreement (NMAR Form 2104) provides that if buyer opts to terminate the Purchase Agreement after conducting inspections of the Property, the buyer is NOT required to provide a copy of the inspection report to Seller unless otherwise directed by the Seller in writing. Further, if buyer objects to issues identified during the inspection, the Buyer is only required to provide a copy of the **section** of the report on which the objection is based unless otherwise directed by Seller in writing. The Purchase Agreement is structured like this for the following reasons: 1) if Seller receives information regarding adverse material facts in the Property and the contract terminates, the Seller and Broker/Brokerage will be required to provide this information to subsequent buyers; and (2) many inspection reports contain copyright language prohibiting the customer (who in most cases is the buyer) from sharing, reproducing or distributing the report, which means that if the transaction terminates and Seller needs to disclose adverse material facts identified in the report to another buyer, Seller would need to transfer those facts into NMAR Form 1110 — Adverse Material Facts; Seller could not provide the entire report to another buyer.
- 20. FIRPTA.** The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") requires buyers who purchase real property from foreign sellers to withhold a portion of the amount realized from the sale of the real property for remittance to the Internal Revenue Service ("IRS"). In the event the seller(s) is NOT a foreign person, FIRPTA requires the buyer to obtain proof of the seller's non-foreign status in order to avoid withholding requirements. Exceptions may apply. For more information, refer to NMAR Form 2304 – Information Sheet – FIRPTA & Taxation of Foreign Persons Receiving Rental Income from U.S. Property. In the event exceptions to FIRPTA do not apply, then prior to or at Closing, Seller(s) shall provide to Buyer or to a Qualified Substitute (generally, the Title Company) either a Non-Foreign Seller Affidavit(s) (NMAR Form 2303) OR a letter from the IRS indicating Seller(s) is exempt from withholding. In the event Seller(s) fails to do so, Buyer shall have the right to withhold the applicable percentage of the amount realized from the sale of the Property for remittance to the IRS in accordance with IRS requirements.
- 21. NON-DISCRIMINATION.**
- A. RESIDENTIAL:** Seller understands that federal housing laws, the New Mexico Human Rights Act and the New Mexico Real Estate Commission Regulations prohibit discrimination in the sale, rental, appraisal, financing, or advertising of housing or other property on the basis of race, color, religion, sex, sexual orientation, gender identity, familial status, spousal affiliation, physical or mental handicap, national origin or ancestry and in some circumstances, age.
  - B. COMMERCIAL:** Seller understands that the New Mexico Human Rights Act prohibits discrimination in the sale or lease of any real property on the basis of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or spousal affiliation.
- 22. FARMS AND RANCHES.** The Agricultural Foreign Investment Disclosure Act ("AFIDA") requires disclosure of a transfer of interest in certain agricultural land (including farms and ranches) to or from a Foreign Person to the Farm Service Agency (FSA) within ninety (90) days of the transaction, on a form provided by the FSA. AFIDA does not apply to agricultural land if in the aggregate it is not more than ten (10) acres and if the gross annual receipts from sale of farm,





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ranch, farming or timber products do not exceed \$1,000.00. A "foreign person" is certain foreign corporations or a person who is not a citizen of the U.S. or U.S. territories, who is not a permanent resident and who is not paroled into the U.S. (NMAR 2304A — Information Sheet — AFIDA).

**23. LEAD-BASED PAINT.** Are there buildings on the Property that were built prior to 1978? ☐ YES ☐ NO. If no, proceed to Para. 24.

**A. DISCLOSURE AND INFORMATION REQUIREMENTS:** If a residence on the Property was constructed before 1978, Seller MUST provide the following information to the Buyer. The Buyer should receive this information BEFORE making an offer on the Property. **Seller cannot legally accept Buyer's offer unless Buyer has received the following AND completed NMAR Form 5112 - Lead-Based Paint Addendum to the Purchase Agreement.**

- i The pamphlet titled, "Protect Your Family from Lead in Your Home".
- ii Disclosure of known presence of lead-based paint and lead-based paint hazards;
- iii A list and copies of all reports and records available to Seller pertaining to lead-based paint and lead-based hazards on the Property; and
- iv A ten (10) day opportunity (or mutually agreed upon period) for the Buyer to conduct a risk assessment or inspection for the presence of lead-based paint hazards. Buyer may waive this opportunity (NMAR Form 5112 — Lead-Based Paint Addendum)

**B. REPAIRS AND RENOVATIONS:** If the Property falls under the Lead-Based Paint Renovation, Repair and Painting Program ("Program"), AND there have been renovations or repairs made to the Property that are governed by the Program, Seller ☐ will ☐ will not provide a Lead-Based Paint Renovation, Repair and Painting Disclosure Addendum (NMAR Form 5112A — Lead-Based Paint Renovation, Repair and Painting Disclosure Addendum.) For definitions of properties and renovations covered by the Program refer to NMAR Form 2315 — Information Sheet — Lead-Based Paint (LBP) Renovation, Repair and Painting.

**24. PUBLIC IMPROVEMENT DISTRICT:** Is the Property located in a Public Improvement District ("PID")? ☐ YES ☐ NO. If yes, per New Mexico law, Seller is prohibited from accepting an offer to purchase until Seller has provided specific PID disclosures to the Buyer.

**25. HOMEOWNERS'/CONDOMINIUM UNIT OWNERS' ASSOCIATION ("HOA/CUOA"):** Is Property located in an HOA OR CUOA? ☐ YES ☐ NO. If yes, Per New Mexico law, Seller is required to provide specific HOA/CUOA disclosures to the buyer. For HOAs, see NMAR Form 4600 — Information Sheet - Homeowners' Association, NMAR Form 4650 — Seller's Disclosure of Homeowners' Association Documents and NMAR Form 4700 — Homeowners' Association Document and Disclosure Certificate. For CUOAs, see NMAR — Form 2356 — Condominium Association Information Sheet and NMAR Form 2302, Residential Re-Sale Condominium Addendum.

**26. MEDIATION AND ARBITRATION.** If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to mediation, jointly appoint a mediator and share equally in the costs of the mediation. NMAR Form 5118 — Information Sheet — Mediation Information for Clients and Customers. If any dispute arising between parties relating to this Agreement cannot be resolved by mediation, the dispute, controversy or claim arising out of or relating to this Agreement shall be settled by arbitration and shall be referred to the American Arbitration Association ("AAA") for arbitration in accordance with AAA Rules of Arbitration. NMAR Form 5121 - Information Sheet – Arbitration. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction.

**27. EXPERT ASSISTANCE.** Broker advises Seller to obtain expert assistance regarding legal, tax and accounting matters or matters relating to zoning, surveying, inspections, construction, hazardous materials, engineering or other matters which are not within the expertise of Broker. **Broker shall have no liability with respect to such matters, provided Broker does not render advice on such matters.**

**28. CONSENT TO THE ELECTRONIC TRANSMISSION OF DOCUMENTS AND TO THE USE OF ELECTRONIC SIGNATURES.** The parties ☐ DO ☐ DO NOT consent to conduct any business related to and/or required under this Agreement by electronic means, including, but not limited to the receipt of electronic records and the use of electronic signatures. Subject to applicable law, electronic signatures shall have the same legal validity and effect as original hand-written signatures. Nothing herein prohibits the parties from conducting business by non-electronic means. If a party has consented to receive records electronically and/or to the use of electronic signatures, that party may withdraw consent at any point in the transaction by delivering written notice to the other party.

**29. ATTORNEY FEES AND COSTS.** Should any aspect of this Agreement result in arbitration or litigation, the prevailing party of such action, shall be entitled to an award of reasonable attorneys' fees and court costs.