



**NEW MEXICO ASSOCIATION OF REALTORS®  
LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL – 2020**

**PART I – BROKERS DUTIES**

Per New Mexico law, Brokers are required to perform a specific set of applicable Broker Duties. Prior to the time the Broker generates or presents any written documents that has the potential to become an express written agreement, he/she must disclose such duties and obtain written acknowledgement that the Broker has made such disclosures.

**SECTION A:** All Brokers in this transaction owe the following broker duties to ALL buyers and sellers in this transaction, even if the broker is not representing the buyer or the seller in the transaction:

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of potential conflict of interest or other written agreement that the broker has in the transaction, including, but not limited to;
  - A. Any written brokerage relationship the Broker has with any other parties to the transaction or;
  - B. Any material interest/relationship of a business, personal or family nature that the broker has in the transaction; or
  - C. Any written agreement the Broker has with a Transaction Coordinator who will be providing services related to the transaction.
5. Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

**SECTION B:** In addition to the above duties, Broker(s) owes the following Broker Duties to the seller(s) in this transaction to whom the Broker(s) is/are directly providing real estate services, regardless of the scope and nature of those services.

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction including:
  - A. timely presentation of and response to all written offers or counteroffers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker’s knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advise to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal’s written consent or is required by law;
6. Written disclosure of brokerage relationship option available in New Mexico:
  - A. **Exclusive agency:** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interest of the person in real estate transaction;
  - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as facilitator in real estate transaction rather than as an exclusive agent for either party;
  - C. **Transaction Broker:** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship.
7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller shall not disclose the following to the buyer in a transaction:
  - A. that the seller has previously indicated he/she will accept a sales price less than the asking or listed price;
  - B. that the seller will agree to financing terms other than those offered;
  - C. the seller’s motivation for selling/leasing; or
  - D. any other information the seller has requested in writing remain confidential, unless disclosure is required by law;

**SELLER(S): PLEASE ACKNOWLEDGE RECEIPT BY INITIALING BELOW.**



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**PART II -OTHER REQUIRED DISCLOSURES**

*Broker shall update these, and all other required disclosures as needed.*

**Check if Applicable**

1.  **TRANSACTION COORDINATOR.** Broker(s) has engaged the services of a transaction coordinator who will be assisting the broker in the processing of the real estate transaction. The transaction coordinator’s services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing.

Name of Transaction Coordinator: \_\_\_\_\_.

**BROKER DUTIES:** Licensed TCs who have no interaction with the Broker’s Customer or Client and/or other parties or brokers involved in the transaction, owe Broker Duties 1-5 in Section A on Cover Page I. Licensed TCs who work directly with the Broker’s Customer or Client and/or other parties or brokers in the transaction, owe Broker Duties 1-5 of Section A on Cover Page I and 5 and 7 of Section B on Cover Page I. Licensed TCs:

2. **CONFLICT OF INTEREST/MATERIAL INTEREST.** Broker has a material interest or relationship of a business, personal, or family nature in the transaction. Describe that material interest and/or relationship: \_\_\_\_\_

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

3. **OTHER WRITTEN AGREEMENTS IN THE TRANSACTION.** Describe any other written agreements Broker has in the transaction: \_\_\_\_\_

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

Seller  is  is not a New Mexico real estate Broker.

Seller  is  is not subject to another existing listing agreement on the subject property.

**SELLER**

\_\_\_\_\_  
Seller Signature Date Time Seller Signature Date Time

**SELLER'S BROKER**

\_\_\_\_\_  
Seller's Brokerage Firm

Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®
---

\_\_\_\_\_  
Broker Signature Date Time



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**1. EXCLUSIVE SERVICES. THE UNDERSIGNED** \_\_\_\_\_

\_\_\_\_\_ ("Seller") grants to the undersigned Brokerage Firm \_\_\_\_\_ ("Brokerage"), the exclusive right to sell the real property described in Paragraph 3. Unless otherwise provided in an amendment 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 Pages 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 such a relationship is desired, such relationship must be established through a separate agreement between Seller and Broker.

**2. 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.

**3. PROPERTY.**

**A.** \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_

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

Or see metes and bounds description attached as Exhibit \_\_\_\_\_, \_\_\_\_\_  
**County, New Mexico.**

**B. Type:**  RESIDENTIAL:  Resale  New Construction  Site Built  Manufactured Housing  
 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, APPLIANCES, PERSONAL PROPERTY and EXCLUSIONS.**

**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 Paragraph 3(D)(iii). 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)
- Ceiling fan(s)
- Central vacuum, to include all hoses & attachments
- 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)
- 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. 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"/> All Window Covering(s)                   | <input type="checkbox"/> Microwave(s)   | <input type="checkbox"/> Storage Shed(s)                            |
| <input type="checkbox"/> Audio Component(s)                       | <input type="checkbox"/> Pool & Spa Equipment   | <input type="checkbox"/> TV(s)                                      |
| <input type="checkbox"/> Decorative Mirror(s) above Bath Vanities | Including any Mechanical or other Cleaning System(s)  | <input type="checkbox"/> Unattached Fireplace Grate(s) & Screen(s)  |
| <input type="checkbox"/> Dryer(s)                                 | <input type="checkbox"/> Refrigerator(s)  | <input type="checkbox"/> Unattached Outdoor Fountain(s) & Equipment |
| <input type="checkbox"/> Washer(s)                                | <input type="checkbox"/> Satellite Receiver(s) with Access Cards (if owned by Seller and if Transferable) | <input type="checkbox"/> Unattached Outdoor Lighting                |
| <input type="checkbox"/> Garage Door Remote(s)                    | <input type="checkbox"/> OTHER: _____   |   |
| <input type="checkbox"/> Freezer(s)                               |   |   |
| <input type="checkbox"/> Freestanding Range(s)                    |   |   |

**iii. EXCLUSIONS.** The following items are excluded from the sales: \_\_\_\_\_

**IT IS THE SELLER'S RESPONSIBILITY TO ENSURE THAT THESE EXCLUSIONS ARE CONTAINED IN THE FINAL PURCHASE AGREEMENT.**

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



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- 5. BROKER OBLIGATIONS.** Broker will use diligence in effecting the sale of the Property, to include the following:
- A. Assisting Seller in locating qualified buyers;
  - B. If requested, assisting potential buyers in preparing offers and locating financing;
  - C. Assisting Seller in monitoring pre-closing and closing procedures; and
  - D. Unless otherwise waived by Buyer, prior to accepting an Offer to Purchase; 1) requesting 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) providing a copy of the Assessor's response in writing to the prospective Buyer(s) or the Buyer's Broker.
- 6. SELLER OBLIGATIONS.** Seller agrees to the following:
- A. To provide to Broker Firm 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; and
  - G. That Seller  will  will not provide a Seller's Property Disclosure Statement. New Mexico law requires the Seller to disclose all known material defects in the Property.
  - H. To inform Broker if Seller is or begins using any audio or video surveillance systems in/on the Property. Seller  IS  NOT using any audio or video surveillance in/on the Property. If applicable, type of surveillance  audio  video.
  - I. To secure all pets, valuables and medication 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, Paragraph. 15.
- 7. 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. Paragraph. 15). 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, that 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.



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**⚠️ MLS ENTRY RULE ⚠️**

**All Multiple Listing Services 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”.**

**8. 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 included in compilations of listings; and
- 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. 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.** Unless otherwise provided in Paragraph 9, Brokerage Firm to list the Property with the MULTIPLE LISTING SERVICE ("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;
- ii. **INTERNET.** 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 Broker’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.

**YES    NO**



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- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| iii. <b>SIGNAGE.</b> Broker to place a "For Sale" sign on the Property, if not otherwise prohibited;  | <input type="checkbox"/> | <input type="checkbox"/> |
| iv. <b>KEYS.</b> 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;   | <input type="checkbox"/> | <input type="checkbox"/> |
| v. <b>PROPERTY INFORMATION.</b> Broker to obtain information about the Property, such as utility bills, loan information, documents, surveys or ILR's, etc.;  | <input type="checkbox"/> | <input type="checkbox"/> |
| vi. <b>LOCKBOX.</b> 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. | <input type="checkbox"/> | <input type="checkbox"/> |
| vii. <b>PHOTOGRAPHY.</b> 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.  | <input type="checkbox"/> | <input type="checkbox"/> |
| viii. <b>OTHER:</b> _____   | <input type="checkbox"/> | <input type="checkbox"/> |

**D. 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.** Broker to authorize  Associate and Qualified brokers within Broker's Brokerage\* and/or  Qualified Broker's outside Broker's Brokerage to hold an Open House of Property. (check all that apply). **\*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, web-sites 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**



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feature may still appear on the Internet websites of other on-line providers that are not MLS participants.

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

**E. REPORTING FALSE INFORMATION.** If Seller(s) believes that information about the Property appearing on another MLS participant's website is false, he/she 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.**

**9. WAIVER OF MARKETING THROUGH OR DELAYED ENTRY INTO THE MULTIPLE LISTING SERVICE (MLS).** 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 BROKER'S BROKERAGE. **NOTE:** Broker'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.** \_\_\_\_\_ / \_\_\_\_\_ Seller's Initials

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

**10. 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: (Tenant's Consent – NMAR Form 2110):

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. **NOTE:** Tenant's grant of consent allowing Broker to hold an "Open House" does *not* obligate Broker to do so.

**11. COMPENSATION.**

**A. SALE.**

**i. Agreement to Pay Compensation.** In the event of the following, Seller agrees to pay Brokerage Firm as compensation for sale of the Property: \_\_\_\_\_ OF SALES PRICE ("Sales Commission") PLUS New Mexico Gross Receipts Tax ("GRT"). 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).** 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.

- a. If during the term of this Agreement, the Property is sold through Seller or any other source; OR
- b. 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, PROVIDED HOWEVER, 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. It shall not be necessary to provide the name(s) of any buyer who has made an offer to purchase the Property. Except as provided in Paragraph 11(A)(iii), the Protection Period shall terminate upon Seller entering into a written exclusive listing agreement with another licensed real estate broker; OR
- c. If at ANY time, a Buyer who obtained an option to purchase during the term of this Agreement exercises that option; commission shall be based on sales price of Property. **This provision WILL CONTINUE TO APPLY even if Seller enters into a written exclusive listing agreement with another licensed real estate broker.**

**ii. Cooperation.** In the event of sale, Seller authorizes Brokerage to share the Sales Commission with the cooperating brokerage firm that procured the Buyer as follows: \_\_\_\_\_ % of Sales Commission plus GRT or \$ \_\_\_\_\_ plus GRT ("Co-Op Broker Commission"). Listing Brokerage shall pay the Co-Op Broker Commission out of the Sales Commission; payment of the Co-Op Broker Commission will **NOT** result in Seller paying any amounts in excess of the Sale Commission. Seller(s) Initials: \_\_\_\_\_ / \_\_\_\_\_





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- iii.  **Seller Paying Bonus to Buyer's Broker. (Check ONLY if Applicable) (Check ONLY if Applicable) IN ADDITION to the Sales Commission**, as set forth in Para. 11(A), Seller will pay a bonus of \_\_\_\_\_ % of sales price, plus GRT or \$ \_\_\_\_\_ plus GRT to a Buyer's Broker under terms and conditions as set forth in NMAR form 4660- Seller's Bonus to Buyer's Broker ("Bonus"). Broker is authorized to promote this Bonus in any and all advertising, including, but not limited to the MLS listing.
- B. **OTHER EVENTS.** Notwithstanding any provision to the contrary, the parties agree that if any of the following events shall occur, that actual damages suffered by the Broker will be difficult to determine with certainty; therefore the parties agree that Owner shall pay Broker compensation as follows: \_\_\_\_\_ PLUS New Mexico GRT. For GRT Location Code, See Paragraph 11(A). 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 Firm, 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 Firm, 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; commission shall be based on sales price as set forth in contract for sale signed by Seller. If during the term of this Agreement, the Property is made unmarketable by Seller's voluntary act;
  - iii. If during the term of this Agreement, Property is withdrawn from sale;
  - iv. 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 or unilaterally terminating this Listing Agreement.
- C. The commission/compensation shall be paid upon the earlier of the Closing or ten (10) calendar days after the occurrence of the event set forth in Paragraph 11(B).
- D. Notwithstanding the foregoing, upon forfeiture of Earnest Money by a prospective buyer, Broker shall be entitled to one-half the earnest money, not to exceed Broker's compensation set forth above.

**12. COMPENSATION FOR LEASE.  Does Apply  Does Not Apply**

- A. In the event Seller elects to lease the Property, Seller agrees to pay Brokerage Firm 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 Paragraph 11(A).

- i. If during the term of this Agreement, the Property is leased through Broker. 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 person who are introduced to the Property during the term, PROVIDED HOWEVER, 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 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 Paragraph 12(B) below, 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 Paragraph 12(A) above. This Paragraph 12(B) shall NOT terminate upon Seller entering into a written exclusive listing agreement with another licensed real estate broker.
- C. Seller authorizes Listing Brokerage Firm to share compensation with a cooperating Brokerage Firm that procures a Tenant as follows: \_\_\_\_\_
- D. Notwithstanding the foregoing, nothing herein creates a property management agreement with Seller and Broker assumes NO property management responsibilities.



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**13. 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 and 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 material latent defects and information concerning the Property known to Seller, including, but not limited to, all material information relating to: connection to a public sewer system, septic tank or other sanitation system; the existence of any tax, judgment or other type of lien; past or present infestation by or treatment for wood-destroying pests or organisms; and past or present repair of the Property for damage resulting from wood destroying pests or organisms. 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 Broker 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 Broker, all Broker Listing Content is owned exclusively by Broker, and Seller has no right, title or interest in or to any Broker 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 Delinquencies/Defaults: \_\_\_\_\_
- ii. Is this a Short Sale?  YES  NO If yes, attach NMAR Form 2109 – Short Sale Addendum to Listing Agreement.
- iii. During the ownership of the Property, has Seller declared bankruptcy?  YES  NO, or engaged in a loan modification?  YES  NO. If yes to either, Seller should determine what, if any implications, such bankruptcy and/or loan modification may have on the sale of the Property.
- iv. 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. \_\_\_\_\_

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.

**14. HOLD HARMLESS; INDEMNIFICATION; RELEASE.**

**A. HOLD HARMLESS AND INDEMNIFICATION.** Seller shall hold harmless and indemnify Brokerage Firm 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;
- 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'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 Broker'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 Firm, Broker or cooperating Broker, Seller agrees that neither Brokerage Firm, 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. Broker shall not be responsible for maintenance of the Property unless otherwise agreed to in writing.

**15. IMPORTANT NOTICE TO SELLER: BROKER IS NOT RESPONSIBLE FOR VERIFYING AUTHENTICITY/ VERACITY OF PRE-QUALIFICATION OR PROOF-OF-FUNDS LETTERS OR FOR DETERMINING BUYER’S CREDITWORTHINESS.** \_\_\_\_\_ **Seller(s) Initials**



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- 16. SERVICE PROVIDER RECOMMENDATIONS. If Broker recommends a builder, contractor, escrow company, title company, pest control service, appraiser, lender, 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 shall be based solely upon such independent investigation and evaluation.
17. INSPECTION REPORTS. The NMAR Purchase Agreement 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 material defects in the Property and the contract terminates, the Seller and Broker will be required to provide this information to subsequent buyers; and 2) many inspection reports contain copyright language prohibiting the customer (who in most case is the buyer) from sharing, reproducing or distributing the report, which means that material defects identified in the report would have to be transferred into Seller's Property Disclosure Statement or otherwise disclosed in writing.
18. FOREIGN SELLERS. The disposition of a U.S. Real Property interest by a Foreign Person is subject to the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") income tax withholding. FIRPTA applies if the Seller is a Foreign Person, Foreign Corporation or Partnership, or non-resident Alien, unless BOTH the purchase price is \$300,000 or less AND Buyer intends to use the Property as Buyer's primary residence. Federal law requires that if Seller is a Foreign Person, then Buyer must withhold a portion of the amount realized from the sale of the Property and remit it to the Internal Revenue Service (IRS) within twenty (20) days of Closing unless the Seller provides written confirmation from the IRS that Seller is not subject to withholding. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate. If Seller is Non-Foreign, the Seller must provide proof of Non-Foreign Status by fully executing the Affidavit of Non-Foreign Seller (NMAR Form 2303) and delivering it to either the Buyer or to a Qualified Substitute. Under FIRPTA, if Seller is a Foreign Person and Buyer fails to withhold taxes, the Buyer may be held liable for the tax, in addition to other fines and penalties and the Buyer's Broker may be fined up to the amount of his commission. (See NMAR Form 2304 – Information Sheet – FIRPTA)
19. 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.
20. 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, ranch, farming or timber products do not exceed \$1,000.00. (See NMAR 2304A – Information Sheet – AFIDA).
21. LEAD-BASED PAINT. Are there buildings on the Property that were built prior to 1978? [ ] Yes [ ] No. If no, proceed to Paragraph 22.
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 all of 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 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 (see NMAR Form 5112).



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- 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, Lead-Based Paint (LBP) Renovation, Repair and Painting Information Sheet.
- 22. PUBLIC IMPROVEMENT DISTRICT:** Is the Property located in a Public Improvement District?  Yes  No **If yes, PER NEW MEXICO LAW, SELLER IS PROHIBITED FROM ACCEPTING AN OFFER TO PURCHASE UNTIL SELLER HAS PROVIDED SPECIFIC DISCLOSURES TO THE BUYER.** See NMAR Form 4500 – Information Sheet – Public Improvement District Act.
- 23. 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 disclosures to the buyer. For HOAs, see NMAR Form 4600, Homeowners' Association Information Sheet, NMAR Form 4650, Seller's Disclosure of HOA Documents and NMAR Form 4700 Homeowners' Disclosure Certificate. For CUOAs, see NMAR Form 4600, Condominium Association Information Sheet and NMAR Form 2302, Residential Re-Sale Condominium Addendum.
- 24. MEDIATION.** If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation. The parties will jointly appoint a mediator and will share equally the costs of the mediation. If a mediator cannot be agreed on or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law. For more information, see NMAR Form 5118 - Information Sheet - Mediation Information for Clients and Customers.
- 25. 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.
- 26. 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. In the event the parties have agreed to electronic transmission of documents, a facsimile or e-mail transmission of a copy of this or any related document shall constitute delivery of that document.
- 27. 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.
- 28. TIME IS OF THE ESSENCE.** Time is of the essence with respect to the parties' performance under this Agreement.
- 29. FORCE MAJEURE.** Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstance beyond their reasonable control, including but not limited to acts of God, war, civil unrest or industrial action.
- 30. GOVERNING LAW AND VENUE.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties. Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Property or any portion of the Property is located in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.
- 31. SEVERABILITY.** If any portion of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.



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32. OTHER. \_\_\_\_\_

33. **ENTIRE AGREEMENT.** This Agreement together with the following addenda, and any exhibits referred to in this Agreement contains the entire Agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written with respect to the Property which are not expressly set forth herein. This Agreement may be varied only by a document signed by both parties.

- Agency Addendum  Other: \_\_\_\_\_  
 Short Sale Addendum  Other: \_\_\_\_\_

*The New Mexico Association of REALTORS® and the local board or association of REALTORS® do not fix, control, recommend, suggest or maintain compensation rates for services to be rendered by members, nor the division of Broker's compensation between Broker and cooperating Brokers in a transaction. The amount of compensation and the terms of the Agreement are not prescribed by law and are subject to negotiation.*

**THE LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL IS BY AND BETWEEN BROKERAGE FIRM,**

\_\_\_\_\_ **AND** \_\_\_\_\_

**⚠ WIRE FRAUD ALERT ⚠**

**Criminals are hacking email accounts of real estate brokers, title companies, settlement attorneys and others, resulting in fraudulent wire instructions being used to divert funds to the account of the criminal. The emails look legitimate, but they are not. Buyer and Seller are advised not to wire any funds without personally speaking with the intended recipient of the wire to confirm the routing number and the account number. Buyer and Seller should not send personal information such as social security numbers, bank account numbers and credit card numbers except through secured email or personal delivery to the intended recipient.**

**SELLER(S)**

Seller Signature	If Entity, Title of Signatory	Date	Time
Seller Signature	If Entity, Title of Signatory	Date	Time
Seller Name (Print)	If Entity, Title of Signatory	Email Address	
Seller Name (Print)	If Entity, Title of Signatory	Email Address	
Seller Address	City	State	Zip Code
Seller Home Phone	Business Phone	Cell Phone	Fax

**LISTING/SELLER'S BROKER**

Seller's Broker Name	Seller's Broker Signature		
If different, Seller's Broker's Qualifying Broker's Name	Seller's Broker's Qualifying Broker's NMREC License No.		
Seller's Brokerage Firm	Office Phone	Fax	
Seller's Brokerage Address	City	State	Zip Code
Seller's Broker Email Address	<div style="border: 1px solid black; padding: 5px; display: inline-block;">           Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®         </div>		



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