

**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
EXCLUSIVE RIGHT TO SELL CONTRACT**

MLS #

1. **PARTIES.** Seller(s) Name(s) _____ (“SELLER”)
Mailing Address: _____
Broker / Corporation: _____ (“BROKER”)
Property Address: _____ (“Property”)

2. **LISTING TERMS:** SELLER hereby gives and grants to BROKER, a member of Multiple Listing Service (MLS) of the Berkshire County Board of REALTORS®, Inc., the exclusive right to list and sell the above mentioned Property for the period to begin on the date of the SELLER signature and end on ___/___/___, unless extended in writing by all parties involved. The list price for the Property shall be \$ _____ or at such other price, terms and considerations to which SELLER may agree.

3. **LICENSEE-CONSUMER RELATIONSHIP:** SELLER acknowledges that they have been provided with a completed copy of the ‘Massachusetts Mandatory Licensee-Consumer Relationship Disclosure’ form. SELLER further acknowledges that the BROKER represents the SELLER as a Seller’s Agent. SELLER may authorize additional representation by real estate agents of other firms by completing a Subagency Consent addendum. If the BROKER represents a buyer who is interested in the Property, the BROKER may: **Serve as a Disclosed Dual Agent /** **Appoint Designated Agent(s).** The applicable ‘Consent Addendum’ attached is incorporated herein by reference.

SELLER acknowledges that it shall not constitute a violation of any duty owed to SELLER by the BROKER, or by any agent associated with the BROKER, to advise a prospective buyer of the availability of a competing property or to assist a buyer with the purchase of another property.

4. **BROKER’S DUTIES:**

- a) **LISTING DATA:** BROKER shall prepare a detailed property description, advertise and market the Property as BROKER shall deem appropriate.
- b) **MLS:** BROKER shall submit the Listing Data to the MLS within two (2) business days from the SELLER’s signature and offer of compensation for the procurement of a buyer to cooperating MLS brokers.
- c) **EFFORTS:** BROKER shall use best efforts to secure a purchaser for the Property.
- d) **FAIR HOUSING:** BROKER shall market the Property in compliance with all Massachusetts and Federal fair housing laws and present the Property equally and without regard to any person’s race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, family status, ancestry, genetic information, veteran status, gender identity, use of public assistance or any other protected class.

5. **COMMISSION:** If within the term of this Agreement or any extension, the Property is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a professional fee for services rendered of ___% of the purchase price. Said fee shall be based on a Purchase and Sale Agreement purchase price less any closing cost credits paid by SELLER to Buyer, if any. [as defined in section 7 ‘Settlement Charges’ on the (HUD-1)]. Fees shall be paid at the time of closing and may be deducted from the amounts held by BROKER as escrow agent. From the total % of professional fees shown above, BROKER will offer the following compensation to cooperating MLS brokers: Buyer agents: ___%, Facilitators: ___%. Other offers of cooperation and/or compensation outlined in par 13.

6. **SELLER’S DUTIES:**

- a) **ACCESS:** SELLER hereby agrees to permit the BROKER access to the Property to photograph, video, install a lawn sign and to show the Property within and without, at reasonable times.
- b) **INQUIRIES:** SELLER agrees to direct all inquiries to the BROKER and shall not list the Property with any other BROKER during the period this contract is in force. Seller represents that at the present time, no other BROKER has a listing of the Property, no other BROKER has been requested or authorized to sell and any previous listing agreement has expired or been terminated.
- c) **DISCLOSURES:** SELLER agrees to complete, sign and return all legally required disclosures within two (2) business days of signing this agreement. SELLER authorizes BROKER to disclose to prospective buyers all information about the Property provided to the BROKER by the seller, all of which the SELLER represents to



be accurate. SELLER acknowledges that the BROKER must disclose to any prospective purchaser or include in published listing data, all information which the BROKER may obtain or discover regarding the Property as required by law.

- d) **USE OF LISTING DATA:** SELLER grants BROKER non-exclusive, royalty free, license to use all photographs, images, videos, drawings, written narratives, pricing information, and any copyrightable elements relating to the Property, ("Listing Data") provided by the SELLER for marketing efforts. SELLER represents ownership of any Listing Data provided to the BROKER and agrees to indemnify and hold BROKER harmless from any and all claims arising from use of the Listing Data. SELLER acknowledges that any Listing Data created by BROKER is owned by the BROKER and SELLER has no right, title or interest in any such content and cannot be used by a third party without the BROKER's written consent. Listing Data may be used for the marketing of the property in the multiple listing service and publicly displayed and reproduced by means of newspaper, television, internet and other media outlets as deemed appropriate by the BROKER. SELLER **does** / **does not** consent to allow BROKER to include the physical property address in advertising and marketing representations.

7. PROPERTY REPRESENTATIONS:

- a) **LEAD LAW:** For premises built before 1978, SELLER agrees to complete the "Department of Public Health Property Transfer Notification" certification regarding Federal and Massachusetts lead laws and regulations. SELLER acknowledges that the Massachusetts Code of Regulations 40 CMR 745.113(a) mandates that all prospective purchasers be provided this notification form prior to signing a purchase and sale agreement or a lease with an option to purchase. Prospective purchasers have a legal right to a minimum of 10 days to have a lead inspection or risk assessment if desired, except in cases of foreclosure sales. SELLER acknowledges that failure to meet these requirements may result in civil penalties up to \$10,000, possible criminal sanctions, and liability for resulting damages.
- b) **RIGHT TO FARM:** SELLER acknowledges that the property **is** / **is not** located in a community that has adopted a Right to Farm bylaw and will comply with any disclosure notification requirements as may be required prior to the sale, purchase, exchange or occupancy of such real property.
- c) **BETTERMENT ASSESSMENTS:** SELLER represents that the property **is** / **is not** subject to a betterment assessment. If the property is subject to a betterment assessment, the SELLER agrees to pay the total outstanding betterment assessment at the closing unless the Buyer agrees to purchase the property subject to, and assumes the payment of the betterment assessment.
- d) **PERMITS:** SELLER agrees to obtain all necessary permits required by Massachusetts General Law 148 Sections 26F and F1/2 prior to the time of sale or transfer, including approved Smoke and Carbon Monoxide permits and wood, gas, coal, pellet stove or outdoor wood burning furnace permit(s), if applicable.
- e) **SEWAGE DISPOSAL / TITLE 5:** The SELLER represents that the Property **is** / **is not** connected to a municipal sewer system. If the Property is served by a septic or other private waste disposal system, SELLER represents that said system is located entirely within the boundaries of the Property, to the best of their knowledge. The SELLER acknowledges their ultimate responsibility to make certain that the system complies with Title 5, pursuant to the State Environmental Code (310 CMR 15.301).

8. OFFERS:

- a) **WRITTEN OFFERS:** BROKER shall submit for the SELLER's consideration all written offers. SELLER agrees that once he/she has entered into a Purchase and Sale Agreement with a buyer and during the pendency of said agreement, BROKER shall have no obligation to continue to market or show the Property.
- b) **PROSPECT NOTICE:** SELLER authorizes the BROKER to disclose to prospective buyers whether an offer has been submitted on the Property and whether an offer is from a buyer introduced to the Property by the listing agent, by another licensee associated with the BROKER, or by a cooperating broker. Disclosure of the price and other terms of any offer shall remain confidential until closing, unless authorized by the SELLER in writing.
- c) **DEPOSIT MONIES:** The BROKER is authorized to accept an earnest money deposit on the SELLER's behalf. SELLER authorizes the BROKER to deduct the commission at the closing from the initial deposit or any subsequent deposit. This contract shall be deemed an order for the payment of such commission by any person in possession of such deposit(s). In the event the Buyer defaults and the SELLER is entitled to retain said deposit, the BROKER shall be entitled to retain one-half (1/2) of the Seller's retained damages, up to an amount not exceeding the full brokerage fee due, in payment of services, advertising, and other expenses.

9. PROTECTION PERIOD: If the Property is sold, rented, transferred or exchanged by SELLER within _____ days after the expiration of this contract (the "Protection Period") to any person or entity to whom the Property had been presented or shown during the term of this contract, by any person or entity whatsoever, SELLER agrees to pay the BROKER the



same commission as if such sale had been made during the term of the contract. SELLER shall not be obligated, however, to pay such compensation, if a valid listing agreement is entered into during the term of the Protection Period with another licensed real estate BROKER and a sale, rental, transfer or exchange of the Property is made during the term of the Protection Period, unless SELLER has entered a written Right of First Refusal or Option Agreement as defined in Paragraph 11 and the property is sold to said Party, in which case SELLER shall compensate the BROKER as provided in Paragraph 11.

10. RETAINER: To defray the out-of-pocket costs incurred by BROKER in preparing a brochure, advertising and other marketing activities, SELLER agrees to pay BROKER a non-refundable marketing payment of _____. If BROKER becomes entitled to any brokerage fee under this contract, the non-refundable marketing payment will be credited against such brokerage fee, to a maximum of one-half percent credit of total commission percentage.

11. OPTIONS/LEASES: If SELLER grants a right of first refusal or option to purchase the Property, SELLER shall pay BROKER ____% of the sale price upon the sale of the Property. If SELLER executes a lease of the Property, SELLER shall pay BROKER annually, in advance, ____% of the total annual rental payments to be collected by SELLER, each year, for a period not to exceed ____ years.

12. BINDING CONTRACT: This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives, legatees, successors, and assigns (collectively "successors"); provided, however, that BROKER shall not assign this contract without SELLER'S prior written consent. SELLER(s) represent possession of 100% ownership right, title and interest in the Property.

- a) **EXTENSIONS:** In the event this Contract is renewed or extended, all of the terms and conditions applicable during the initial term of the contract shall apply with equal force and effect during such renewal or extension, except as otherwise agreed in writing.
- b) **MODIFICATION:** No modification, amendment or deletion affecting this contract shall be effective unless in writing and signed by all parties.
- c) **COLLECTION OF FEES:** If SELLER breaches this contract and suit is brought by BROKER to recover fees and a judgment is awarded in favor of BROKER, BROKER shall be entitled to recover from SELLER all expenses, including reasonable attorneys' fees, incurred as a result of SELLER'S breach. SELLER and BROKER agree that any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS").
- d) **WITHDRAWAL FROM THE MARKET:** In the event SELLER withdraws the Property from the market, SELLER agrees to give BROKER immediate written notice of such withdrawal. With such notice, SELLER agrees to pay BROKER ____% of the listed price to defray BROKER effort and marketing costs associated with subject listing. Furthermore, the SELLER acknowledges that withdrawing the property from the market does not constitute a termination of this contract and all provisions shall continue for the duration of the contract as set forth in paragraph 2, including the agreement by SELLER to pay the BROKER the commission stated in paragraph 5 if the SELLER signs an agreement for the sale of the Property prior to the expiration period of this contract, which includes the Protection Period as described in paragraph 9.
- e) **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

13. ADDITIONAL TERMS: : See attached addendum(s), incorporated here by reference. _____

14. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL. SELLER has read this Contract and hereby acknowledges receipt of a copy of same.

_____ SELLER:	_____ DATE	_____ AUTHORIZED BROKER	_____ DATE
_____ SELLER:	_____ DATE	_____ For: BROKERAGE NAME	

