



EXCLUSIVE BUYER AGENCY AGREEMENT

Document updated:
April 2014

1. **PARTIES:** The parties to this Exclusive Buyer Agency Agreement (the "Agreement") are:

BUYER: _____
BROKER: _____

2. **SCOPE OF THE AGREEMENT:** BUYER appoints BROKER as the BUYER'S sole and exclusive representative to assist the BUYER in the purchase of property as generally described in Section 3 of this Agreement and to negotiate terms and conditions acceptable to the BUYER for the purchase of the property. BUYER represents and warrants to BROKER that this is the one and only Exclusive Buyer Agency Agreement in effect.

3. **GENERAL DESCRIPTION OF PROPERTY:** BUYER desires to purchase real property, which may include improvements to the real property and certain items of personal property, subject to the following general characteristics:

TYPE OF PROPERTY: Residential Income Vacant Residential Land Commercial Agricultural Land

GENERAL LOCATION: _____

APPROXIMATE PRICE RANGE: \$ _____ to \$ _____

PREFERRED TERMS: _____

4. **TERM OF THE AGREEMENT:** This Agreement shall begin at 12:01 AM on _____ (the "Beginning Date") and shall end at 11:59 PM on _____ (the "Ending Date").

5. **BROKER'S COMPENSATION:**

- A. BUYER agrees to pay the BROKER compensation consisting of \$ _____ (flat fee amount) plus _____% (percentage-based fee) of the purchase price of the property purchased by the BUYER. BROKER agrees to credit the amount of any compensation or fee accepted by the BROKER from the SELLER or the Listing Broker towards the compensation that must be paid by the BUYER to the BROKER under this section, except for the \$ _____ (flat fee amount) that will be collected from the BUYER and retained solely by the BROKER.
- B. BUYER and BROKER agree that the BROKER shall first seek payment of the BROKER'S compensation from the SELLER and Listing Broker at the closing of the real estate transaction. If the full amount of the BROKER'S compensation cannot be obtained from the SELLER and Listing Broker, the BUYER agrees to pay the BROKER the amount necessary to provide the BROKER with the full amount of compensation specified in this section. In the event that the BUYER is required to pay the BROKER'S compensation, the BROKER agrees to provide the BUYER with a written notice that the BROKER'S compensation is to be paid at the closing of the real estate transaction by the BUYER.
- C. The BROKER'S compensation shall be earned and shall be due and payable to the BROKER in the event that the BUYER or any person acting on BUYER'S behalf purchases any real property of the general nature described in Section 3 of this Agreement during the term of this Agreement, whether through the services of the BROKER or otherwise.
- D. The BROKER'S compensation shall also be due and payable if the property purchased by the BUYER was presented to the BUYER by someone other than the BROKER, or was actually seen by the BUYER without the services or assistance of any real estate licensee, during the term of this Contract and the BUYER failed to disclose to the BROKER the description of such property or to refer the presentation or submission of the property to the BROKER. BUYER agrees to inform all real estate licensees and sellers of property that the BUYER comes into contact with that the BUYER has appointed the BROKER as the BUYER'S sole and exclusive representative to assist the BUYER in the purchase of property.
- E. If a SELLER fails to close the transaction to sell property to the BUYER, through no fault on the part of the BUYER, the BUYER and BROKER agree that the BUYER shall be released and relieved of any obligation to pay the BROKER'S compensation described in this section. However, this provision shall not release and relieve the SELLER of any obligation to pay such BROKER'S compensation to the BROKER as may be applicable. If such transaction fails to close because of any fault of the BUYER, the BROKER'S compensation will not be waived, but will be due and payable immediately to the BROKER.

- F. BUYER and BROKER agree that the BROKER may accept any selling incentives offered by the SELLER.
- G. **PROTECTION PERIOD:** "Protection Period" means that time beginning on the day after this Agreement expires or terminates and continuing for _____ calendar days (90 if left blank).
 - (1) No later than _____ calendar days (ten if left blank) following the expiration or termination of this Agreement, the BROKER shall send the BUYER a written notice specifying the list of properties that were called to the attention of the BUYER by the BROKER, the BROKER'S affiliated licensees or cooperating brokers during the term of this Agreement.
 - (2) BUYER agrees that the BROKER shall be entitled to receive the BROKER'S compensation specified under this Agreement if the BUYER enters into any agreement to acquire or purchase any property identified by the BROKER in the written notice provided under this Agreement during the Protection Period.
 - (3) SELLER and BUYER agree and acknowledge that this section shall survive and continue to bind the BUYER and BROKER after the expiration or termination of this Agreement.

6. BROKER'S OBLIGATIONS TO BUYER: BROKER agrees to and BUYER acknowledges that BROKER will:

- A. Perform the terms of this written Agreement;
- B. Promote the interests of the BUYER with the utmost good faith, loyalty and fidelity;
- C. Present in a timely manner all offers to and from the BUYER. BROKER shall present all offers to the BUYER when such offer is received prior to the closing of the sale unless the BUYER agrees to one of the following provisions by initialing the provision:
 - _____ BROKER shall not be obligated to seek or present other properties to the BUYER after the BUYER has entered into a contract to purchase property unless the purchase contract permits the BUYER to seek other property and purchase other property instead of the subject property until closing; or
 - _____ BROKER shall not be obligated to seek or present other properties to the BUYER after the BUYER has entered into a contract to purchase property;
- D. Disclose to the BUYER all adverse material facts actually known by the BROKER;
- E. Advise the BUYER to obtain expert advice as to material matters known by the BROKER, but the specifics of which are beyond the BROKER'S expertise. When the BUYER has been so advised by the BROKER, no cause of action for any person shall arise against the BROKER pertaining to such material matters;
- F. Account in a timely manner for all money and property received by the BROKER;
- G. Comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas (BRRETA) and comply with any applicable federal, state and local laws, rules, regulations and ordinances, including fair housing and civil rights statutes and rules and regulations;
- I. Keep all confidential information about the BUYER confidential unless the disclosure of such information is required by statute, rule or regulation, or unless the BROKER reasonably believes that the failure to disclose such information would constitute fraudulent misrepresentation. When the disclosure of confidential information is required, no cause of action for any person shall arise against the BROKER for making the permitted or required disclosure;
- J. Disclose to potential sellers all adverse material facts actually known by the BROKER, including but not limited to material facts concerning the BUYER'S financial ability to perform the terms of the transaction;
- K. Regarding the required disclosures in Section 6(J) of this Agreement, the BROKER owes no duty conduct an independent inspection of the BUYER'S financial condition for the benefit of sellers and owes no duty to independently verify the accuracy or completeness of any statement made by the BUYER or any qualified third party;
- L. Disclose to the BUYER and SELLER any facts known by the BROKER that were omitted from or contradict any information included in a written report prepared by a qualified third party and provided to the BUYER or SELLER; and
- M. At the time of initial contact, inform all prospective sellers and any real estate licensees assisting prospective sellers with whom the BROKER negotiates pursuant to this Agreement that the BROKER acts on behalf of the BUYER. BUYER authorizes the BROKER to cooperate with other real estate licensees and share any compensation due under this Agreement.

7. BUYER'S OBLIGATION TO DISCLOSE ADVERSE MATERIAL FACTS REGARDING THE BUYER'S FINANCIAL ABILITY TO PERFORM THE TERMS OF THE TRANSACTION:

- A. BUYER understands that he or she has a legal obligation and affirmative duty to be honest by making accurate and complete disclosures of any adverse material facts regarding the BUYER'S ability to perform the terms of the transaction and that the failure to do so may result in civil liability for damages.

- B. BUYER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all claims, damages, demands, expenses, losses or suits (including any reasonable attorneys' fees) arising out of any misrepresentation, non-disclosure or concealment by the BUYER regarding the BUYER'S ability to perform the terms of the transaction.

8. BROKER RECOMMENDS BUYER SEEK LEGAL AND PROFESSIONAL ADVICE:

- A. BROKER recommends that the BUYER seek legal, tax or other professional advice regarding the real estate transaction. BROKER makes no representation or warranty regarding the advisability or legal effect of any real estate transaction. BROKER is not an expert in matters relating to law, tax, financing, surveying, structural or mechanical condition, hazardous material, engineering or other specialized topics and the SELLER is strongly encouraged to seek expert advice in such areas.
- B. BROKER will cooperate with the experts engaged by the BUYER, but the BROKER shall have no liability to the BUYER pertaining to such matters.

9. LIABILITIES FOR INSPECTIONS:

- A. BUYER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all claims, damages, demands, expenses, losses or suits (including any reasonable attorneys' fees) resulting from any liability for damage, theft or vandalism of any nature whatsoever to the property of prospective sellers or for any personal injury on the property of prospective sellers.
- B. In consideration of BROKER'S arranging for any inspection at BUYER'S request, BUYER hereby agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all claims, damages, demands, expenses, losses or suits (including any reasonable attorneys' fees) resulting from or in connection with such inspections of prospective sellers' property.

10. BROKERAGE RELATIONSHIP DISCLOSURE:

- A. BUYER acknowledges receiving the "Real Estate Brokerage Relationships" Brochure.
- B. BUYER understands that other potential buyers may utilize the BROKER to consider, make offers on or purchase the same or similar properties as the BUYER seeks to acquire.
- C. BUYER consents to BROKER'S representation of other such potential buyers before, during and after the expiration of this Agreement. In such a situation, BROKER agrees that BROKER will not disclose the term of BUYER'S offer to any other potential buyers.
- D. Pursuant to Section 11 of this Agreement, BUYER consents does not consent to transaction brokerage, subject to both the BUYER and seller signing a Transaction Broker Addendum to their respective agency agreements with the BROKER, which must be signed by the BUYER prior to writing an offer to purchase the property and by the seller prior to signing the purchase contract.
- E. Pursuant to Section 12 of this Agreement, BUYER consents does not consent to a designated agent relationship. If applicable, BROKER (or the BROKER'S authorized representative) hereby designates _____ to act as the designated agent on the BUYER'S behalf.
- F. Pursuant to Section 12 of this Agreement, BUYER consents does not consent to the above-named designated agent (if applicable) acting as a transaction broker in the event that he or she is also the designated agent for the seller, subject to both the BUYER and seller signing a Transaction Broker Addendum to their agency agreement with the BROKER, which must be signed by the BUYER prior to writing an offer to purchase the property and by the seller prior to signing the purchase contract.

11. BUYER'S ACKNOWLEDGEMENT OF THE POTENTIAL FOR BROKER TO ACT AS A TRANSACTION BROKER:

- A. BUYER acknowledges that the BROKER may have clients who have retained the BROKER to represent them as a seller in the sale of property. If the BUYER becomes interested in making an offer on a seller client's property, then the BROKER would be in a position of representing both the BUYER and the SELLER in that transaction, which constitutes dual agency and is illegal in Kansas. In order to avoid dual representation, designated agents may be appointed under Section 12 of this Agreement.
- B. With the informed consent of both the BUYER and SELLER, the BROKER may act as a transaction broker. As a transaction broker, the BROKER would assist the parties with the real estate transaction without being an agent or advocate for the interests of either party.

12. BUYER'S ACKNOWLEDGEMENT OF POSSIBLE DESIGNATED AGENT RELATIONSHIP:

- A. A designated agent is a real estate licensee affiliated with a BROKER who has been designated by the BROKER, or the BROKER'S duly authorized representative, to act as the agent of the BROKER'S BUYER or SELLER client to the exclusion of all other affiliated licensees. If a designated agent is appointed to represent the BUYER, BUYER understands that:
- (1) The designated agent will perform all of the duties of a BUYER'S agent and will be the BUYER'S legal agent to the exclusion of all other real estate licensees in the BROKER'S firm;
 - (2) Another real estate licensee in the BROKER'S firm may act as a designated agent for the SELLER in the sale of the SELLER'S Property;
 - (3) The supervising broker (or branch broker if applicable) will act as a transaction broker and will not advocate for the interests of either party and will not, without the prior consent of both parties, disclose any information or personal confidences about either party that might place the other party at an advantage in the transaction. The supervising broker (or branch broker if applicable) may appoint an affiliated real estate licensee to act in the transaction as a transaction broker;
 - (4) If the designated agent for the BUYER is also the designated agent of a SELLER in whose property the BUYER is interested in purchasing, the designated agent cannot represent both the BUYER and SELLER. With the informed consent of both the BUYER and SELLER, the designated agent may act as a transaction broker and assist the parties with the real estate transaction without being an agent or advocate for the interests of either party; and
 - (5) If a BUYER client of a designated agent wants to see a property that was personally listed by the supervising broker, the supervising broker, with the written consent of the SELLER, may specifically designate an affiliated licensee who will act as a designated agent for the SELLER.

13. POTENTIAL PROXIMITY OF REGISTERED OFFENDERS TO PROPERTY:

- A. Kansas state law requires persons who are convicted of certain crimes, including certain sexually violent crimes, to register with the sheriff of the county in which they reside. If you, as the BUYER, desire information regarding those registrants, you may find information on the homepage of the Kansas Bureau of Investigation (KBI) at <http://www.kansas.gov/kbi> or by contacting the local sheriff's office.
- B. BUYER and BROKER agree that the BROKER owes no duty or obligation to the BUYER to conduct an independent investigation as to the potential proximity of registered offenders to the Property. BUYER agrees to hold harmless the BROKER and its agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including reasonable attorneys' fees) arising out of the discovery of registered offenders residing within relative proximity to any prospective property to be purchased by the BUYER.

14. COSTS OF SERVICES OBTAINED FROM OUTSIDE SOURCES: BROKER shall not obtain or order products or services from outside sources unless the BUYER agrees in writing to pay for the same immediately when payment is due. Examples of such products or services would include, but are not limited to, engineering studies, inspections, soil tests, surveys and title reports.

15. DISCLOSURE OF BUYER'S IDENTITY AND PERSONAL AND FINANCIAL INFORMATION:

- A. Unless otherwise expressly requested in writing, BUYER agrees that the BROKER has the BUYER'S permission to disclose the BUYER'S identity to prospective sellers and any real estate licensees assisting prospective sellers in the transaction.
- B. BUYER agrees to provide the BROKER, upon request, with relevant personal and financial information to assure the BROKER of the BUYER'S ability to acquire property of the character and quality described in this Agreement.

16. NON-ASSIGNMENT OF AGREEMENT: BUYER and BROKER understand and agree that the relationship created by this Agreement is a personal one and that neither the BUYER nor the BROKER shall have the right to assign this Agreement to third parties. Any attempted assignment shall be void and have no legal effect.

17. ATTORNEYS' FEES: In the event of litigation concerning the rights of the BUYER or BROKER pursuant to this Agreement, the BUYER and BROKER agree that the court shall award reasonable attorneys' fees and court costs to whichever party shall prevail in such action, to the extent allowed by law.

18. LACK OF EXCLUSIVITY FOR BROKER: BUYER acknowledges and agrees that BROKER may now or in the future represent other buyers and sellers of similar properties.

19. ELECTRONIC SIGNATURES AND TRANSACTIONS: BUYER and BROKER agree that this transaction may be conducted through electronic means according to the Kansas Uniform Electronic Transactions Act. However, the BROKER has no authority enter into electronic agreements with other parties on behalf of the BUYER unless authorized to do so by a duly executed power of attorney.

20. ACKNOWLEDGEMENT OF RECEIPT OF THE AGREEMENT: BUYER hereby acknowledges and certifies that he or she has received, read and understood a copy of this Agreement.

21. ENTIRE AGREEMENT OF THE PARTIES: This Agreement constitutes the entire agreement between the parties. Any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. There shall be no modification of any terms of this Agreement unless such modification has been agreed to in writing and signed by both parties.

22. FORM AGREEMENT AND RECOMMENDATIONS FOR INDEPENDENT LEGAL ADVICE: This Agreement has been approved as a form contract by the legal counsel of the Kansas Association of REALTORS® for exclusive use by its REALTOR® members. This is a legally binding contract when the BROKER and BUYER sign the Agreement. If not understood, the Kansas Association of REALTORS® and the BROKER recommend that the BUYER seek the advice of an attorney before signing the completed Agreement.

23. SPECIAL CONDITIONS, PROVISIONS OR TERMS:

CAREFULLY READ THE TERMS OF THIS AGREEMENT BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS DOCUMENT BECOMES PART OF A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.

BUYER DATE

BROKER

BUYER DATE

BROKER'S AFFILIATED LICENSEE OR REPRESENTATIVE DATE

BUYER'S MAILING ADDRESS

BROKER'S MAILING ADDRESS

BUYER'S CITY, STATE AND ZIP CODE

BROKER'S CITY, STATE AND ZIP CODE

BUYER'S CONTACT TELEPHONE NUMBER

BROKER'S CONTACT TELEPHONE NUMBER

BUYER'S FAX NUMBER

BROKER'S FAX NUMBER

BUYER'S EMAIL ADDRESS

BROKER'S EMAIL ADDRESS