



COMMERCIAL EXCLUSIVE RIGHT TO SELL OR LEASE AGREEMENT

Document updated:
August 2015

1. **PARTIES:** The parties to this agreement (the "Agreement") are:

OWNER: _____
BROKER: _____

2. **PROPERTY:** OWNER appoints BROKER as OWNER'S sole and exclusive representative to sell or lease the real property, all improvements on the Property, the fixtures described below and any personal property described in Section 3 (the "Property"):

PROPERTY ADDRESS: _____
CITY: _____ **COUNTY:** _____ **STATE:** _____ **ZIP CODE:** _____
LEGAL DESCRIPTION: _____

3. **PERSONAL PROPERTY:** OWNER instructs BROKER to market the Property with the following items of personal property included:

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. **PRICE OR RENT AMOUNT:** OWNER instructs BROKER to market the Property:

A. For sale for the sum of \$ _____ (the "Listing Price") on the following terms agreeable to the OWNER:

B. For lease for a monthly rental price of not less than \$ _____ (the "Rent") for a lease term of not less than _____ months and not more than _____ months on the following terms agreeable to the OWNER:

6. **BROKER'S COMPENSATION:**

- A. If the BROKER or anyone else produces a prospect ready, willing and able to purchase the Property at the Listing Price or lease the Property at the rental rate and on the terms stated in this Agreement, or later agreed upon, or if a condemnation, donation, exchange, lease, sale or transfer of the Property is made by the OWNER or any other person during the term of this Agreement, OWNER agrees to pay the BROKER compensation consisting of a _____% commission or a minimum of \$ _____, whichever is greater, of the sales price or the total Rent and any other payments due to the OWNER under any lease agreements on the Property. In the event of a donation or exchange of the Property, the commission due to the BROKER shall be based upon the appraised value of the Property.
- B. Such commission shall be due and payable in full, in cash or its equivalent, at the consummation of the sale or lease transaction. OWNER agrees to divide any deposit made on a sale or lease transaction and forfeited by a prospective buyer or tenant equally with the BROKER, but the amount of the deposit paid to the BROKER shall not exceed the amount to which the BROKER would be entitled as compensation under this Agreement.
- C. OWNER further agrees to pay the BROKER compensation consisting of a _____% commission of the total Rent and any other payments due to the OWNER under any extensions or renewals of the lease term and for enlargement or substitution of the leased premises. Such commission shall be paid by the OWNER to the BROKER upon the exercise of the renewal or extension option or the date of any enlargement or substitution agreement.

- D. In the event that the Property is leased and thereafter the Property is purchased by any tenant, OWNER agrees to pay the BROKER compensation consisting of a _____% commission of the sales price. BROKER agrees to credit the OWNER the amount of any compensation for leases paid to the BROKER by the OWNER based on Rent to be received by the OWNER after the closing of the sale of the Property. OWNER agrees that the OWNER'S obligation to pay the above-described compensation on a sale of the Property shall survive the expiration of this Agreement.
- E. **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 OWNER a written notice specifying the names of any persons or entities whose attention was called to the Property during the term of this Agreement.
 - (2) OWNER agrees that the BROKER shall be entitled to receive the BROKER'S compensation specified in this Agreement if the OWNER enters into any agreement to donate, exchange, lease, sell or transfer the Property upon any terms to any person or entity identified by the BROKER in the written notice provided under this section during the Protection Period. An "agreement to sell or transfer the Property" shall mean any agreement to transfer all or a substantial part of SELLER'S interest in the Property, including contracts for deed, contracts for sale or lease-option contracts.
 - (3) OWNER and BROKER agree and acknowledge that this section shall survive and continue to bind the OWNER and BROKER after the expiration or termination of this Agreement. OWNER shall not be obligated to pay said BROKER'S compensation if a valid exclusive right to lease or sell agreement is entered into with another licensed real estate broker and the Property is leased during the Protection Period.

7. **MARKETING FEE (SECTION MUST BE CHECKED IF APPLICABLE):**

- A. OWNER agrees to pay a non-refundable marketing fee in the amount of \$ _____ (the "Marketing Fee") to cover the estimated costs that will be incurred by the BROKER to advertise, market and prepare the Property for sale or lease immediately upon the execution of this Agreement. OWNER agrees to pay any and all expenses that will be incurred by the BROKER to advertise, market and prepare the Property for sale or lease.
- B. Upon the consummation of a sale or lease transaction, BROKER shall provide an itemized list of the actual costs incurred by the OWNER to advertise, market and prepare the Property for sale or lease. In the event that that the amount of the Marketing Fee paid by the OWNER to the BROKER upon the execution of this Agreement does not exceed the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale or lease, BROKER shall refund the excess amount from the Marketing Fee to the OWNER upon the consummation of a sale or lease transaction.
- C. In the event that the amount of the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale or lease exceed the amount of the Marketing Fee paid by the OWNER to the BROKER upon the execution of this Agreement, OWNER shall pay the additional amount of funds required to offset the BROKER'S actual costs to advertise, market and prepare the Property for sale or lease upon the consummation of a sale or lease transaction.
- D. In the event that the lease of the Property does not become consummated due to a default of the prospective buyer or tenant or OWNER under the terms and conditions of the lease or sale agreement between the parties, OWNER agrees that any additional funds required to offset the BROKER'S actual costs to advertise, market and prepare the Property for sale or lease shall be paid by the OWNER to the BROKER as if the sale or lease transaction had been consummated.

8. **BROKER'S OBLIGATIONS TO OWNER:** BROKER agrees to and OWNER acknowledges that BROKER will:

- A. Perform the terms of this written Agreement;
- B. Promote the interests of the OWNER with the utmost good faith, loyalty and fidelity;
- C. Present in a timely manner all offers to and from the OWNER;
- D. Disclose to the OWNER all adverse material facts actually known by the BROKER about any prospective buyers or tenants;
- E. Advise the OWNER 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 OWNER 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;
- H. Keep all confidential information about the OWNER 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;
- I. Disclose to any customers and prospective buyers or tenants all adverse material facts actually known by the BROKER, including but not limited to:

- (1) Any environmental hazards affecting the Property that are required by law to be disclosed;
 - (2) The physical condition of the Property;
 - (3) Any material defects in the Property;
 - (4) Any material defects in the title to the Property; or
 - (5) Any material limitation on the OWNER'S ability to perform under the terms of the contract.
- J. Regarding the required disclosures in Section 8(l) of this Agreement, the BROKER owes no duty conduct an independent inspection of the Property for the benefit of any customers or prospective buyers or tenants and owes no duty to independently verify the accuracy or completeness of any statement made by the OWNER or any qualified third party;
 - K. Disclose to any prospective buyers or tenants or OWNER any facts actually 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 prospective tenants or OWNER; and
 - L. Assist with the consummation of any sale or lease agreements on the Property.

9. OWNER'S OBLIGATIONS TO BROKER: OWNER agrees to and BROKER acknowledges that OWNER will:

- A. Represent and warrant that this is the one and only Exclusive Right to Sell or Lease Agreement in effect on the Property and that the OWNER has the capacity to convey merchantable title to or possession of the Property upon the consummation of the sale or lease transaction;
- B. Refer any and all offers or inquiries regarding the Property that are received by the OWNER during the term of this Agreement to the BROKER;
- C. Permit the BROKER to place a "For Lease," "For Rent" or "For Sale" sign on the Property and to remove all other signs appearing on the Property during the term of this Agreement;
- D. Allow the BROKER to accept an Earnest Money deposit and to place that deposit into an escrow or trust account maintained by the BROKER or escrow agent until the consummation of the sale or lease of the Property. OWNER agrees and acknowledges that these funds may be deposited into an interest-bearing account and that the BROKER has the right to retain all interest accruing in this account to compensate for the cost and burden of maintaining such account;
- E. Allow the BROKER to enter the Property at all reasonable times for the purpose of inspecting, previewing or showing the Property to prospective buyers or tenants or other real estate licensees; and
- F. Leave all utilities on at the Property during the term of this Agreement or until possession of the Property by a buyer or tenant, whichever is later, unless provided for otherwise in this Agreement or an agreement to sell or lease the Property.

10. OWNER'S AUTHORIZATIONS TO BROKER: OWNER authorizes BROKER to:

- A. Obtain any and all records and information concerning the OWNER'S Property from the appropriate governmental agencies and other entities; and
- B. Cooperate and share the compensation payable to the BROKER under this Agreement with other licensed real estate brokers who have been employed as buyers' agents, tenants' agents, designated agents, sub-agents or transaction brokers, subject where applicable to authorization as otherwise provided in this Agreement. OWNER agrees that BROKER shall:
 - (1) Offer cooperation to buyers'/tenants' agents: YES NO
 - (2) Offer compensation to buyers'/tenants' agents: YES NO
 - (3) Offer cooperation to designated agents: YES NO
 - (4) Offer compensation to designated agents: YES NO
 - (5) Offer cooperation to sub-agents: YES NO
 - (6) Offer compensation to sub-agents: YES NO
 - (7) Offer cooperation to transaction brokers: YES NO
 - (8) Offer compensation to transaction brokers: YES NO

11. USE OF LISTING DATA AND PROPERTY INFORMATION:

- A. BROKER shall use reasonable efforts to sell or lease the Property on the terms stated in this Agreement. In addition, OWNER:
 - (1) Authorizes the BROKER to submit pertinent information, including virtual tours and images when applicable, concerning the Property to any third party for the purpose of marketing the Property for sale or lease;
 - (2) Authorizes the BROKER to disseminate data about the Property and other information relating to the Property supplied by or on behalf of the OWNER, including creative works depicting the Property, such as virtual tours, images, videos and any textual descriptions of the Property (collectively referred to as "Content") to other real estate licensees and third parties in the BROKER'S sole discretion and to further disseminate or permit third parties to disseminate such Content to potential buyers or tenants through websites on the internet that are owned, operated or controlled by third parties;

- (3) Grants to BROKER an irrevocable, perpetual, non-exclusive and fully sub-licensable and assignable right (through multiple tiers) to use, reproduce, modify, adapt, publish, create derivative works from, distribute, perform and display any photographs, aerial photographs, floor plans, architectural drawings, video images, sounds or other copyrightable material related to the Property (hereinafter referred to as "Works") and to incorporate any such Works (in whole or in part) into other Works in any form, media or technology now known or later developed; and
- (4) Agrees that this non-exclusive license shall survive the termination of this Agreement for any reason whatsoever. OWNER represents and warrants to BROKER that the license granted to BROKER for this Content does not violate or infringe upon the rights, including any copyright rights, of any person or entity. OWNER acknowledges and agrees that all listing content is owned exclusively by the BROKER and that OWNER has no right, title or interest in Content.

12. OWNER'S OBLIGATION TO DISCLOSE ADVERSE MATERIAL FACTS REGARDING THE PROPERTY:

- A. OWNER understands that OWNER has a legal obligation and affirmative duty to be honest by making accurate and complete disclosures of any adverse material facts regarding the Property to prospective buyers or tenants and that the failure to do so may result in civil liability for damages.

(OWNER'S INITIALS REQUIRED)

- B. Upon the signing of this Agreement, the OWNER shall shall not complete a Commercial Property Disclosure Statement (the "Statement") to be provided to prospective buyers or tenants and to update the Statement upon the request of the BROKER or in the event of any material change in the condition of the Property or the discovery of any additional material facts regarding the Property that were not disclosed in prior versions of the Statement.
- C. OWNER agrees to provide any and all inspection reports regarding the Property that are in existence at the time of this Agreement or any inspection reports generated during the term of this Agreement to the BROKER and authorizes the BROKER to disclose such inspection reports to prospective buyers or tenants and other real estate licensees.
- D. OWNER warrants that there are no known material defects in the Property except as will accurately and completely be disclosed on the Statement or in other written disclosures provided to any prospective buyers or tenants of the Property. OWNER agrees to defend, indemnify and hold harmless 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 any reasonable attorneys fees) arising out of any misrepresentation, non-disclosure or concealment by OWNER in connection with the lease of the Property including, without limitation, inaccuracy of information provided by the OWNER for the preparation of listing data, the Statement or otherwise provided or omitted in connection with the sale or lease of the Property.
- E. OWNER agrees to thoroughly review the listing information prepared by the BROKER and advise the BROKER immediately of any errors or omissions. OWNER further stipulates that the dimensions and size of the Property are accurate to the best of his or her knowledge. OWNER agrees to personally assume all responsibility for any claims made by a buyer or tenant with respect to any errors or omissions contained in the information provided to BROKER, any prospective buyers or tenants and other real estate licensees and that the BROKER shall not be responsible in any manner for any errors or omissions.

13. BROKER RECOMMENDS OWNER SEEK LEGAL AND PROFESSIONAL ADVICE:

- A. BROKER recommends that the OWNER seek legal, tax or other professional advice regarding the real estate transaction. BROKER makes no representation or warranty regarding the advisability 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 OWNER is strongly encouraged to seek expert advice in such areas.
- B. BROKER will cooperate with the experts engaged by the OWNER, but the BROKER shall have no liability to the OWNER pertaining to such matters.

14. LIABILITIES FOR INSPECTIONS:

- A. OWNER agrees to defend, indemnify and hold harmless 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 any reasonable attorneys' fees) resulting from any liability for vandalism, theft or damage of any nature to the Property or for personal injury to any persons of the Property.
- B. In consideration of BROKER'S arranging for any inspections at OWNER'S request, OWNER hereby agrees to defend, indemnify and hold harmless 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 any reasonable attorneys' fees) resulting from or in connection with such inspections.

15. BROKERAGE RELATIONSHIP DISCLOSURE:

- A. OWNER understands that the BROKER may show alternative properties not owned by the OWNER to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the OWNER.

- B. Pursuant to Section 16 of this Agreement, OWNER consents does not consent to transaction brokerage, subject to both the BUYER or TENANT and OWNER signing a Transaction Broker Addendum to their respective agency agreements with the BROKER, which must be signed by the BUYER or TENANT prior to writing an offer to purchase or lease the Property and by the OWNER prior to signing the purchase or lease agreement.
- C. Pursuant to Section 17 of this Agreement, OWNER consents does not consent to a designated agent relationship. If applicable, the BROKER or the BROKER'S authorized representative hereby designates _____ to act as the designated agent on the OWNER'S behalf.
- D. Pursuant to Section 16 of this Agreement, OWNER consents does not consent to the above-named designated agent acting as a transaction broker in the event that he or she is also the designated agent for the BUYER or TENANT, subject to both the BUYER or TENANT and OWNER signing a Transaction Broker Addendum to their respective agency agreements with the BROKER, which must be signed by the BUYER or TENANT prior to writing an offer to purchase or lease the Property and by the OWNER prior to signing the purchase or lease agreement.

16. OWNER'S ACKNOWLEDGEMENT OF THE POTENTIAL FOR BROKER TO ACT AS A TRANSACTION BROKER:

- A. OWNER acknowledges that the BROKER may have clients who have retained the BROKER to represent them as a buyer or tenant in the purchase or lease of property. If a buyer or tenant client becomes interested in making an offer on the OWNER'S Property, then the BROKER would be in a position of representing both the prospective buyer or tenant and the OWNER in that transaction unless designated agents have been appointed. Such representation would constitute dual agency, which is illegal in Kansas.
- B. With the informed consent of both the BUYER or TENANT and OWNER, 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.

17. OWNER'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 tenant or owner client to the exclusion of all other affiliated licensees. If a designated agent is appointed to represent the OWNER, OWNER understands that:
 - (1) The designated agent will perform all of the duties of an OWNER'S agent and will be the OWNER'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 buyer or tenant in the sale or lease of the OWNER'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 OWNER is also the designated agent of a buyer or tenant who is interested in purchasing or leasing the OWNER'S Property, the designated agent cannot represent both the OWNER and the buyer or tenant. With the informed consent of both the buyer or tenant and OWNER, 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 or tenant 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 OWNER, may specifically designate an affiliated licensee who will act as a designated agent for the OWNER.

18. TITLE EVIDENCE: If the Property is sold to a buyer pursuant to this Agreement, OWNER has been informed of the OWNER'S responsibility to provide the buyer of the Property with evidence of clear title to the Property as required by the purchase contract. SELLER authorizes the BROKER to order title evidence for the Property through _____ (name of the title insurance vendor). Title to the Property is vested in the name of _____.

19. NOTICE TO OWNERS WHO ARE FOREIGN PERSONS: An OWNER who is a foreign person should consult an attorney or accountant who is familiar with the Foreign Investment in Real Property Act before entering into negotiations for the sale of the Property.

20. NON-ASSIGNMENT OF AGREEMENT: OWNER and BROKER understand and agree that the relationship created by this Agreement is a personal one and that neither the OWNER 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.

21. ATTORNEYS' FEES: In the event of litigation concerning the rights of the OWNER or BROKER pursuant to this Agreement, the OWNER 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.

22. LACK OF EXCLUSIVITY FOR BROKER: OWNER acknowledges and agrees that BROKER may now or in the future represent other buyers or tenants and owners of similar properties.

23. ELECTRONIC SIGNATURES AND TRANSACTIONS: OWNER 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 OWNER unless authorized to do so by a duly executed power of attorney.

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

25. 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.

26. 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 OWNER sign the Agreement. If not understood, the Kansas Association of REALTORS® and the BROKER recommend that the OWNER seek the advice of an attorney before signing the completed Agreement.

27. 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.

<hr/> OWNER _____ DATE _____	<hr/> BROKER _____
<hr/> OWNER _____ DATE _____	<hr/> BROKER'S AFFILIATED LICENSEE OR REPRESENTATIVE _____ DATE _____
<hr/> OWNER'S MAILING ADDRESS _____	<hr/> BROKER'S MAILING ADDRESS _____
<hr/> OWNER'S CITY, STATE AND ZIP CODE _____	<hr/> BROKER'S CITY, STATE AND ZIP CODE _____
<hr/> OWNER'S CONTACT TELEPHONE NUMBER _____	<hr/> BROKER'S CONTACT TELEPHONE NUMBER _____
<hr/> OWNER'S EMAIL ADDRESS _____	<hr/> BROKER'S EMAIL ADDRESS _____