

SOUTH DAKOTA BUYER AGENCY AGREEMENT

I. The Parties. This South Dakota Buyer Agency Agreement (“Agreement”) made on _____, 20____ is by and between:

Buyer: _____ with a mailing address of _____,
City of _____, State of _____ (“Buyer”)

AND

Agency: _____ (“Broker”) of _____ (“Agency”) with a
mailing address of _____, City of _____, State
of _____. Collectively, the Buyer and Agency shall be referred to as the
“Parties”.

If for any reason the Broker is not able to fulfill their duties under the terms and conditions of this Agreement, another agent from the Agency may be appointed during the Listing Period of this Agreement. Any person or entity that the Buyer enters into a contractual agreement for real estate shall be referred to as a “Seller” in this Agreement.

II. Services Provided. Buyer hereby agrees to hire the Agency on a(n): (check one)

- **Exclusive Basis:** To accept the terms of this Agreement and communicate with the Agency on an exclusive basis in their efforts to assist in acquiring real property that meets the wants and needs of the Buyer through either purchase, option, exchange, trade, or lease. The Commission, under an exclusive basis, is due and payable even under the circumstance the Buyer acquires real property on their own without the assistance or involvement of the Agency.

- **Non-Exclusive Basis:** To accept the terms of this Agreement and communicate with the Agency on a non-exclusive basis in their efforts to assist in acquiring real property that meets the wants and needs of the Buyer through either purchase, option, exchange, trade, or lease. The Commission, under a non-exclusive basis, is due and payable only if the Buyer acquires real property with the assistance and involvement of the Agency. In the event the Buyer purchases real property during the Listing Period without the use of the Agency, the Agency shall not be due a Commission.

III. Period of Agreement. This Agreement shall start on _____, 20____ (“Effective Date”) and end on _____, 20____ at 12:00 midnight (“Listing Period”), unless the expiration date is extended in writing.

- a.) **Listing Period Extension.** The Commission provided shall be due if real property is acquired in accordance with Section II within ____ days (“Extension Period”) after the expiration of the Listing Period to anyone with whom the Broker or Agency has negotiated unless the Buyer is in agreement, in good faith, with another real estate agency. The term “negotiation” shall include obtaining information about real property, showing real property, or presenting an offer on the real property. All rights under this Section shall terminate upon the expiration of the Extension Period.

IV. Compensation. In the event real property is acquired under Section II of this Agreement, the Buyer agrees to compensate the Agency under the following terms and conditions:

- a.) **Listed Property.** To pay the Agency a commission in the amount of ____% or \$_____ of the purchase price or the amount offered by the listing agency, whichever is greater (“Commission”).
- b.) **Unlisted Property.** To pay the Agency a commission of ____% or \$_____ (“Commission”).
- c.) **Retainer Fee.** This Agreement shall have no retainer fee a non-refundable retainer fee in the amount of \$_____ to obtain the Agency’s services under this Agreement (“Retainer Fee”). If a Commission is paid the Retainer Fee shall be deducted from the total Commission amount. The Commission is due and payable at closing by the Buyer. The amount or rate of real estate commissions is not fixed by law. The commission is set by each Broker individually and may be negotiable between the Buyer and the Broker.
- d.) **Leasing.** During the Listing Period, if the Agency finds a ready, willing, and able Landlord that agrees to rent real property to the Buyer, the Agency shall be due _____ percent (____%) of the total rent amount stated in the rental agreement for the lease term. The lease term shall be defined as the period between the start and end dates listed in the rental agreement, not including any renewal period(s). If the Buyer agrees to rent the real property on a month-to-month basis, the Agency shall be due the equivalent of one (1) month’s rent (“Commission”).

V. Buyer’s Identity. The Buyer agrees and directs the Broker to: (check one)

- **Disclose the Buyer’s Identity.** When presenting an offer, orally or in writing, the Broker agrees to disclose the identity of the Buyer.

- **Exclusive Basis:** When presenting an offer, orally or in writing, the Broker agrees to keep the Buyer’s identity anonymous. The Buyer’s identity must remain confidential through the expiration of the Listing Period unless written consent is granted by the Buyer. If the Buyer’s identity is released by the Broker during the Listing Period, the Buyer shall be entitled to monetary damages equal to the fullest extent under law.

VI. Agency Disclosure. Buyer recognizes that, under this Agreement, a relationship has been established between the Buyer and Agency. The Agency’s policy regarding other agents, specifically those not represented by the Agency, includes, but is not limited to, cooperating with other agencies acting as listing agents, sharing compensation with listing agents, and paying other agencies in the same manner representing their Sellers.

VII. Disclosed Dual Agency. Due to certain events, the Broker may be required to act as the only licensee involved between the Buyer and Seller to facilitate the transaction between the parties. Under such circumstance, the Broker shall disclose to Buyer their intention to act as a disclosed dual agent or similar role. If a Seller of real property is produced by the Broker, or by a licensee in the same Agency as the Broker, the Buyer consents to the Broker acting in such a role and agrees to allow the Broker to collect compensation from the Seller or other parties. While performing this role, Broker agrees to conduct themselves in a manner that does not adversely affect the Buyer or Seller in any way, including, but not limited to, stating the Seller is willing to sell for a lesser price than the asking price, stating the Buyer is willing to pay more than an offer that is made or suggested, or disclosing any type of financial information that would negatively affect the other party.

Buyer has read this Section and fully comprehends and understands the concept of Disclosed Dual Agency under the laws in the State.

Therefore, the Buyer hereby agrees to **ALLOW** Disclosed Dual Agency **NOT ALLOW** Disclosed Dual Agency.

VIII. Buyer's Duties. Buyer agrees to work with the Agency in accordance with Section II of this Agreement in addition to the following:

- a.) **Financial Records.** Buyer agrees to submit any and all financial information to the Agency in order to verify the Buyer's ability to purchase real property. This includes, but is not limited to, documentation related to tax returns, pay stubs, bank statements, credit reports, pre-qualification or pre-approval letters, outstanding debts or liens, certificates of ownership, and any other information that may assist in the Buyer's ability to purchase real property.
- b.) **Contact with 3rd Parties.** Buyer recognizes that for the Agency to perform their services to the best of their abilities, that the Buyer contact the Agency before visiting an open house, contacting another agency, contacting a homeowner directly, or making any type of communication that involves expressing interest in real property.
- c.) **Exclusive Responsibility.** Buyer recognizes that ultimately it is their sole responsibility to verify any and all information provided to Buyer by the Broker. Furthermore, Buyer agrees to indemnify and hold the Broker harmless from any and all loss, cost, expense, attorney fees, damage or claim arising out of this Agreement, including without limitation, liability resulting from incomplete or inaccurate information provided to Broker.

IX. Disclaimer. Buyer acknowledges that the Broker is not a professional or expert in the matters of law, Federal or State tax codes, financing, surveying, engineering, architectural, structural, environmental, other physical conditions or non-physical details of real property. In addition, the Broker has advised and recommended the Buyer to seek expert assistance for advice on such matters. Broker makes no warranty or guarantee concerning the service of such experts or their products, the condition of property, the absence of defects therein, or the suitability of such property for Buyer's purposes.

X. Dispute Resolution. In connection with the purchase of the real property, the Buyer and Broker mutually covenant, stipulate and agree that in connection with the resolution of any dispute or controversy arising out of or relating to this Agreement or concerning the real property covered hereby, or the breach, termination, or validity thereof, shall be administered by submitting to binding arbitration. Due to this Agreement involving interstate commerce, the Agreement has been and will continue to be regulated by the laws in the United States of America; and, that the contract(s) entered into by the Parties concerning the real property evidence transactions involving and affecting commerce. The Parties agree that all disputes not barred by applicable statutes of limitations or otherwise barred by law, resulting from or arising out of this Agreement or the purchase contemplated; that Buyer and Broker agree to submit such dispute(s) to binding arbitration, pursuant to the provisions of 9 U.S.C Section 1, et seq and according o the Commercial Rules of the American Arbitration Association then existing in the County where the real property being sold and located. The prepaid arbitration filing fees and all other prepaid costs of the arbitration proceeding shall be paid by the party seeking to invoke said arbitration, with the assignment of those costs to be divided between the parties as the arbitrator sees fit in setting the Arbitration Award. It is hereby agreed that it is the intent of the Parties that the Arbitrator's Award is to be final and binding and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof. THIS

ARBITRATION SHALL BE IN FULL LIEU OF ANY CIVIL LITIGATION IN ANY COURT, AND IN LIEU OF ANY TRIAL BY JURY.

XI. Fair Housing. Broker agrees and adheres to the standard of showing real properties made available to the Buyer without regard to race, color, religion, age, handicap, familial status, or national origin.

XII. Other Clients. Buyer is aware and acknowledges that the Broker may or may not have other clients with similar wants and needs. Broker shall not favor any client over the Buyer for any reason.

XIII. Binding Effect. This Agreement shall be binding upon the Buyer's successors, assigns, heirs, and beneficiaries.

XIV. False Information. Buyer agrees to indemnify the Agency and hold harmless from any and all claims, which may lead to a dispute, due to false information provided. Such indemnification shall include the Buyer's reimbursement to the Agency for any attorneys' fees arising from any dispute brought against the Agency.

XV. Legal Signature. This Agreement may be executed and delivered by any party herein by sending a facsimile of the signature or by a legally recognized digital or electronic signature. Such legal signature shall be binding on the party so executing it upon receipt of signature by the other party.

XVI. Governing Law. This Agreement shall be governed under the laws located in the State of South Dakota.

XVII. Severability. This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provisions or section. In such case, the affected provision or section shall be enforced as so limited.

XVIII. Additional Terms and Conditions. _____

XIX. Entire Agreement. This Agreement constitutes the entire agreement between the Buyer and Broker and supersedes all prior discussions, negotiations, and agreements between the Buyer and Broker whether oral or written. Any understanding, agreement or promise shall bind neither Buyer not Broker, expressed or implied, not specified herein.

This Agreement is intended to be the legal and binding agreement of the Buyer and Broker. The Parties acknowledge receipt of a signed copy of this Agreement.

Buyer's Signature _____ Date: _____
Print Name _____

Buyer's Signature _____ Date: _____
Print Name _____

Broker's Signature _____ Date: _____
Print Name _____
Agency Name: _____

