

### 9.3 EXCLUSIVE LISTING AGREEMENT

1 This is a legally binding agreement establishing an exclusive agency relationship between Seller, Principal Broker and Principal Broker's  
2 Firm and establishing Seller's obligations to compensate Principal Broker and Firm. If Seller does not understand this agreement, Seller  
3 should seek the advice of legal and financial professionals.

4 **1. Parties to this Agreement.**

5 Seller \_\_\_\_\_ Broker \_\_\_\_\_  
6 Seller \_\_\_\_\_ Principal Broker \_\_\_\_\_  
7 Seller \_\_\_\_\_ Principal Broker's Firm \_\_\_\_\_ ("Firm")  
8 Seller \_\_\_\_\_

9 **2. Purpose.** This Agreement establishes Firm's exclusive right to sell the property located at \_\_\_\_\_  
10 ("Property"), and more particularly described in the associated MLS Data Input Form (attach as an exhibit to this Agreement).

11 **3. Exclusive Right to Sell.** Under this Exclusive Right to Sell, Seller agrees that Firm shall be entitled to a commission under the terms  
12 described in Section 7 below ("Brokerage Fee").

13 **4. Agents.** By signing below, Seller understands and agrees that this Agreement creates an agency relationship with Broker, Principal  
14 Broker, \_\_\_\_\_ [insert name(s) of additional agents acting  
15 as seller's agent], and with any other agent associated with Firm that Firm appoints to act as Seller's agent (collectively and individually  
16 "Seller's Agent"). Seller acknowledges having received the Oregon Real Estate Agency Disclosure Pamphlet at first contact with Seller's  
17 Agent and represents that Seller understands the contents of said Pamphlet including the legal obligations and duties owed by Agent  
18 to the Seller and to all parties in a transaction. A **Form 9.2 Disclosed Limited Agency Agreement** will be required (i) if buyer's agent is  
19 associated with Firm or (ii) if Principal Broker or any Seller's Agent intend to represent both a buyer and Seller in this transaction.

20 **5. Term.** This Agreement shall commence when signed by all parties in Section 21 below, and expires at 11:59 p.m. on \_\_\_\_\_  
21 \_\_\_\_\_ [Date], or at the end of 24 months, whichever is sooner. If Seller accepts an offer to purchase or lease the Property,  
22 the Term extends through the date of closing for that transaction, up to a maximum of 24 months. Upon expiration, this Agreement  
23 terminates except Seller remains obligated under Section 7(iv) below.

24 **6. Listing Terms.** Seller agrees to list the Property for \$ \_\_\_\_\_ ("Listing Price").

25 **7. Brokerage Fee. THE BROKERAGE FEE IS A FULLY NEGOTIABLE FEE FOR SERVICES RENDERED AND IS NOT FIXED, CONTROLLED, OR**  
26 **RECOMMENDED BY LAW, OREGON REALTORS®, ANY MLS, OR ANY OTHER PERSON NOT A PARTY TO THIS AGREEMENT.**

27 Seller shall pay a Brokerage Fee if any of the following occurs:

- 28 (i) Seller sells the Property during the term of this Agreement or any extension or renewal of the Agreement Term; or  
29 (ii) Seller's Agent produces an offer from a buyer who is ready, willing, and able to purchase the Property at or above the Listing Price  
30 and on other terms acceptable to the Seller during the term of this Agreement or any extension or renewal of the Agreement  
31 Term; or  
32 (iii) Seller accepts an offer on Property but refuses to close the sale on the terms of the accepted offer  
33 (iv) Within ☐ **120 Calendar Days** or ☐ \_\_\_\_\_ **Calendar Days** after expiration or termination of this Agreement, Seller sells Property  
34 to a person with whom Seller's Agent placed Seller in contact.

35 **The Brokerage Fee shall be equal to ☐ \_\_\_\_\_ % of the Gross Sales Price, or shall be equal to ☐ \$\_\_\_\_\_.**

36 ☐ If this box is checked and Buyer is unrepresented, the Brokerage Fee in line 34 shall instead be equal to ☐ \_\_\_\_\_ % of the Gross  
37 Sales Price, or shall be equal to ☐ \$\_\_\_\_\_.

38 The Gross Sales price is the sales price unmodified by seller concessions or buyer upgrades. The Brokerage Fee will be paid to Firm at  
39 Closing of the sale. Seller instructs Escrow to pay Firm the Brokerage Fee out of proceeds of the Sale.

40 THE BROKERAGE FEE AMOUNT IN THIS SECTION ONLY REPRESENTS SELLER'S PAYMENT OBLIGATION TO SELLER'S AGENT; IT DOES  
41 NOT INCLUDE ANY COMPENSATION FOR BUYER'S AGENT. IF SELLER AUTHORIZES AGENT (EITHER BROKER, PRINCIPAL BROKER OR  
42 BOTH) TO ACT AS A DISCLOSED LIMITED AGENT REPRESENTING BOTH SELLER AND BUYER, ANY COMPENSATION EARNED BY AGENT  
43 FOR BUYER REPRESENTATION WILL BE ESTABLISHED BETWEEN AGENT AND BUYER.

44

**Seller Initials** \_\_\_\_\_

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45 **8. Seller Contributions to Buyer Brokerage Fees and Other Buyer Closing Costs.** The Brokerage Fee in Section 7 **DOES NOT** include  
46 any compensation for buyer's real estate brokerage. Under multiple listing service rules, if buyer is using a real estate agent, buyer  
47 and buyer's agent must enter a written agreement describing the compensation owed by buyer to buyer's real estate brokerage.  
48 **Buyer brokerage compensation is fully negotiable between buyer and buyer's real estate brokerage and is not fixed, controlled, or**  
49 **recommended by law, Oregon REALTORS®, the MLS, or any other party.** Some buyers cannot afford to pay brokerage fees out of  
50 pocket, and brokerage fees cannot be directly financed through buyer's loan. Buyers may include a provision in their purchase offer  
51 specifying an amount for seller contributions to buyer brokerage fees and other buyer closing costs. Seller is not required to accept  
52 such offers or make such contributions. Buyers' agents may inquire in advance of submitting offers about seller's willingness to accept  
53 offers that include seller contributions to buyer brokerage fees and other closing costs. Agent will communicate that buyers are  
54 encouraged to submit all offers, and Seller will consider all offers based on their overall price and terms.

55 ☐ If this box is checked, Agent is authorized to communicate Seller's willingness to consider Buyer offers that contain a request for  
56 Seller contribution towards Buyer Brokerage Fees.

57 **9. Multiple Brokerage Fees Prohibited.** If Seller lists the Property with a subsequent duly licensed real estate broker or principal broker  
58 after expiration or mutually agreed upon termination of this Agreement, and application of this Agreement would result in Seller  
59 paying more than one Brokerage Fee, no Brokerage Fee will be due under this Agreement. This provision does not apply if Seller  
60 unilaterally terminates.

61 **10. Earnest Money Forfeited.** Seller's Agent and Seller agree that (Choose one):

- 62 ☐ If a Sale Agreement is terminated and the buyer forfeits their Earnest Money, Seller's Agent's expenses, including without  
63 limitation advertising costs and attorney fees, will be paid from the forfeited Earnest Money. Up to half of the remaining funds  
64 will be disbursed to Firm, up to the Brokerage Fee. All remaining funds will be disbursed to Seller.  
65 ☐ If a Sale Agreement is terminated and the buyer forfeits their Earnest Money, all funds will be disbursed to Seller.

66 **11. Insufficient Funds.** If the proceeds from the sale of Property are insufficient to cover closing costs, Seller agrees and acknowledges  
67 that Seller will remain responsible for paying all closing costs and debts including the Brokerage Fee.

68 **12. Termination; Early Termination Fee.** The parties may mutually terminate this Agreement with a written termination statement  
69 signed by Seller and Principal Broker or Broker acting on behalf of Principal Broker. Seller may unilaterally terminate this Agreement  
70 before the end of the Term ("Early Termination"). As a condition required for an Early Termination, Seller shall pay an "Early  
71 Termination Fee" of ☐ 25% of the expected Brokerage Fee in section 7 above or ☐ \$\_\_\_\_, representative of the reasonable cost of  
72 Seller's Agents' expenses and time up to the moment of Seller's Early Termination. If a Brokerage Fee is payable to Firm at the time of  
73 the Early Termination, Seller shall remain obligated to pay the Brokerage Fee to Firm at Closing, but will not be required to pay an  
74 Early Termination Fee. If a Brokerage Fee is payable to Firm under Section 7(iv) above, the amount of any Early Termination Fee paid  
75 by Seller shall be deducted from the Brokerage Fee.

76 **13. Services; Authority.** Seller authorizes Seller's Agent to market the Property and authorizes Seller's Agent to:

- 77 (i) Place a "For Sale" sign on the Property and remove other similar signs;  
78 (ii) Turn on, leave on, or cause utility providers to do so, any of the Property's utilities to permit showing of Property;  
79 (iii) Gather and disclose any information pertaining to encumbrances on or condition of the Property;  
80 (iv) Access the Property at reasonable times to show it to prospective buyers;  
81 (v) Advertise the Property and information about the Property in any manner deemed appropriate by the Seller's Agent;  
82 (vi) Accept deposits on behalf of Seller;  
83 (vii) Deliver documents, disclosures, and addendums to buyers on behalf of Seller;  
84 (viii) Share commissions, compensation, finder's fees or Brokerage Fees with cooperating brokers and cooperating firms;  
85 (ix) Communicate with Seller by telephone, text messaging, facsimile, email and/or other electronic means during and after the  
86 Term of this Agreement.

87 If Property is occupied by a tenant, Seller will obtain permission and authority from tenant to permit the above services where  
88 necessary. Seller authorizes marketing of the Property to begin on \_\_\_\_\_ ("Marketing Date").

89 **14. Optional Authorizations.** By checking the below boxes, Seller further authorizes only the following selected actions:

- 90 ☐ Seller's Agent may place a lockbox on the Property, with Seller responsible for all risk of loss or damage stemming from such  
91 lockbox;

Seller Initials \_\_\_\_\_

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- ☐ Seller's Agent may advertise the Property on the Internet in addition to the multiple listing services selected below
- ☐ Seller's Agent may advertise the Property with the following multiple listing services, and Seller authorizes the uncompensated use, relicense, repurpose, and display of Property photos and Property data on the same: ☐ Regional Multiple Listing Service (RMLS) ☐ Oregon Data Share ☐ Oregon Coast Multiple Listing Service (OCMLS) ☐ Clatsop MLS (CMLS) ☐ Willamette Valley MLS (WVMLS) ☐ Intermountain MLS (IMLS)

**15. Seller Representations.** Seller represents and warrants the following:

- (i) Seller has authority to convey marketable and insurable title to the Property and to enter into this Agreement;
- (ii) Seller will cooperate with Seller's Agent to sell the Property;
- (iii) Seller shall accurately and truthfully complete a **Property Disclosure Statement** if required by law or contract;
- (iv) If Property is subject to Lead-Based Hazard disclosures, Seller shall accurately and truthfully complete any required disclosure statements;
- (v) Seller acknowledges that Seller's Agent may not have made inquiries or investigations into the Property and may rely on Seller's disclosure statements;
- (vi) All information provided by Seller and all information Seller will provide is and will be correct, complete, and not misleading to the best of Seller's knowledge and ability;
- (vii) Seller will install approved smoke and carbon monoxide detectors as required by Oregon law;
- (viii) Seller will comply with all laws relating to the Property and sale thereof, including fair housing laws; and
- (ix) On the closing of the sale and date of possession, the Property will be free from material defects and in substantially its present condition.

**16. FIRPTA.** The Foreign Investment in Real Property Tax Act of 1980 requires buyers withhold certain amounts of money at closing to cover the tax when purchasing Foreign-Person owned property. To avoid delays in closing, Seller must complete a FIRPTA disclosure based on the following: ☐ Seller is a foreign person under FIRPTA; or ☐ Seller is not a foreign person under FIRPTA

**17. Indemnification.** Seller shall protect, defend, indemnify, and hold harmless Seller's Agent, Firm, and their respective agents, assigns and employees from and against:

- (i) Any damages other than for those caused by Seller's Agent's failure to comply with duties owed to all parties in a transaction as a result of Seller's Agent's representation of Seller;
- (ii) all losses, costs, liabilities, claims, damages, and expenses of every character and kind, as incurred, relating to or arising out of inaccuracy, nonfulfillment or breach of any representation, warranty, covenant or agreement made by Seller in the Sale Agreement;
- (iii) any legal action including any counterclaim based on facts that, if true, would constitute a breach of any representation, warranty, covenant or agreement made by Seller in the Sale Agreement;

relating to or arising out of any act or omission of Seller prior to the Closing Date; or information and disclosures about the Property provided by Seller.

**18. Dispute Resolution.** Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement, shall be exclusively resolved in accordance with this dispute resolution provision, under the laws of Oregon. All disputes within the jurisdiction of the small claims court shall be submitted to small claims court in the county where the Property is located. All disputes not within the jurisdiction of the small claims court will be resolved through mediation, and if unresolved through mediation, to binding arbitration through Arbitration Services of Portland (ASP) according to the then-existing rules of ASP. The prevailing party in any dispute resolution procedure (as determined by the judge, mediator or arbitrator, as applicable) shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration.

The following matters are excluded from this Dispute Resolution provision:

- (i) Any matter within the jurisdiction of probate, small claims, or bankruptcy court;
- (ii) Matters that must be exclusively resolved under Article 17 of the Code of Ethics and Professional Standards Policies of the National Association of REALTORS®; and
- (iii) Matters related to contracts with Seller that predate this Agreement and contain a mandatory mediation or arbitration provision.

SELLER HAS BEEN ADVISED TO CONSULT INDEPENDENT LEGAL COUNSEL TO UNDERSTAND THE PROVISIONS OF THIS AGREEMENT AND BY CONSENTING TO THIS AGREEMENT, HEREBY WAIVES THE CONSTITUTIONAL RIGHT TO BRING ISSUES AND CLAIMS RELATED TO THIS

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141 AGREEMENT TO A TRIAL BY JUDGE OR JURY, OTHER THAN SMALL CLAIMS COURT PROCEEDINGS, IN ANY STATE OR FEDERAL ACTION,  
142 PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

143 **19. Fair Housing.** Seller agrees to comply with all federal, state, and local fair housing laws. Seller may not discriminate against potential  
144 buyers based on the buyer’s status as a member of a protected class. Protected classes under federal law include race, color, religion,  
145 national origin, sex, gender, disability, familial status. Oregon additionally identifies sexual orientation, gender identity, marital status,  
146 source of income, and status as a victim or survivor of domestic violence as protected classes. Some localities also protect domestic  
147 partnerships, ethnicity, age or other classes and seller is responsible for learning about and complying with local laws.

148 **20. Modification.** No provision in this Agreement may be modified except in a writing signed by Seller and Principal Broker.

149 **21. Additional Provisions.** \_\_\_\_\_  
150 \_\_\_\_\_  
151 \_\_\_\_\_

152 **22. Signatures**  
153 Seller: \_\_\_\_\_ Dated: \_\_\_\_\_  
154 Seller: \_\_\_\_\_ Dated: \_\_\_\_\_  
155 Seller: \_\_\_\_\_ Dated: \_\_\_\_\_  
156 Seller: \_\_\_\_\_ Dated: \_\_\_\_\_  
157 Broker[signing for Broker, individually, and on behalf of Principal Broker] : \_\_\_\_\_  
158 Dated: \_\_\_\_\_

Seller Initials \_\_\_\_\_