



## LISTING AGREEMENT FOR THE SALE OF REAL PROPERTY

Property Address: \_\_\_\_\_

List Price: \$ \_\_\_\_\_

Owner / Seller: \_\_\_\_\_

### ACKNOWLEDGEMENT

**THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER COMPENSATION IS NOT SET BY LAW OR BY ANY REALTOR® ASSOCIATION OR ONEKEY® MLS AND IS FULLY NEGOTIABLE BETWEEN OWNER AND THE LISTING BROKER.**

### EMPLOYMENT

1. The BROKER (the Executive Group Realty) agrees to act as a special limited agent for the OWNER(s) for the sole purpose marketing the property in an attempt to find a Purchaser and/or Tenant to buy and/or rent the property with details as described and verified by OWNER, at the price and conditions set below and incorporated herein.
2. The parties agree that the BROKER represents the OWNER as Listing/Seller's agent, and under such authority granted by the OWNER, BROKER may at their own discretion publish the listing of the property description and details and share it with other BROKERS.
3. The OWNER(s) authorizes the BROKER to enter the information supplied by the OWNER, and any photographs, images, graphics and video recordings of the OWNER's property whether taken by BROKER'S agent, supplied by OWNER or otherwise (listing content), into a listing content compilation owned by OneKey®. The OWNER understands and agrees that said compilation is exclusively owned by OneKey® who alone possesses the right to publish said compilation in any media form it deems appropriate including, the World Wide Web. OneKey® may license, sell, lease and commercially utilize its compilation. Among other uses OneKey® may license or sell the listing content and resell the same. Such aggregated content shall not contain any personal information about the OWNER other than the OWNER's name. If any photograph, image, graphics or video recordings were created by the OWNER and are delivered to BROKER for use in the OneKey® compilation by virtue of such delivery and the execution of this agreement the OWNER(s) hereby irrevocably assign and transfers to BROKER any and all copyright rights and other intellectual property rights in the foregoing.
4. BROKER agrees to use its experience and knowledge to determine the appropriate marketing plan for the property including all forms of advertising. The OWNER(s) grants to the BROKER full discretion to determine an appropriate marketing plan for the property.
5. The OWNER shall not offer nor show their property for sale or rent to any prospective buyers or tenants but shall refer all such prospective buyers or tenants to the BROKER, nor shall the OWNER negotiate the sale or rental of the property with a buyer unless the BROKER participates in such negotiations.

### BROKER LISTING FEE

6. LISTING BROKER has explained and advised OWNER that OWNER is not required to offer compensation to other brokers or agents representing buyers ("Buyer Brokers") that procure a buyer for the PROPERTY ("Buyer's Broker Fees"). An OWNER may receive requests from a buyer to pay Buyer's Broker Fees as part of the purchase offer or separately. The OWNER can accept, deny or negotiate the amount of Buyer's Broker Fees being requested by the

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Buyer. LISTING BROKER will disclose in writing to OWNER, and obtain OWNER's authority, for any offer to pay Buyer's Broker Fees made to another Buyer Broker. This disclosure will include the amount or rate of any such offer to a Buyer Broker and will be made in advance of any payment or agreement to pay. Any agreement to pay Buyer Broker's Broker Fees will be memorialized in a Confirmation of Seller's Agreement to Pay Buyer's Broker signed by the parties and/or the binding contract of sale. \_\_\_\_\_ [Initials]

### COMPENSATION

7. The OWNER(s) hereby agrees to pay the BROKER a **listing commission** in the amount of \_\_\_\_\_% of the selling price for representing the OWNER in the sale of the above referenced Real Estate. The Owner grants Broker authority to disburse their funds freely to pay services necessary to market the property which could include a fee to a Buyer's Broker for assistance in locating a buyer and securing a sale.

The OWNER furthermore agrees to allow the buyer's broker to add additional commission onto the price of the house and understands that this added commission is not mandatory but used as an incentive to promote further exposure of the property to other brokers.

The additional commission is separate and not included in what the OWNER is paying the BROKER.

Said total commission shall be earned and payable under any of the following conditions:

- (a) If the BROKER or Cooperating BROKER produces a buyer ready, willing and able to purchase the property.
  - (b) If through the BROKER's or Cooperating BROKER's efforts a buyer and the OWNER(s) reach an agreement upon all the essential terms of a transaction.
  - (c) If the property is sold or rented during the term of this Agreement whether or not the sale or rental is a result of the BROKER'S efforts and even if the property is sold as a result of the efforts of the OWNER(s) or any other BROKER or agent not acting under this agreement.
  - (d) If the BROKER or Cooperating BROKER is the procuring cause of a transaction.
8. The above compensation shall be paid to the BROKER in the event that the OWNER enters into a contract of sale to sell the property or actually sells the property within a period of 45 days after the termination of the agreement to any person (buyer) who has been shown the property during the term of this agreement. This paragraph shall not apply if the OWNER(s) has in good faith re-listed the property with another broker after the expiration of this Agreement and prior to the commencement of negotiations with such buyer.
9. In the event that during the term of this contract the OWNER enters into a contract of sale with a buyer and then the buyer defaults on the transaction then the OWNER agrees to share evenly with the BROKER the down payment that has been forfeited by the buyer.

### GOOD FAITH

10. In the event the OWNER(s) signs a binder or contract of sale during the term of this agreement, the parties agree that the expiration date set forth below shall be extended until the time that said contract of sale is fully performed or until such time as said contract fails to be performed either by its terms or because of the default of one of the parties. Nothing herein contained is intended to reduce the term of this Agreement.
11. The OWNER(s) agrees at all times to act in good faith to assist the BROKER in the performance of the BROKER'S obligations and to fully cooperate with the BROKER in the BROKER'S efforts to find a buyer for the property and complete the transaction contemplated by this agreement. OWNER(s) also agree that in the event that they decide to take the house off the market for any reason, that they shall compensate BROKER for all expenses including time spent representing the sale. The time shall be calculated at \$ 350.00 an hour. Expenses at face value of invoice.



## TERM OF AGREEMENT

12. This agreement shall commence on \_\_\_\_\_ and shall terminate at midnight on \_\_\_\_\_.
13. Any notices required to be given under this agreement shall be in writing and may be given to the party by hand delivery of such notice, e-mail, confirmed facsimile or by certified or ordinary mail.

## MISCELLANEOUS PROVISIONS

14. ALL ORAL OR PRIOR AGREEMENTS BETWEEN THE PARTIES ARE HEREBY MERGED INTO THIS AGREEMENT AND THE PARTIES AGREE THAT THEIR RELATIONSHIP SHALL BE GOVERNED SOLELY BY THIS AGREEMENT AND NOT BY ANY OTHER PRIOR ORAL OR WRITTEN REPRESENTATIONS OR AGREEMENTS.
15. The parties agree that no change, amendment, modification or termination of this agreement shall be binding on any party unless the same shall be in writing and signed by the parties hereto subsequent to the date of this agreement.
16. The OWNER(s) understands and agrees that neither the Long Island Board of Realtors, Inc. nor the OneKey® are parties to this agreement and that the BROKER is not an agent for either of said organizations and has no authority to make any representation, agreement or commitment with respect to either of said corporations other than those contained in the printed portions hereof.

## REAL PROPERTY LAW 294-b NOTICE

17. Effective January 1, 2009, BROKER shall have the rights set forth in Real Property Law Section 294-b. Notice is hereby given to the seller that: **AT THE TIME OF CLOSING, YOU MAY BE REQUIRED TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK IN THE EVENT THAT YOU DO NOT PAY THE BROKER HIS OR HER COMMISSION AS SET FORTH HEREIN. YOUR OBLIGATION TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK MAY BE WAIVED BY THE BROKER.**
- (a) Commission Escrow Act. Alternatively, LISTING BROKER shall have the right to exercise LISTING BROKER's rights under the Commission Escrow Act and specifically, Real Property Law Section 294-b. The provisions of this law may require the deposit of the Broker Fee claimed by LISTING BROKER, with the County Clerk in the County in which the property is located. Notice is hereby given in accordance with Section 294-b(4)(k).
- (b) Escrow. If, for any reason, LISTING BROKER is not paid the Broker Fee on the due date, OWNER shall establish an escrow account with a party mutually agreeable to LISTING BROKER and OWNER or a title insurance agent or company, and shall place into the escrow account an amount equal to the Broker Fee. The escrow monies shall be paid by OWNER to the escrow agent and shall be held in escrow until the parties' rights to the escrow monies have been determined (i) by the written agreement of the parties; (ii) pursuant to an arbitration award; (iii) by order of a court of competent jurisdiction; or (iv) some other process to which the parties agree to in writing.

## HOME EQUITY THEFT PROTECTION ACT

18. OWNER acknowledges that they are aware of the New York Law called Home Equity Theft Prevention Act. In order to ensure compliance with same, OWNER warrants and represents that:
- (a) OWNER is not in default of any mortgage affecting real property by reason of there being payments due and unpaid on any mortgage for two (2) months or more;  Yes  No

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- (b) there are no actions pending against the real property to foreclose a mortgage;  Yes  No
- (c) the PROPERTY is not shown as an active property on a tax lien sale list and all real estate taxes have been paid through the next lien date.  Yes  No

### INDEMNITY

19. In the event any claim or action is commenced against the BROKER or a cooperating BROKER as a result of the BROKER or cooperating BROKER obeying the lawful instructions of the OWNER(s), then, and in such event, the OWNER(s) hereby agrees to defend, indemnify and hold harmless the BROKER or cooperating BROKER in any such claim or action. OWNER shall have the right to select counsel in such an event, subject to the approval of the BROKER and/or cooperating BROKER, whose approval shall not be unreasonably withheld.
20. With respect to the provisions of this agreement relating to compensation (Paragraph 7) and indemnity (Paragraph 19) cooperating BROKERS shall be third party beneficiaries of this agreement.

### PROPERTY CONDITION DISCLOSURE

21. Property OWNER/Seller acknowledges the receipt of the Property Condition Disclosure Statement from the Executive Group Realty as required by Real Property Law §462 (2) and cause it, or a copy thereof, to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. \_\_\_\_\_ [Initials]
22. Property OWNER/Seller should seek out the advice of their attorney regarding the filling out and exchange of the Property Condition Disclosure Statement or any questions as to OWNER's obligation under the law.
23. If OWNER acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement previously provided, OWNER must deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. OWNER should seek the advice of their attorney regarding the filling out and exchange of the Property Condition Disclosure Statement or any questions to the OWNER's obligations under the law.

### EXPLANATIONS

24. An "EXCLUSIVE RIGHT TO SELL" listing means that if you, the OWNER(s) of the property, find a buyer for your house, or if another BROKER finds a buyer, you must pay the agreed commission to the present BROKER.
25. An "EXCLUSIVE AGENCY" listing means that if you, the OWNER(s) of the property find a buyer, you will not have to pay a commission to the BROKER. However, if another BROKER finds a buyer, you will owe a commission to both the selling BROKER and your present BROKER.
26. In certain circumstances, Dual Agency may occur. This happens when a Buyer of real property is also represented by the LISTING BROKER, or by a licensee in the LISTING BROKER's firm, who is representing the Seller. In such cases, the LISTING BROKER shall disclose the Dual Agency situation to OWNER. At the time of this disclosure, OWNER can consent to Dual Agency by executing the New York State Agency Disclosure Form which defines the concept of Disclosed Dual Agency, or Buyer and LISTING BROKER will dissolve their relationship. If the OWNER does consent to Dual Agency at the time of disclosure, the LISTING BROKER may collect professional services fees from the Buyer or other parties for professional services LISTING BROKER provides to Buyer, and such compensation will be disclosed to OWNER. The parties acknowledge that the OWNER has been presented with a New York State Agency Disclosure Form which defines the concept of Disclosed Dual Agency.

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**EQUAL OPPORTUNITY IN HOUSING**

27. The parties agree that the above listed property is to be marketed in compliance with all Federal, State, Municipal and Local Laws concerning discrimination in housing.

**USE OF AUDIO DEVICE**

28. OWNER is advised that it is in violation of NYS Penal Law to mechanically overhear a conversation by having any device (or devices) recording, streaming, or otherwise documenting the conversation of an individual during real estate-related activities at the property (open houses, showings, etc.) if you are not a party to that conversation. If such a device is present and will be operating at any time a potential Buyer is viewing the property, the OWNER understands that the listing agent must disclose the presence of the device.

The property (check one)  does  does not have a device that can mechanically overhear a conversation.

**PENDING CONTRACT PRICE**

29. OWNER hereby authorizes LISTING BROKER to provide OneKey® MLS with the pending contract price for their property at the time when the subject property status is marked "Pending" on OneKey® MLS for the sole purpose of aggregating this information with similar data for statistical purposes only. Individual pending contract data shall not be accessible by OneKey® MLS Participants, Subscribers, or consumers and only aggregated data reports shall be made available.

**LISTING BROKER is authorized to use a lockbox:**  Yes  No

**LISTING BROKER is authorized to place a "For Sale" sign on the PROPERTY:**  Yes  No

I have read, understood and agreed to the terms of this contract.

Owner Signature: \_\_\_\_\_ Owner Signature: \_\_\_\_\_

Owner Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Email: \_\_\_\_\_ Date: \_\_\_\_\_

Listing Agent: \_\_\_\_\_ Listing Broker: \_\_\_\_\_

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