

## EXCLUSIVE AGENCY RENTAL AGREEMENT

**THIS AGREEMENT** is effective \_\_\_\_\_, 201\_\_\_\_, and confirms that \_\_\_\_\_ ("Owner") has (have) appointed \_\_\_\_\_ ("Agent") to act as Agent for the rental of property known as \_\_\_\_\_, New York.

In return for the Agent's agreement to use Agent's best efforts to rent the above property, Owner grants to Agent the exclusive agency to rent this property under the following terms and conditions:

### PERIOD OF AGREEMENT

1. This agreement shall be effective from the above date and shall expire at midnight on \_\_\_\_\_, 201\_\_\_\_.
2. The Term of the lease shall be for \_\_\_\_\_ months or \_\_\_\_\_ years, with occupancy available, commencing on \_\_\_\_\_, 201\_\_\_\_.

### PRICE AT WHICH PROPERTY WILL BE OFFERED FOR RENT

3. The property will be offered for rent at a price of \_\_\_\_\_ per \_\_\_\_\_, or an aggregate of \_\_\_\_\_ in accordance with the terms of the lease as above stated. The word Owner refers to each and ALL parties who have ownership interest in the property and the undersigned represent(s) they are the sole and exclusive owners and are fully authorized to enter into this Agreement.
4. A security deposit in the amount of \_\_\_\_\_ will be required.

### COMMISSION TO BE PAID TO AGENT

5. Agent shall be entitled to and Owner shall pay to Agent one commission of \_\_\_\_\_ of the aggregate rental payments for the original term of the lease as above stated in paragraph 3 and an additional commission of \_\_\_\_\_ of said aggregate rental payments for any extension of the original lease; or in lieu of such percentages, Agent shall be entitled to a commission in the amount of \_\_\_\_\_. Both Owner and Agent acknowledge that the above commission was not suggested, nor influenced by anyone other than the parties to this Agreement.

Owner hereby authorizes Agent to a) appoint Sub-agents to represent the interests of the Owner and/or b) to appoint Broker's Agents to represent the interests of Owner and/or c) to make an offer of cooperation to other Brokers who are Participants of any multiple listing service in which Agent participates, whether such cooperating brokers are Tenant's agents, broker's agents or sub-agents, on terms satisfactory to Agent. Agent is (is not) authorized to offer to share Agent's compensation with a Tenant's Broker on terms satisfactory to Agent.

Any commission due for a rental brought about by a Sub-agent or Broker's Agent (see Real Property Law Section 443, Agency Relationship Disclosure Form for explanation) (another broker who is authorized by Agent to represent Owner's interests in the rental of the property) shall be paid by Agent from the commission received by Agent pursuant to this paragraph 5. The commission shall be payable when a meeting of the minds has occurred between Owner and Tenant, but not later than the date of full execution of the lease agreement.

The commission offered by Agent to Sub-Agents shall be \_\_\_\_\_ of the aggregate rental payments for the original term of the lease as above stated in paragraph 3. The commission offered by Agent to Broker's Agents shall be \_\_\_\_\_ of the aggregate rental payments for the original term of the lease as above stated in paragraph 3. The commission offered by Agent to Tenant's Agents shall be \_\_\_\_\_ of said aggregate rental payments.

In the event that Owner authorizes Agent to compensate a Tenant's Agent, Owner acknowledges Owner's understanding that such Tenant's Agent is not representing Owner and that the Tenant's Agent will be representing only the interests of the prospective tenant.

Owner(s) will not be obligated to pay a commission to Agent if Owner rents Owner's property without the efforts of any of Agent, Sub-Agent, Broker's Agent or a Buyer's Agent whose services have been authorized by Agent.

### PROPERTY FOR (NOT FOR) SALE

6. Owner represents that the property being offered hereby for rent is (\_\_\_\_) is not (\_\_\_\_) for sale. In the event that the property is currently for sale, the name of the Listing Broker, if any, is \_\_\_\_\_. Owner represents that if the property shall be placed on the market for sale at any time during the term of this Agreement or any extension hereof, Owner will promptly notify Agent of the identity of the Listing Broker and that Agent may elect to terminate this Agreement at such time, in Agent's sole discretion.

### OWNER(S) OBLIGATION AFTER THE EXPIRATION OF THIS AGREEMENT

7. If this property is rented, or otherwise transferred during the term of any extension hereof or within \_\_\_\_\_ months after the expiration date, or any extension of the expiration date of this Agreement, to anyone with whom the Agent or any Cooperating Broker is or was negotiating during the original or extended term of this Agreement, the rental commission shall be earned as hereinabove provided in paragraph 5 and shall be payable to Agent by Owner. In the event that the property is sold by Owner to anyone with whom the Agent or any Cooperating Broker is or was negotiating during the term of this Agreement or any extension hereof, Agent shall be entitled to a selling commission from Owner in the amount of \_\_\_\_\_ of the sales price. This selling commission shall also be earned and payable by Owner to Agent in the event the Tenant procured by Agent purchases the property during the term specified in paragraph 2 hereof with or without the existence of a written lease agreement. The selling commission shall be earned and payable to Agent when the property is sold and title is transferred and conveyed by Owner to the Tenant, or, if not to the Tenant, to any other person with whom Agent is or was negotiating during the term of this Agreement. Owner will not be obligated to pay such commission if after the expiration of this Agreement, Owner enters into a valid Exclusive Listing Agreement with another New York State licensed real estate broker who receives a commission pursuant to such subsequent agreement.

### COMMISSION PAYMENT

8. [a] Escrow. If, for any reason, Agent is not paid the compensation set forth herein on the due date, Owner shall establish an escrow account with a party mutually agreeable to Agent and Owner or a title insurance agent or company, and shall place into said escrow account an amount equal to the compensation set forth herein. The escrow monies shall be paid by Owner to said 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.

[b] Attorneys Fees. In any action, proceeding or arbitration to enforce any provision of this Agreement, or for damages caused by default, the prevailing party shall be entitled to reasonable attorney's fees, costs and related expenses, such as expert witness fees and fees paid to investigators. In the event Agent hires an attorney to enforce the collection of any brokerage commission due hereunder and is successful in collecting all or any portion thereof with or without commencing a legal action or proceeding, Owner agrees to pay the reasonable attorney's fees, costs and related expenses incurred by Agent.

[c] Arbitration. All claims, disputes or other matters in question between Agent (or any cooperating subagent or tenant's agent) and Owner, arising out of or relating to this Agreement shall be determined by arbitration before the American Arbitration Association in New York, New York, pursuant to its Commercial Arbitration Rules. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

### FAIR HOUSING

9. Agent and Owner agree to comply fully with local, state and federal fair housing laws against discrimination on the basis of race, color, religion, sex, national origin, handicap, age, marital status and/or familial status, children or other prohibited factors.

### REQUIREMENTS FOR PUBLICATION IN EAMLS COMPILATION

10. This listing agreement is not acceptable for publication by the Empire Access Multiple Listing Service, Inc. ["EAMLS"] unless and until Owner has duly signed this agreement and an acknowledgment reflecting receipt of the definitions of "Exclusive Right to Sell" and "Exclusive Agency" required by the New York State Department of State - Division of Licensing Services. The Authorization by Owner to publish this listing in the EAMLS compilation also includes the right of Agent to advertise the listing information, in any medium or media including electronic formats and including but not limited to, the Internet.

### LOCKBOX AUTHORIZATION

11. Agent \_\_\_\_\_ (is) hereby authorized to use a lockbox \_\_\_\_\_ (is not) authorized to use a lockbox. Owner understands that neither Agent, any cooperating agent, EAMLS or any Board of Realtors, shall be responsible for any theft, loss or damages attributed to the use of a lockbox.

### TERMINATION

12. Owner understands that if Owner terminates Agent's authority prior to the expiration of its term, Agent shall retain its contract rights (including but not limited to recovery of its commission, advertising expenses and/or any other damages) incurred by reason of an early termination of this agreement.

### WHO MAY NEGOTIATE FOR OWNER(S)

13. Owner agrees to direct all inquiries to Agent. Owner elects to have all negotiations submitted through \_\_\_\_\_ Agent \_\_\_\_\_ Cooperating Broker.

### SUBMISSION OF LISTING TO MULTIPLE LISTING SERVICE

14. Both Owner and Agent agree that Agent is to submit this Rental-Listing Agreement to the Empire Access Multiple Listing Service, Inc. for dissemination to its Participants within 48 hours of the full execution of this Agreement. No provision of this Agreement is intended to nor shall be understood to establish or imply any contractual relationship between Owner and the Empire Access Multiple Listing Service, Inc., nor has the Empire Access Multiple Listing Service, Inc. in any way participated in any of the terms of this Agreement, including the rate or amount of the commission. Owner acknowledges that Agent's ability to submit this listing to EAMLS or to maintain such listing amongst those included in any compilation of listing information published by EAMLS is subject to Agent's continued status as a Participant in good standing of the EAMLS.

Data including photographs and sketches relating to Owner's property will be aggregated with that of other properties listed by Participants of EAMLS, and will become the copyrighted data of EAMLS. Owner and Listing Agent hereby assign to EAMLS all rights of ownership and copyright to such data, for dissemination to its Participants and others as EAMLS may elect pursuant to its copyrights.

**AUTHORIZATION FOR "FOR RENT" SIGN**

- 15. Agent \_\_\_ is authorized to place a "For Rent" sign on the property.
Agent \_\_\_ is not authorized to place a "For Rent" sign on the property.

**CREDIT REPORTS**

- 16. Owner hereby authorizes Agent to obtain credit reports with respect to any prospective Tenant and to provide same to and for the benefit of Owner.

**OTHER SERVICES**

- 17. Owner acknowledges that Agent has fully explained to Owner(s) the services and marketing activities which Agent has agreed to provide.

**IN-HOUSE RENTALS**

- 18. If Agent has an agency relationship with the Tenant ["tenant's broker"], and that tenant expresses interest in property owned by an owner who also has an agency relationship with Agent ["owner's broker"], a conflict has arisen.

Agent shall immediately advise both the Tenant client and the Owner client of the pertinent facts including the fact that a dual agency situation has arisen, and that the following options are available:

[a] Agent and the Tenant could dissolve their Agency relationship. The Tenant may then seek to retain another broker, and/or an attorney, or may represent (her)himself. This would release the Tenant from any Broker employment contract which was entered into with Agent. Agent may continue to act as an agent for Owner.

[b] Agent and the Owner could dissolve their Agency relationship. Owner may then seek to retain another broker, and/or an attorney, or may represent (her)himself. This would release Owner from any listing agreement which was entered into with Agent. Agent may continue to act as an Agent for the Tenant.

[c] With fully informed consent, the Tenant and Owner may elect to continue with the brokerage firm serving as a consensual dual agent, which is the exception to the general rule that agents serve one principal. As a dual agent, the firm and its licensee agents have a duty of fairness to both principals. By mutual agreement the Tenant and Owner may identify who will negotiate for each principal. For example: [a] the licensee who signed the Tenant as a principal of the brokerage firm may negotiate on behalf of the Tenant principal and [b] the licensee who signed Owner as a principal of the firm may negotiate on behalf of the Owner principal. This is referred to in Real Property Law Section 443, Agency Relationship Disclosure Statement as "Designated Sales Associates".

In either case, the brokerage commission will be paid by the Owner in accordance with the listing agreement with the Owner, unless different arrangements have been negotiated.

As a dual agent, the firm and its agents cannot furnish undivided loyalty to either party.

As a dual agent, the firm and its licensee agents have a duty not to disclose confidential information given by one principal to the other principal, such as the rental amount one is willing to pay or accept. Such information may already be known to the firm and its agents. If the information is of such a nature that Agent cannot fairly give advice without disclosing it, Agent cannot properly continue to act as an agent.

The Tenant, Owner and Agent shall memorialize the option of their mutual choice by executing a statutory disclosure notice. If there is no mutual agreement, the proposed transaction between Tenant and Owner shall not be pursued.

**ADDITIONAL POINTS**

- 19. Additional Points of Agreement, if any: \_\_\_\_\_

**ALL MODIFICATIONS TO BE MADE IN WRITING**

- 20. Owner and Agent 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.

\_\_\_\_\_(OWNER) (DATE) \_\_\_\_\_(AGENT)

\_\_\_\_\_(OWNER) (DATE) \_\_\_\_\_(Authorized Representative) (DATE)

Owner's Mailing Address: \_\_\_\_\_ Agent's Address: \_\_\_\_\_

Owner's Telephone: \_\_\_\_\_ Agent's Telephone: \_\_\_\_\_

**DEFINITIONS**

In accordance with the requirements of the New York State Department of State the undersigned Owner(s) does (do) hereby acknowledge receipt of the following:

- 1. Explanation of "Exclusive Right to Sell" listing;
2. Explanation of "Exclusive Agency" listing

EXPLANATION OF EXCLUSIVE RIGHT TO SELL: (As worded verbatim by the Department of State)

An "exclusive right to sell" listing means that if you, the owner 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.

EXPLANATION OF EXCLUSIVE AGENCY: (As worded verbatim by the Department of State)

An "exclusive agency" listing means that if you, the owner 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.

**"THE FAIR HOUSING ACT"**

The Civil Rights Act of 1968 known as the Federal Fair Housing Law makes illegal any discrimination based on race, color, religion, sex or national origin in connection with the sale or rental of housing. The 1988 amendment to this Act (The Fair Housing Amendments Act of 1988) expands the coverage of this law to handicapped persons and families with children. Agent and Owner agree to comply fully with State and local statutes and Federal Fair Housing laws.

**Article 10 of the REALTOR Code of Ethics states:**

"REALTORS shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin."

Owner

Owner