



# EXCLUSIVE RIGHT TO BUY TRANSACTION BROKERAGE AGREEMENT

**1. PARTIES:** This legally binding Agreement ("Contract:") is entered into by Buyer(s), \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Broker") as Buyer's exclusive transaction broker, subject to the terms and conditions stated in this Contract. Buyer agrees to conduct all transactional dealings (showings, discussions, communications, facilitations, information regarding the Property described in Section 2 below, etc.) through Broker, and refer to Broker all inquiries made to Buyer about such Property from other brokers, salespersons, buyers and other persons/organizations during the term of this contract. "Broker" is defined as a licensed South Carolina real estate broker-in-charge which includes the broker's associated real estate licensees.

**2. PURPOSE OF AGENCY:** Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:

Type:  Residential  Commercial  Industrial  Vacant Land  Other  
General Description/ Address: \_\_\_\_\_  
Approximate Price Range: \$ \_\_\_\_\_  
General Location: \_\_\_\_\_  
Preferred Terms: \_\_\_\_\_  
Other: \_\_\_\_\_

**3. BROKER'S DUTIES:** (a) The Broker shall provide to Buyer a meaningful explanation of brokerage offered duties and shall use Broker's professional real estate knowledge and skills to work with and facilitate the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) if the Broker represents the seller, the Broker shall not disclose to the Buyer information obtained within the confidentiality and trust of the agency relationship with the seller, nor disclose to the seller information within the confidentiality of this transaction brokerage agreement with the Buyer, without the consent of the party adversely affected by the disclosure; (c) the Broker may represent other buyers who may be interested in the same property as the Buyer; (d) Broker shall not inform Buyer that Broker's services are free or at no cost unless Buyer is not required to make any payment under this Contract and Broker will not receive any compensation from the seller, seller's broker or any other source related to Buyer's purchase. Upon the termination or completion of this agreement, Broker shall keep confidential information received during the course of this agreement that was made confidential by written request or instructions from the Buyer, except as provided for under South Carolina law or this Contract.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts to locate property of the type described in Section 2 of this contract and to present any offers by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

Broker who represents one party or no parties to a real estate transaction may provide assistance to other parties to the transaction by performing ministerial duties (e.g. writing and conveying offers, providing information and aid concerning other professional services not related to the real estate brokerage services being performed). Performing ministerial duties does not create an agency relationship.

Broker may offer transaction brokerage to potential Buyers and sellers. During the transaction, the Broker may represent sellers in an agency relationship while acting as Buyer's transaction brokerage giving Buyers customer service. Broker may facilitate the transaction giving customer service to both Buyers and sellers without any agency relationship.

Buyers and sellers who do not establish an agency relationship with a Broker and use the services of the Broker are customers. Buyer and Broker agree that Broker shall provide the following customer services to Buyer. The Broker shall:

1. Use skill, care, and diligence to facilitate the transaction;
2. Be honest, fair and provide accurate information;
3. Account in a timely manner for all funds received by the Broker on behalf of a party to a real estate transaction;

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4. Disclose material adverse facts actually known by the Broker that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;
5. Promptly present all written offers and counteroffers involving the sale, lease or exchange of property even when the property is subject to a contract of sale;
6. Keep information confidential as requested in writing by the Buyer.

**4. BUYER'S DUTIES. BUYER AGREES TO:**

**(A)** Work exclusively with Broker during the term of this agreement by: (1) viewing any property (previewing, etc.) only with Broker and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker to identify property, facilitate the transaction for the Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker; and

**(B)** Assist Broker in the process of identifying, facilitating and contracting to purchase, lease or otherwise acquire by: (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of this agreement; and

**(C)** Provide Broker the following information: (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property; and

**(D)** Authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final settlement statement and other closing documents for the transaction prior to the closing date; and

**(E)** Waive all confidentiality except for that information the Buyer requests, in writing, be kept confidential.

Buyer further agrees that Broker is not an agent of the Buyer, Buyer has not established a client relationship with the Broker, and that the Broker is not acting in a fiduciary capacity. Buyer agrees that the Broker is not an advocate for the interests of the Buyer. Buyer agrees to be responsible for verifying wiring instructions.

**5. BROKER FEE:** Buyer agrees to pay Broker, as provided below (the "Broker Fee") for any Properties involving Broker's Duties (Section 3). Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due to Broker will be due and payable immediately in cash from the Buyer. **Broker Fees are not set by law and are fully negotiable between Broker and Buyer.** This Section survives the expiration or earlier cancellation of this agreement

**Compensation:**

**Broker Fee:** (initial only one)

\_\_\_\_\_(initials) \_\_\_\_\_% of the gross purchase price of the Property (as reflected on the final settlement statement); or  
 \_\_\_\_\_(initials) Exactly \$ \_\_\_\_\_.  
 \_\_\_\_\_(initials) Other: \_\_\_\_\_.

**Bonuses (In Addition to Broker Fee):**

\_\_\_\_\_(initials) Buyer agrees to allow the Broker to accept in addition to the Broker Fee above a bonus offered and paid by Seller or Listing Brokerage of \_\_\_\_\_% of the gross purchase price of the Property or \$ \_\_\_\_\_. If no bonus is offered this selection will not apply.

\_\_\_\_\_(initials) **Retainer Fee:**

A retainer fee \$ \_\_\_\_\_ due and payable upon the signing of this contract. This fee  shall or  shall not be credited against the Brokerage fee.

If within \_\_\_\_\_ days after the expiration of this Contract Buyer purchases or leases any property that Broker has shown him during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above.

\_\_\_\_\_(initials) **Administrative Fee:**

Buyer shall pay Broker an Administrative Fee of \$ \_\_\_\_\_ to be paid  no later than \_\_\_\_\_ calendar days of the signing of this contract at closing regardless of whether or not Buyer purchases any property or  at closing. (Check applicable sub-section.)

This Administrative Fee shall be the only fee due Broker from Buyer under the terms of this Contract.

This Administrative Fee shall be credited against the Brokerage Fee described above and shall be kept by Broker whether or not a Brokerage Fee is earned.

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This Administrative Fee shall be credited against the Brokerage Fee described above and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters into a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Administrative Fee will be credited against the Brokerage Fee in subsection (a) above.

This Administrative Fee will be kept by the Broker and will not be credited against any Brokerage Fee described above.

**Credit to Buyer at Closing:** Buyer may choose to negotiate that the Broker Fee be paid, in whole or in part, by the seller, through a seller credit to Buyer, at closing. At Buyer's instructions, Broker will make this request in the Buyer's offer to purchase the property.

**Direct Seller/Listing Broker to Buyer Broker Compensation:** Buyer  does  does not authorize Broker to request that the Broker Fee be paid, in whole or in part, by the seller, to Broker, at closing. Any such arrangement will be in writing in a separate compensation agreement between the seller/listing broker and Broker. Buyer understands that Broker cannot communicate directly with the Seller, if Seller is represented by another Broker.

Any amounts paid by the Seller/Listing Broker, towards the Broker Fee, shall reduce the amount of the Broker Fee to be paid by Buyer. In no event will Broker retain a Broker Fee that exceeds what is specified in this **Section 7**.

**6. TERM OF AGREEMENT:** Broker's authority to act as Buyer's exclusive transaction brokerage under the terms of this Contract shall begin on \_\_\_\_\_, \_\_\_\_\_ and shall end at 11:59 p.m. on \_\_\_\_\_.

**7. OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers. Broker agrees not to give Buyer's confidential information to such other buyers and not to give such other buyers' confidential information to Buyer unless otherwise agreed. Broker will provide Buyer with the Multiple Buyer Disclosure (SCR Form 140) should they become aware of a multiple buyer situation.

**8. DUTIES:** Broker has provided Consumer both a copy of the "South Carolina Disclosure of Brokerage Relationships" form and a meaningful explanation of brokerage relationships provided by Broker in accordance with South Carolina Real Estate License Law.

**9. INDEMNIFICATION OF BROKER:** Buyer agrees to disclose immediately to Broker whether Buyer has signed any agency agreement or transaction brokerage agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages and attorney's fees incurred by Broker because of such claim.

**10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY:** The Broker  does or  does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent or seller's transaction brokerage may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

**11. BROKER LIABILITY LIMITATION:** Buyer and Seller acknowledge that Broker(s) will not, under any circumstances except for gross negligence, have any liability greater than the total compensation amount paid to Broker(s) by the Buyer and/or Seller. Broker(s) will not, under any circumstances except for gross negligence, have any liability for any loss of funds in the transaction due to wire or other cyber or electronic fraud.

**12. SURVEILLANCE:** Buyer is advised that properties they enter may have both audio and video surveillance. Broker advises buyer to be aware of possible surveillance and conduct any and all communications about the potential property offsite.

**13. FAIR HOUSING:** Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination including on the basis of race, color, religion, sex, national origin, familial status, marital status, age, disabilities/handicap, sexual orientation, or gender identity.

**14. PROFESSIONAL COUNSEL:** Buyer acknowledges that Broker is being retained solely as a transaction broker as defined by South Carolina law and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

**15. SEX OFFENDER REGISTRY INFORMATION:** Consumer may obtain information about the sex offender registry and persons registered with the registry by contacting the South Carolina Law Enforcement Division on the Internet at: <https://scor.sled.southcarolina.gov>.

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16. CONTINGENCIES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any addenda, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. This agreement It can be changed only by a subsequently written instrument signed by both parties.

18. **AMENDMENT:** Any amendment to this agreement must be in writing and signed by Broker and Buyer.

**THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND COPY OF THE SC DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS FORM. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, AND PHONE NUMBER LISTED BELOW.**

BUYER \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

BUYER \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

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BUYER \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

BROKER \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

BY (BROKER IN CHARGE OR ASSOCIATED LICENSEE): \_\_\_\_\_

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH \_\_\_\_\_ IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE SOUTH CAROLINA ASSOCIATION OF REALTORS® AT (803) 772-5206

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