

Type **ER**

### EXCLUSIVE RIGHT TO SELL/RENT LISTING CONTRACT LEGAL LANGUAGE

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. NO REPRESENTATION IS MADE AS TO THE LEGAL OR TAX CONSEQUENCES OF THIS CONTRACT. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

1 1. **EXCLUSIVE RIGHT TO SELL AND/OR RENT.** In consideration of the acceptance by the undersigned licensed Arizona real  
2 estate broker ("Broker") of the terms of this Listing Contract and Broker's promise to endeavor to effect a;  
3  sale,  rental,  sale and/or rental, of the property described below ("Premises"), I or we, as owner(s) ("Owner"), employ and  
4 grant Broker the exclusive and irrevocable right commencing on \_\_\_\_\_, \_\_\_\_\_, and  
5 expiring at 11:59 p.m. \_\_\_\_\_, \_\_\_\_\_, to sell, rent, exchange, or option the Premises described  
6 in Paragraph 3.

7 **NOTE:** Owner acknowledges that signing more than one Exclusive Right to Sell/Rent or other form of listing contract for the  
8 same term could expose the Owner to liability for additional commissions.

9 2. **PRICE.** The listing price shall be: **Sale \$**  **Rental \$**  per month, plus (in  
10 the case of a rental) all applicable lease or rental (transaction privilege) taxes, to be paid as described in the Owner's Profile  
11 Sheet ("Data Entry Form"), or such other price and terms as are accepted by Owner.

12 3. **THE PREMISES.**  
13 a. **Location Information.**

14 \_\_\_\_\_  
15 Street Address City/Town County

16 \_\_\_\_\_  
17 Legal Description Assessor #

18 b. **Fixtures and Personal Property.** Except as excluded in Section 3(c) below, any sale or rental of the Premises shall include  
19 all existing fixtures on the Premises, any existing personal property specified in Section 3(c) below, and all of the following  
20 items of personal property, to the extent located on the Premises:

- 21 • free standing range/oven
- 22 • built in appliances
- 23 • light fixtures
- 24 • ceiling fans
- 25 • towel, curtain/drapery rods
- 26 • draperies/other window coverings
- 27 • attached floor coverings
- 28 • pool/spa equipment (including all mechanical and cleaning systems)
- 29 • flush-mounted speakers
- 30 • attached fireplace equipment
- 31 • window/door screens, sun screens
- 32 • storm windows and doors
- 33 • shutters and awnings
- 34 • garage door opener(s) and control(s)
- 35 • attached media antennas/satellite dishes
- 36 • security and/or fire systems and/or alarms
- 37 • central vacuum hoses, and attachments
- 38 • landscaping, fountains and lighting
- 39 • water-misting systems
- 40 • solar systems
- 41 • pellet, wood-burning or gas-log stoves
- 42 • timers
- 43 • mailbox
- 44 • storage sheds
- 45 • water softeners
- 46 • water purification system

47 c. **Appliances and Additional Existing Personal Property.** The Premises shall include the following appliances which are  
48 presently located in or upon the Premises:  Refrigerator  Washer  Dryer  
49  Other \_\_\_\_\_

50 **Additional items of personal property included in sale:** \_\_\_\_\_  
51 \_\_\_\_\_

52 **Fixtures and leased items NOT included in sale:** \_\_\_\_\_  
53 \_\_\_\_\_

54 4. **ACCESS AND LOCKBOX.** Owner acknowledges that a lockbox and any other keys left with or available to Broker will permit  
55 access to the Premises by Broker or any other broker, with or without potential purchasers or tenants ("Prospects"), even when  
56 Owner or occupant is absent. Owner further acknowledges that, from time to time, unauthorized persons may have gained  
57 access to properties using lockboxes. Owner acknowledges that neither the Arizona Regional Multiple Listing Service ("ARMLS"),  
58 nor any Board or Association of REALTORS®, nor any broker (including Broker), is insuring Owner or occupant against theft, loss  
59 or vandalism resulting from any such access. Owner is responsible for taking such steps as may be necessary to secure and  
60 protect the Premises during any time that a lockbox is being used and obtaining appropriate insurance.

61  (Owner's Initials). Owner  does /  does not authorize Broker to install and use, on the Premises, a lockbox  
62 containing the key to the Premises. If the Premises is occupied by someone other than Owner, Owner will provide to the  
63 \_\_\_\_\_

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Broker the occupant's written permission for the installation of the lockbox and the publication and dissemination of the occupant's name and telephone number.

5. **AGENCY RELATIONSHIPS.** Owner understands that Broker is Owner's agent with respect to this Listing. Owner understands that Broker, either acting directly or through one or more licensees within the same brokerage firm, may represent a Prospect interested in the purchase or rental of the Premises. Owner authorizes the Premises to be shown to any such Prospect and understands that Broker may legally represent both Owner and Prospect in a transaction with the knowledge and informed consent of both parties.

6. **COMPENSATION TO BROKER.** Owner agrees to compensate Broker as follows:  
a. **RETAINER.** Broker acknowledges receipt of a non-refundable retainer fee of \$ [ ] payable to Broker for initial consultation, research and other services.  
b. **COMMISSIONS.** If Broker produces a ready, willing and able purchaser or tenant in accordance with this Listing Contract, or if a sale, rental, option or exchange of the Premises is made by Owner or through any other broker, or otherwise, during the exclusive term of this Listing Contract, Owner agrees to pay Broker a commission of:

**For a: Sale:** [ 6% ] **Rental:** [ ]

of the Purchase/Lease Price or a commission of a substantially similar allocable amount if the transaction is structured as other than a purchase or sale.

With respect to any holdovers or renewals of rental, regardless of whether this Listing Contract has expired, Owner agrees to pay a commission of [ ]

The same amount of sale or rental commission shall be due and payable to Broker if, without the consent of Broker, the Premises is withdrawn from this Listing Contract, otherwise withdrawn from sale or rental, or is rented, transferred, or conveyed by Owner through any other broker or otherwise.

c. **COOPERATION WITH AND COMPENSATION TO OTHER BROKERS.** With regard to this Listing Contract, Broker intends to cooperate with all other brokers except when not in Owner's best interest:

and, in the case of a purchase, to offer compensation in the amount of [ 3.000 ] % of the gross purchase price or \$ [ ] to a buyer's broker, who represents the interest of the buyer(s), and not the interest of Owner in a transaction;

or, in the case of a lease, to offer compensation in the amount of [ ] % of the gross lease price as calculated for the entire term of the initial lease, or

\$ [ ] to a tenant's broker, who represents the interest of the tenant(s), and not the interest of Owner in a transaction.

Furthermore, Broker may offer referral compensation to a referring broker who has no broker relationship with the buyer/tenant or Owner. If not specified above, Owner authorizes Broker to share all such compensation with other brokers in any manner acceptable to Broker.

d. **PAYMENT FROM ESCROW OR RENT.** Owner instructs the escrow company, if any, to pay all such compensation to Broker in cash or certified funds as a condition to closing or upon cancellation of the escrow, and irrevocably assigns to Broker, to the extent necessary, money payable to Owner at the closing or cancellation of escrow. Broker is authorized to deduct compensation from any rent or other monies received on behalf of Owner.

e. **PURCHASE BY TENANT.** If during the terms of any rental of the Premises, including any renewals or holdovers, or within [ ] days after its termination, any tenant, or his heirs, executors, or assigns shall buy the Premises from Owner, the sale commission described in Paragraph 6(b) shall be deemed earned by and payable to Broker.

f. **AFTER EXPIRATION.** After the expiration of this Listing Contract, the same commissions, as appropriate, shall be payable if a sale, rental, exchange, or option is made by Owner to any person to whom the Premises has been shown or with whom Owner or any broker has negotiated concerning the Premises during the term of this Listing Contract, (1) within

[ 90 ] days after the expiration of this Listing Contract, unless the Premises has been listed on an exclusive basis with another broker, or (2) during the pendency, including the closing, of any purchase contract or escrow relating to the Premises that was executed or opened during the term of this Listing Contract, or (3) as contemplated by Paragraph 6(e).

g. **FAILURE TO COMPLETE.** If completion of a sale or rental is prevented by default of Owner, or with the consent of Owner, the entire sale or rental commission, as appropriate, shall be paid to Broker by Owner. If any earnest deposit is forfeited for any other reason, Owner shall pay a brokerage fee equal to the lesser of one-half of the earnest deposit or the full amount of the commission.

h. **CONSTRUCTION.** Listing Contract shall be construed as limiting applicable provisions of law relating to when commissions are earned or payable. In the event of any express disagreement between any provision of this Listing Contract and the

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terms of applicable law, the applicable provision of this Listing Contract shall be deemed as modified to the minimum extent necessary to ensure compliance with applicable law.

7. **LISTING BROKER OBLIGATIONS AND AUTHORITY.** Broker agrees to make diligent and continued efforts to sell/lease the Premises.
- a. Owner authorizes Broker to place appropriate transaction signs on the Premises, including "For Sale" signs and "Sold" signs OR "For Lease" and "Leased" signs.
  - b. Owner authorizes Broker to obtain information relating to the present mortgage(s) on the Premises.
  - c. Owner authorizes Broker to provide the information on the Listing/Data Entry Form, and any photographs of the Premises, to ARMLS for publishing and dissemination, in whole or in part, in printed or electronic form, including via the Internet, to ARMLS participants and the general public, even after the cancellation or expiration of the Listing. Broker is authorized to report the sale, exchange, option or rental of the Premises, and its price, terms and financing, for dissemination through ARMLS or otherwise to authorized ARMLS participants and to the public and for use by companies engaged in selling information for various purposes, including but not limited to, appraisals or evaluations of tax assessments.
  - d. Owner authorizes Broker to market the Premises as Broker deems advisable, including marketing the Premises on the Internet unless limited in (7)(d)(i) or (7)(d)(ii) below.  
**(Owner opt-out) (Check one if applicable)**
    - (i) Owner does not authorize Broker to display the Listing on the Internet.
    - (ii) Display the Listing on the Internet except the street address of the Premises shall not be displayed on the Internet. Owner understands and acknowledges that if Owner selects option (ii), consumers who conduct searches for listings on the Internet will not see information about the listed Premises in response to their search.
  - e. Virtual Office Websites: Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOW"). An automated estimate of market value or reviews and comments about a Premises may be displayed in conjunction with a Premises on some VOWs. Anyone who registers on a Virtual Office Website may gain access to such automated valuations or comments and reviews about any Premises displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments/reviews (blogs) about this Premises.  
**(Owner opt-out) (Check if applicable)**
    - (i) Owner does not authorize an automated estimate of the market value of the Premises (or hyperlink to such estimate) to be displayed in immediate conjunction with any listing information relating to Premises.
    - (ii) Owner does not authorize third parties to write online comments or reviews about the Premises or the listing of the Premises (or display a hyperlink to such comments or reviews) in immediate conjunction with any listing information relating to the Premises.
  - f. Broker reserves the right to cancel this Listing Contract unilaterally for cause, which shall include, but is not limited to, Broker's good faith belief that any service requested of Broker or any action undertaken by anyone other than Broker is (or could be determined to be) in violation of any applicable law.
8. **ROLE OF BROKER.** Owner acknowledges that Broker is not responsible for the custody or condition of the Premises or for its management (except under separate contract), maintenance, upkeep or repair.
9. **DOCUMENTS.** In connection with any sale or rental of the Premises, Owner consents to the use of the standard form of purchase or rental contract used by Broker and all other standard documents used by Broker and the escrow and title companies.
10. **REALTOR® STATUS.**  This agent is a REALTOR® member of the Scottsdale Association/Board of REALTORS® and subscribes to the REALTOR® Code of Ethics.  This agent is not a member of any REALTOR® Association/Board, but as a Subscriber to the Arizona Regional Multiple Listing Service, Inc., has agreed to abide by the Standards of Conduct of MLS Subscribers.
11. **OWNER OBLIGATIONS.** In consideration of Broker's obligations, Owner agrees to:
- a. Cooperate with Broker in carrying out the purpose of this Listing Contract, including referring immediately to Broker all inquiries regarding the Premises' transfer, whether by purchase or any means of transfer.
  - b. Provide Broker with keys to the Premises and make the Premises available for Broker to show during reasonable times.
  - c. Inform Broker prior to leasing, mortgaging or otherwise encumbering the Premises.
  - d. Inform Broker of any past due HOA, tax or other Premises related fees. During the term of this Listing Contract, Owner agrees to continue disclosing to Broker all additional information of the type required by the preceding sentence promptly after Owner becomes aware of any such information.
  - e. **Complete and return to Broker a Seller Property Disclosure Statement ("SPDS") form if the premises is to be sold, and/or any disclosures required by the Arizona Residential Landlord and Tenant Act if the premises is to be leased. These disclosures are designed to disclose pertinent property information. Broker shall have no responsibility, in whole or part, for the preparation of the SPDS form nor any disclosures required in the Arizona Residential Landlord and Tenant Act.**

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- 168 f. If applicable, sign and deliver to the escrow company a certificate indicating whether Owner is a foreign person or non-  
 169 resident alien pursuant to the **Foreign Investment in Real Property Tax Act (FIRPTA)**.
- 170 g. Provide a **Disclosure of Lead-Based Paint and Lead-Based Paint Hazards** as required by the U.S. Department of  
 171 Housing and Urban Development, if any Premises structure was built before 1978.
- 172 h. Deliver a completed **Affidavit of Disclosure** in the form required by law to a buyer within (5) days after purchase contract  
 173 acceptance, if the Premises is located in an unincorporated area of the county, and five or fewer parcels of property other  
 174 than subdivided property are being transferred.
- 175
- 176 12. **INSURANCE.** Owner acknowledges that Owner's or occupant's property could be damaged or stolen or persons visiting the  
 177 Premises could be injured. Owner shall be responsible for obtaining appropriate insurance to cover such possible events.
- 178
- 179 13. **GENERAL WARRANTIES BY OWNER.** Owner represents and warrants:
- 180 a. **CAPACITY.** Owner has the legal capacity, full power and authority to enter into this Listing Contract, deliver marketable  
 181 title to the Premises and consummate the transactions contemplated hereby on Owner's own behalf or on behalf of the  
 182 party Owner represents, as appropriate.
- 183 b. **ADVERSE INFORMATION.** Owner has disclosed to Broker all material latent defects and information concerning the  
 184 Premises known to Owner, including all material information relating to: connection to a public sewer system, septic tank or  
 185 other sanitation system; the existence of any tax, judgment or other type of lien; past or present infestation by or treatment  
 186 for wood-destroying pests or organisms; and past or present repair of the Premises for damage resulting from wood-  
 187 destroying pests or organisms. During the term of this Listing Contract, Owner agrees to continue disclosing to Broker all  
 188 additional information of the type required by the preceding sentence promptly after Owner becomes aware of any such  
 189 information by updating SPDS or other written notice.
- 190 c. **CORRECT INFORMATION.** All information concerning the Premises in this Listing Contract, including the Data Entry Form  
 191 relating to the Premises, or otherwise provided by Owner to Broker or to any Prospect is, or will be at the time provided,  
 192 and shall be at close of escrow or occupancy by a tenant, true, correct and complete. Owner agrees to notify Broker  
 193 promptly if there is any material change in such information until the latest to occur of the expiration of this Listing Contract,  
 194 any close of escrow or occupancy by a tenant.
- 195 d. **USE OF LISTING CONTENT; INTELLECTUAL PROPERTY LICENSE.** Unless Owner delivers to Broker a written  
 196 certification, expressly prohibiting the dissemination to a multiple listing service of the listing and any listing information  
 197 relating to the Premises, Owner acknowledges and agrees that all photographs, images, graphics, video recordings, virtual  
 198 tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to  
 199 the Premises provided by Owner to Broker or Broker's agent (the "Owner Listing Content"), or otherwise obtained or  
 200 produced by Broker or Broker's agent in connection with this Listing Contract (the "Broker Listing Content"), and any  
 201 changes to the Owner Listing Content or the Broker Listing Content, may be filed with one or more multiple listing services,  
 202 included in compilations of listings, and otherwise distributed, publicly displayed and reproduced, subject to the limitations  
 203 listed in Section 7 of this Listing Contract. Owner hereby grants to Broker a non-exclusive, irrevocable, worldwide, royalty  
 204 free license to use, sublicense through multiple tiers, publish, display, and reproduce the Owner Listing Content, to prepare  
 205 derivative works of the Owner Listing Content, and to distribute the Owner Listing Content or any derivative works thereof,  
 206 subject to the limitations listed in Section 7 of this Listing Contract. This non-exclusive license shall survive the termination  
 207 of this Listing Contract for any reason whatever. Owner represents and warrants to Broker that the Owner Listing Content,  
 208 and the license granted to Broker for the Owner Listing Content, do not violate or infringe upon the rights, including any  
 209 copyright rights, or any person or entity. Owner acknowledges and agrees that as between Owner and Broker, all Broker  
 210 Listing Content is owned exclusively by Broker, and Owner has no right, title or interest in or to any Broker Listing Content.
- 211
- 212 14. **UTILITIES.** During the term of this Listing Contract, Owner shall maintain continuous service to the Premises of all utilities which  
 213 are currently connected to the Premises.
- 214
- 215 15. **RELIEF OF LIABILITY.** Broker is hereby relieved of any and all liability and responsibility for everything stated in Paragraphs  
 216 11.e, 11.f, 11.g, 12, and 13.
- 217
- 218 16. **INDEMNIFICATION.** Owner agrees to indemnify and hold Broker, all Boards or Associations of REALTORS®, ARMLS and all  
 219 other brokers harmless against any and all claims, expenses, liabilities, damages and losses arising from (i) any  
 220 misrepresentation, breach of warranty or breach of a promise by Owner in this Listing Contract, (ii) any incorrect information  
 221 supplied by Owner, (iii) any facts concerning the Premises not disclosed by Owner, including any facts known to Owner relating  
 222 to adverse conditions or latent defects, (iv) the use of a lockbox, or (v) any injury or damage to persons or property in connection  
 223 with the marketing or showing of the Premises. This indemnification shall survive Broker's performance and any transfer of title.
- 224
- 225 17. **OTHER OWNERS AND PROSPECTS.** Owner understands that other owners may make offers to sell or rent or may sell, rent,  
 226 exchange or option properties similar to the Premises through Broker. Owner consents to any agency representation by Broker  
 227 of such other owners before, during and after the expiration of this Listing Contract and understands that the Premises probably  
 228 will not be presented or shown to every Prospect encountered by Broker.

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18. **ATTORNEYS' FEES.** In any action or proceeding to enforce any provision of this Listing Contract, or for damages sustained by reason of its breach, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees, as set by the court or arbitrator and not by a jury, and all other related expenses, such as expert witness fees, fees paid to investigators and court costs. Additionally, if any broker hires an attorney to enforce the collection of any commission payable pursuant to this Listing Contract, and is successful in collecting some or all of such commission without commencing any action or proceeding, Owner agrees to pay such broker's reasonable attorneys' fees and costs and Owner also agrees to pay interest at the legal rate on all compensation and other amounts owed or due to broker from the time due until paid in full.

19. **DEPOSITS.** Owner authorizes brokers to accept earnest deposits on behalf of Owner and to issue receipts for such earnest deposits.

20. **RECOMMENDATIONS.** If Broker recommends a builder, contractor, escrow company, title company, pest control service, appraiser, lender, home inspection company or home warranty company or any other person or entity to Owner for any purpose, such recommendation shall be independently investigated and evaluated by Owner, who hereby acknowledges that any decision to enter into any contractual arrangement with any such person or entity recommended by Broker will be based solely upon such independent investigation and evaluation.

21. **SUBSEQUENT PURCHASE OR LEASE OFFERS.** Broker acknowledges that Owner has the right to accept subsequent offers until the close of escrow in the case of a sale or until occupancy by a tenant in the case of a rental. Owner understands that any subsequent offers accepted by Owner must be backup offers, namely, contingent on the cancellation or other nullification of any contracts arising from the acceptance of earlier offers. Broker will change or maintain the correct MLS Listing status in accordance to the ARMLS Rules and Regulations and any associated policies.  
(Check if applicable)  Accept backup offers.  Withhold verbal offers.  Withhold all offers once Owner accepts a purchase or lease contract for the Premises.

22. **EQUAL HOUSING OPPORTUNITY.** The Premises will be presented in compliance with federal, state and local fair housing laws and regulations.

23. **TIME OF ESSENCE.** Time is of the essence in the performance of the obligations contained in this Listing Contract.

24. **COUNTERPARTS AND ELECTRONIC COPIES.** This Listing Contract may be executed in any number of counterparts by the parties hereto. All counterparts so executed shall constitute one Listing Contract binding upon all parties hereto, notwithstanding that all parties do not sign the same counterpart. Any legible electronic copy of the Listing Contract which indicates that the Listing Contract was fully executed shall be treated as an original Listing Contract.

25. **CONSTRUCTION OF LANGUAGE AND GOVERNING LAW.** The language of this Listing Contract shall be construed according to its fair meaning and not strictly for or against either party. Words used in the masculine, feminine or neuter shall apply to either gender or the neuter, as appropriate. All singular and plural words shall be interpreted to refer to the number consistent with circumstances and context. Whenever the words "include", "includes" or "including" are used in this Listing Contract, they shall be deemed to be followed by the words "without limitation". If this Listing Contract is used for a rental, exchange, or option instead of a sale of the Premises, all language in this Listing Contract relating to the sale of Premises shall be construed to apply as appropriate, to a rental, exchange, or option. For example, Owner shall be deemed to be Exchanger, Optionor, or Landlord respectively. This Listing Contract shall be governed by the laws of the State of Arizona.

26. **TAXES AND REGISTRATION.** Owner acknowledges that a rental property must be registered with the County Assessor's Office and may be subject to a tax on gross receipts and a special rental classification for property taxes. Owner agrees to obtain appropriate licenses and pay fees and taxes when due. Owner agrees to indemnify and hold Broker harmless for any such tax liability, including penalties and interest.

27. **ADDITIONAL TERMS.**

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Additional addendum/addenda attached.

28. **ENTIRE AGREEMENT.** This Listing Contract including the Data Entry Sheet, plus any attached exhibits and any addenda or supplements signed by Owner and Broker, shall constitute the entire agreement between Owner and Broker and supersede any other written or oral agreements between Owner and Broker. It is the intention of the parties that this Listing Contract shall be a legally binding contract once it has been signed by Owner and Broker even though none, or only some, of the pages have been initialed by Owner. This Listing Contract can be modified only by a writing signed by Owner and Broker. THE TERMS AND CONDITIONS IN THIS LISTING CONTRACT PLUS ALL INFORMATION ON THE DATA ENTRY FORM ARE INCORPORATED HEREIN BY REFERENCE. COMMISSIONS PAYABLE FOR THE SALE, RENTAL OR MANAGEMENT OF PREMISES ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS® OR MULTIPLE LISTING CONTRACT SERVICE OR IN ANY MANNER OTHER THAN BY NEGOTIATION BETWEEN THE BROKER AND THE OWNER. BY SIGNING BELOW, OWNER ACKNOWLEDGES THAT HE HAS READ, UNDERSTANDS AND ACCEPTS ALL TERMS AND PROVISIONS CONTAINED HEREIN AND THAT HE HAS RECEIVED A COPY OF THIS LISTING CONTRACT.

Print Name of Owner		Print Name of Owner	
Street	City/Town	State	Zip
Phone	Fax	Owner's email Address	
Owner's Signature	Mo/Da/Yr	Owner's Signature	Mo/Da/Yr

**ADDITIONAL OWNER(S) (If applicable)**

Print Name of Owner		Print Name of Owner	
Street	City/Town	State	Zip
Phone	Fax	Owner's email Address	
Owner's Signature	Mo/Da/Yr	Owner's Signature	Mo/Da/Yr

Additional Owner information attached.

In consideration of Owner's representations and promises in this Listing Contract, Broker agrees to endeavor to effect a sale, rental, exchange, or option in accordance with this Listing Contract.

<b>HomeSmart Premier</b>	<b>(480) 888-6708</b>	
Firm Name (Broker)	Preferred Phone	Fax

By: _____	<b>Patti Irwin</b>	<b>Patti@PattiIrwin.com</b>
Agent's Signature	Agent Name (Printed)	Date (Mo/Da/Yr) Agent's Email

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Broker's File/Lot No. \_\_\_\_\_ Broker/Manager Initials \_\_\_\_\_ Date: \_\_\_\_\_



# REAL ESTATE AGENCY DISCLOSURE AND ELECTION

Document updated:  
January 2009



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. Firm Name ("Broker") HomeSmart Premier  
2. acting through Patti Irwin hereby makes the following disclosure.  
LICENSEE'S NAME

## DISCLOSURE

- 3. Before a Seller or Landlord (hereinafter referred to as "Seller") or a Buyer or Tenant (hereinafter referred to as "Buyer") enters into a discussion with a real estate broker or licensee affiliated with a broker, the Seller and the Buyer should understand what type of agency relationship or representation they will have with the broker in the transaction.
- 6. I. Buyer's Broker: A broker other than the Seller's broker can agree with the Buyer to act as the broker for the Buyer. In these situations, the Buyer's broker is not representing the Seller, even if the Buyer's broker is receiving compensation for services rendered, either in full or in part, from the Seller or through the Seller's broker:
  - 9. a) A Buyer's broker has the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the Buyer.
  - 10. b) Other potential Buyers represented by broker may consider, make offers on, or acquire an interest in the same or similar properties as Buyer is seeking.
- 12. II. Seller's Broker: A broker under a listing agreement with the Seller acts as the broker for the Seller only:
  - 13. a) A Seller's broker has the fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the Seller.
  - 14. b) Other potential Sellers represented by broker may list properties that are similar to the property that Seller is selling.
- 15. III. Broker Representing both Seller and Buyer (Limited Representation): A broker, either acting directly or through one or more licensees within the same brokerage firm, can legally represent both the Seller and the Buyer in a transaction, but only with the knowledge and informed consent of both the Seller and the Buyer. In these situations, the Broker, acting through its licensee(s), represents both the Buyer and the Seller, with limitations of the duties owed to the Buyer and the Seller:
  - 19. a) The broker will not, without written authorization, disclose to the other party that the Seller will accept a price or terms other than stated in the listing or that the Buyer will accept a price or terms other than offered.
  - 21. b) There will be conflicts in the duties of loyalty, obedience, disclosure and confidentiality. Disclosure of confidential information may be made only with written authorization.
- 23. Regardless of who the Broker represents in the transaction, the Broker shall exercise reasonable skill and care in the performance of the Broker's duties and shall be truthful and honest to both the Buyer and Seller and shall disclose all known facts which materially and adversely affect the consideration to be paid by any party. Pursuant to A.R.S. §32-2156, Sellers, Lessors and Brokers are not obligated to disclose that a property is or has been: (1) the site of a natural death, suicide, homicide, or any crime classified as a felony; (2) owned or occupied by a person exposed to HIV, or diagnosed as having AIDS or any other disease not known to be transmitted through common occupancy of real estate; or (3) located in the vicinity of a sex offender. Sellers or Sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless there is a confidentiality agreement between the parties.
- 30. THE DUTIES OF THE BROKER IN A REAL ESTATE TRANSACTION DO NOT RELIEVE THE SELLER OR THE BUYER FROM THE RESPONSIBILITY TO PROTECT THEIR OWN INTERESTS. THE SELLER AND THE BUYER SHOULD CAREFULLY READ ALL AGREEMENTS TO ENSURE THAT THE DOCUMENTS ADEQUATELY EXPRESS THEIR UNDERSTANDING OF THE TRANSACTION.

## ELECTION

- 33. Buyer or Tenant Election (Complete this section only if you are the Buyer.) The undersigned elects to have the Broker (check any that apply):
  - 34.  represent the Buyer as Buyer's Broker.
  - 35.  represent the Seller as Seller's Broker.
  - 36.  show Buyer properties listed with Broker's firm and Buyer agrees that Broker shall act as agent for both Buyer and Seller provided that the Seller consents to limited representation. In the event of a purchase, Buyer's and Seller's informed consent should be acknowledged in a separate writing other than the purchase contract.
- 39. Seller or Landlord Election (Complete this section only if you are the Seller.) The undersigned elects to have the Broker (check any that apply):
  - 40.  represent the Buyer as Buyer's Broker.
  - 41.  represent the Seller as Seller's Broker.
  - 42.  show Seller's property to Buyers represented by Broker's firm and Seller agrees that Broker shall act as agent for both Seller and Buyer provided that Buyer consents to the limited representation. In the event of a purchase, Buyer's and Seller's informed consent should be acknowledged in a separate writing other than the purchase contract.

45. The undersigned  Buyer(s) or  Seller(s) acknowledge that this document is a disclosure of duties. This document is not an employment agreement.

46. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE.

47. ^ PRINT NAME ^ PRINT NAME

48. ^ SIGNED MO/DA/YR ^ SIGNED MO/DA/YR



# MARKET CONDITIONS ADVISORY

Document updated:  
August 2009



*The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.*



## ***The real estate market is cyclical and real estate values go up and down.***

***The financial market also changes, affecting the terms on which a lender will agree to loan money on real property. It is impossible to accurately predict what the real estate or financial market conditions will be at any given time.***

The ultimate decision on the price a Buyer is willing to pay and the price a Seller is willing to accept for a specific property rests solely with the individual Buyer and Seller. The parties to a real estate transaction must decide on what price and terms they are willing to buy or sell in light of market conditions, their own financial resources and their own unique circumstances.

The parties must, upon careful deliberation, decide how much risk they are willing to assume in a transaction. Any waiver of contingencies, rights or warranties in the Contract may have adverse consequences. Buyer and Seller acknowledge that they understand these risks.

Buyer and Seller assume all responsibility should the return on investment, tax consequences, credit effects, or financing terms not meet their expectations. The parties understand and agree that the Broker(s) do not provide advice on property as an investment. Broker(s) are not qualified to provide financial, legal, or tax advice regarding a real estate transaction. Therefore, Broker(s) make no representation regarding the above items. Buyer and Seller are advised to obtain professional tax and legal advice regarding the advisability of entering into this transaction.

### **THE UNDERSIGNED ACCEPT AND UNDERSTAND THE FOREGOING AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS ADVISORY.**

^ BUYER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

^ BUYER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

^ SELLER'S SIGNATURE \_\_\_\_\_ MO/DA/YR

^ SELLER'S SIGNATURE \_\_\_\_\_ MO/DA/YR





# H.O.A. CONDOMINIUM / PLANNED COMMUNITY ADDENDUM



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



## SELLER'S NOTICE OF H.O.A. INFORMATION

1. Seller: \_\_\_\_\_
2. Premises Address: \_\_\_\_\_
3. Date: \_\_\_\_\_

4. **INSTRUCTIONS:** (1) Homeowner's association ("H.O.A.") information to be completed by Seller at the time of listing the Premises for sale.
5. (2) Upon completion, this Addendum shall be uploaded to the multiple listing service, if available, or delivered to prospective buyers upon request prior to prospective buyer's submission of a Purchase Contract to Seller.

### ASSOCIATION(S) GOVERNING THE PREMISES

8. **H.O.A.:** \_\_\_\_\_ Contact info: \_\_\_\_\_
9. Management Company (if any): \_\_\_\_\_ Contact info: \_\_\_\_\_
10. Amount of Dues: \$ \_\_\_\_\_ How often?: \_\_\_\_\_
11. Amount of special assessments (if any): \$ \_\_\_\_\_ How often?: \_\_\_\_\_ Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_  
MO/DA/YR MO/DA/YR

12. **Master Association** (if any): \_\_\_\_\_ Contact info: \_\_\_\_\_
13. Management Company (if any): \_\_\_\_\_ Contact info: \_\_\_\_\_
14. Amount of Dues: \$ \_\_\_\_\_ How often?: \_\_\_\_\_
15. Amount of special assessments (if any): \$ \_\_\_\_\_ How often?: \_\_\_\_\_ Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_  
MO/DA/YR MO/DA/YR

16. **Other:** \_\_\_\_\_ Contact info: \_\_\_\_\_
17. Amount of Dues: \$ \_\_\_\_\_ How often?: \_\_\_\_\_

### FEES PAYABLE UPON CLOSE OF ESCROW

19. **Transfer Fees:** Association(s) fees related to the transfer of title. H.O.A. \$ \_\_\_\_\_ Master Association \$ \_\_\_\_\_ .
20. **Capital Improvement Fees,** including, but not limited to, those fees labeled as community reserve, asset preservation, capital reserve, working capital, community enhancement, future improvement fees, or payments. H.O.A. \$ \_\_\_\_\_ Master Association \$ \_\_\_\_\_ .
22. **Prepaid Association(s) Fees:** Dues, assessments, and any other association(s) fees paid in advance of their due date. H.O.A. \$ \_\_\_\_\_ Master Association \$ \_\_\_\_\_ .
24. **Disclosure Fees:** Association(s) Management/Company(ies) costs incurred in the preparation of a statement or other documents furnished by the association(s) pursuant to the resale of the Premises for purposes of resale disclosure, lien estoppels and any other services related to the transfer or use of the property. Pursuant to Arizona law, Disclosure Fees cannot be more than an aggregate of \$400.00 per association. As part of the Disclosure Fees, each association may charge a statement or other documents update fee of no more than \$50.00 if thirty (30) days or more have passed since the date of the original disclosure statement or the date the documents were delivered. Additionally, each association may charge a rush fee of no more than \$100.00 if rush services are required to be performed within seventy-two (72) hours after the request. H.O.A. \$ \_\_\_\_\_ Master Association \$ \_\_\_\_\_ .
31. **Other Fees:** \$ \_\_\_\_\_ Explain: \_\_\_\_\_ .
32. **SELLER CERTIFICATION:** By signing below, Seller certifies that the information contained above is true and complete to the best of Seller's actual knowledge as of the date signed. Broker(s) did not verify any of the information contained herein.

34. \_\_\_\_\_
35. ^ SELLER'S SIGNATURE MO/DA/YR ^ SELLER'S SIGNATURE MO/DA/YR



### ADDITIONAL OBLIGATIONS

36. **If the homeowner's association has less than 50 units**, no later than ten (10) days after Contract acceptance, the Seller shall provide in  
 37. writing to Buyer the information described below as required by Arizona law.
38. **If the homeowner's association has 50 or more units**, Seller shall furnish notice of pending sale that contains the name and address of the  
 39. Buyer to the homeowner's association within five (5) days after Contract acceptance and pursuant to Section 3d of the Contract. Escrow  
 40. Company is instructed to provide such notice on Seller's behalf. The association is obligated by Arizona law to provide information  
 41. described below to Buyer within ten (10) days after receipt of Seller's notice.
42. **BUYER IS ALLOWED FIVE (5) DAYS AFTER RECEIPT OF THE INFORMATION FROM THE SELLER(S) OR HOMEOWNER'S ASSOCIATION**  
 43. **TO PROVIDE WRITTEN NOTICE TO SELLER OF ANY ITEMS DISAPPROVED.**

#### INFORMATION REQUIRED BY LAW TO BE PROVIDED TO BUYER:

44. 1. A copy of the bylaws and the rules of the association.
45. 2. A copy of the declaration of Covenants, Conditions and Restrictions ("CC&Rs").
46. 3. A dated statement containing:
47. (a) The telephone number and address of a principal contact for the association, which may be an association manager, an association  
 48. management company, an officer of the association or any other person designated by the board of directors.
49. (b) The amount of the common expense assessment and the unpaid common expense assessment, special assessment or  
 50. other assessment, fee or charge currently due and payable from the Seller.
51. (c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.
52. (d) The total amount of money held by the association as reserves.
53. (e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any  
 54. alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information  
 55. regarding alterations or improvements that occurred more than six years before the proposed sale. Seller remains obligated  
 56. to disclose alterations or improvements to the Premises that violate the declaration. The association may take action against  
 57. the Buyer for violations apparent at the time of purchase that are not reflected in the association's records.
58. (f) If the statement is being furnished by the Seller, a statement as to whether the Seller has any knowledge of any alterations  
 59. or improvements to the unit that violate the declaration.
60. (g) A statement of case names and case numbers for pending litigation with respect to the Premises or the association, including  
 61. the amount of any money claimed.
62. 4. A copy of the current operating budget of the association.
63. 5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide  
 64. a summary of the report in lieu of the entire report.
65. 6. A copy of the most recent reserve study of the association, if any.
66. 7. Any other information required by law.
67. 8. A statement for Buyer acknowledgment and signature as required by Arizona law.
- 68.



**BUYER'S ACKNOWLEDGMENT AND TERMS**

69. Buyer: \_\_\_\_\_

70. Seller: \_\_\_\_\_

71. Premises Address: \_\_\_\_\_

72. Date: \_\_\_\_\_

73. **The following additional terms and conditions are hereby included as part of the Contract between Seller and Buyer for the**  
74. **above referenced Premises.**

75. **Transfer Fees** shall be paid by:  Buyer  Seller  Other: split 50/50

76. **Capital Improvement Fees** shall be paid by:  Buyer  Seller  Other: \_\_\_\_\_

77. Buyer shall pay all **Prepaid Association Fees**.

78. Seller shall pay all **Disclosure Fees** as required by Arizona law.

79. In a financed purchase, Buyer shall be responsible for all lender fees charged to obtain Association(s)/Management Company(ies) documents.

80. **Other fees:** \_\_\_\_\_

81. \_\_\_\_\_

82. **BUYER VERIFICATION:** Buyer may contact the Association(s)/Management Company(ies) for verbal verification of association **FEES**  
83. **PAYABLE UPON CLOSE OF ESCROW.**

84. **ASSESSMENTS:** Any current homeowner's association assessment which is a lien as of Close of Escrow shall be paid in full by Seller.

85. Any assessment that becomes a lien after Close of Escrow is Buyer's responsibility.

86. **ADDITIONAL TERMS AND CONDITIONS**

87. \_\_\_\_\_

88. \_\_\_\_\_

89. \_\_\_\_\_

90. \_\_\_\_\_

91. **BUYER ACKNOWLEDGMENT:** By signing below, Buyer acknowledges receipt of all three (3) pages of this addendum and acknowledges  
92. that although Seller has used best efforts to identify the amount of the fees stated herein, the precise amount of the fees may not be known  
93. until written disclosure documents are furnished by the Association(s)/Management Company(ies) per Arizona law (A.R.S. § 33-1260 and  
94. § 33-1806). Buyer further acknowledges that Broker(s) did not verify any of the information contained therein. Buyer therefore agrees to hold  
95. Seller and Broker(s) harmless should the **FEES PAYABLE UPON CLOSE OF ESCROW** prove incorrect or incomplete.

96. The undersigned agrees to the additional terms and conditions set forth above and acknowledges receipt of a copy hereof.

97. \_\_\_\_\_

98. ^ BUYER'S SIGNATURE MO/DA/YR ^ BUYER'S SIGNATURE MO/DA/YR

99. **SELLER'S ACCEPTANCE:**

100. \_\_\_\_\_

101. ^ SELLER'S SIGNATURE MO/DA/YR ^ SELLER'S SIGNATURE MO/DA/YR

**For Broker Use Only:**

Brokerage File/Log No.: \_\_\_\_\_ Manager's Initials: \_\_\_\_\_ Broker's Initials: \_\_\_\_\_ Date: \_\_\_\_\_  
MO/DA/YR

