

**FACILITATOR VARIABLE RATE EXCLUSIVE LISTING AGREEMENT  
MULTIPLE LISTING SERVICE--SALE  
LIMITED SERVICE (MLS ONLY)  
Fax to 1-617-892-4187**

This Listing Agreement is by and between \_\_\_\_\_  
(Seller) and **Mildred N. Phillips, Attorney at Law** (known as Broker) and provides that, in consideration for the covenants contained herein, Seller hereby appoints Broker as Seller's exclusive Broker limited to listing the Property more fully described below.

**1. PROPERTY:** Seller hereby appoints Broker as Seller's exclusive Broker limited to list the Property described below, at the price described below, beginning the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ and terminating at **11:59 P.M.** the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (Termination Date). Upon full execution of contract for sale and purchase of the property, all rights and obligations of this Contract will automatically extend through the date of the actual closing of a contract for sale and purchase. SELLER certifies and represents that Seller is the legal title holder and entitled to convey the Property and all improvements.

PROPERTY

ADDRESS: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Tax Id. \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_ (if Registered) Cert.

Num.: \_\_\_\_\_ County: \_\_\_\_\_ LISTING PRICE: \$ \_\_\_\_\_

The full legal description of said property is the same as is recorded with the Clerk of the County in which the property is locate and is made a part of this agreement by reference.

Seller warrants the property is connected by public sewer: Yes \_\_\_\_\_ (Seller's Initials)

No \_\_\_\_\_ (Seller's Initials)

FINANCING TERMS: NEW MORTGAGE \_\_\_\_\_ SELLER FINANCING OFFERED \_\_\_\_\_

FHA \_\_\_\_\_ VA \_\_\_\_\_ OTHER FINANCING \_\_\_\_\_

**2. PERSONAL PROPERTY:** Seller agrees to offer for sale through the services provided by Broker the property, fixtures and all improvements thereon. All personal property to be conveyed at the time of sale shall be listed by Seller in the Real Estate Sales Agreement entered into between Seller and Buyer and shall be transferred free of any liens.

**3. LISTING PRICE:** The Property and all improvements are offered for sale at a selling price of \$ \_\_\_\_\_ . Seller is solely responsible for determining the appropriate listing price.

**4. SELLERS OBLIGATIONS & BROKER COMPENSATION:** The Property and all improvements thereon are offered for sale at the listing price. Seller reserves the right to amend the listing price. Any changes to the listing price will not be effective until submitted to Broker in writing, signed by Seller, and submitted to the Multiple Listing Service ("MLS") by Broker. Broker shall make any modifications and changes in the MLS pursuant to the MLS rules. Seller agrees to make the Property available to MLS Members at all reasonable hours for showing to prospective Buyers during the term of this Agreement.

**4A. COOPERATING COMMISSION:** Seller authorizes Broker to make an offer of cooperation to all participating brokers in the MLS. Seller authorizes Broker to make an offer of compensation equal to the cooperating commission to all participating Brokers in the MLS who are acting solely as a Buyer's Agent

("Cooperating Broker"). Any changes to the cooperating commission will not be effective until submitted to Broker in writing, signed by Seller, and submitted to the MLS by Broker.

**4B. BROKER'S FEES:** Other than the non-refundable **\$599.00** fee Seller agrees to pay Broker, Seller is only required to pay a commission of \_\_\_\_\_(%) percent [**insert percentage from 2% to 3%, typically 2.5%**] to a licensed Cooperating Broker. Seller must pay the cooperating commission if, during the term of this agreement or the protection period, within 60 days after this listing expires, Seller transfers the Property to a buyer shown the Property by a cooperating broker. The term "buyer" is broadly construed to include any individual or entity to any capacity and any type (or portion) of transfer of a legal or equitable interest in the subject Property. Upon the sale of the Property the cooperating commission will be paid to Cooperating Broker.

**4C. PAYMENT OF COOPERATING COMMISSION:** Seller must pay the cooperating commission if, within 60 days after this listing expires, Seller 1) enters into a contract to transfer the Property, or 2) transfers a legal or equitable interest (excluding a lease with no right to purchase) in the Property, to any buyer shown the Property by a cooperating broker during the term of the listing. If such contract or transfer occurs while the Property is listed exclusively with another licensed real estate broker, the provision of this sub-paragraph will not apply. Should Seller default in the performance of a sales contract signed by Seller and a prospective buyer, Seller must pay the cooperating commission as if the sale of the Property had been consummated, and any expenses, including reasonable attorneys fees, incurred in connection with such default, the sale of this Agreement, Seller must pay any expenses, including reasonable attorneys fees, incurred in connection with such default or the enforcement of this Agreement. Broker will retain the listing fee in all circumstances, including, without limitation, when a buyer is found for the Property or in the event Seller is unable to sell the Property.

**Under this Agreement, the Seller can sell his/her Property himself/herself to any buyer not procured or represented by a participating Real Estate Agent, in which case no selling agent commission is due.**

**Notice:** The amount or rate of the real estate commission is not fixed by law. They are set by each Real Estate Agent individually and may be negotiable between the Seller and Real Estate Agent.

**5. SELLER'S REQUIREMENTS:** Seller shall provide Broker with all the Property information requested and represents that said information is true and accurate to the best of Seller's knowledge. Seller is responsible for any and all inaccuracies contained in the information provided to Broker and agrees to be responsible for any fines assessed by the MLS for any MLS infractions caused by Seller as stated below. Seller understands that Broker does not conduct any investigation of the Property to verify the information provided by Seller and is not responsible for the accuracy of the information. Broker shall input the Property information with the local MLS in accordance with local MLS rules and regulations. Broker shall complete a verification form setting forth all of the information provided by Seller and as input on the MLS. Seller agrees to review, verify and sign the form.

**5A. Seller agrees to notify Broker, within 48 hours, in the event of any of the following:**

- Seller enters into a contract to sell the property;**
- Seller wishes to change the listing price or cooperating commission;**
- Seller decides not to sell property;**
- Closing date or settlement.**

**5B.** Seller, upon entering into a contract of sale with a buyer, agrees to notify Broker within 48 hours of the fact that Property is under contract, and will advise Broker of the name and phone number of the settlement agent or attorney and provide Broker with a fully executed copy of the purchase/sale agreement and all addendum thereto. The failure to do so may result in a fine, by the MLS, to Broker, which will be charged to the Seller collectable at closing and/or through judicial action at the option of Broker.

**\*\*\*Upon the sale of the Property, Seller agrees to deliver to Broker, the following documents or information:**

- Copy of HUD-1 settlement statement or closing statement;
- Copy of Sales Contract including all addenda and amendments, if any, and written verification by the escrow agent that all required deposit(s) have been paid;
- Seller's new address;
- Seller may not terminate this Agreement while the Property is under contract. If this agreement expires while the property is under contract Seller must comply with the above.

**5C.** Seller may not: Advertise the Property at a price that is lower than the Listing Price; or use the Broker's name or logo in any advertisement placed independently by Seller.

**6. LISTING FEE:** Seller agrees to pay at the time of entering into this Agreement and in the manner provided herein a **non-refundable** listing fee of **\$599.00** for the initial term of this Agreement. Should a participating Real Estate Agent procure a buyer who is ready, able and willing to purchase the described Property for the price identified in paragraph #3 of this agreement the sale and transfer to such a buyer must occur. The listing fee charged is for placing the initial information into the MLS. There are no other fees charged for subsequent changes made to the information provided to the MLS or cancellation of the listing. **Once the listing is placed on the MLS the listing fee is non-refundable. If MLS service is cancelled by Seller prior to the listing being activated on the MLS a \$75.00 administration charge will apply and the balance of the listing fee will be refunded to Seller.**

**7. BROKER'S SERVICES:** The Broker's services are strictly limited to the following:

List the Property on the Multiple Listing Service (MLS), for the terms of this Agreement, up to a maximum of 6 months.

**8. BROKER SHALL NOT BE AN ESCROW AGENT:** Other than the service fee paid by Seller for the Broker's services, Seller shall not tender to Broker or any Broker/Agent employed by Broker, at any time, any money for deposit or to hold on Seller's or Buyer's behalf. Broker/Agent employees are expressly prohibited from accepting any money from Seller. Seller shall not execute a sales contract that stipulates or requires Broker to hold earnest money or a possession escrow.

**9. SELLER'S MANDATORY DISCLOSURES:** Seller understands that **Seller has a duty under law to disclose** to a potential buyer facts known to the Seller which materially and adversely affect the value of the Property, including violations of governmental laws, rules and regulations, and which are not readily observable by a buyer. Seller understands that **state law** requires Broker to disclose to any buyer all facts, which materially affect the value of the Property actually known by Broker, which are not readily observable by any buyer. Seller understands that a licensed Real Estate Broker or Salesperson ("licensee") working with a buyer may represent that buyer, and may be required to disclose to the buyer any information given to him by Seller. Broker shall not be responsible for making any disclosure to Buyer. Seller expressly releases Broker from any responsibility or liability regarding disclosure requirements whether required by statute or otherwise. Broker recommends that Seller consult with legal counsel concerning Seller's disclosure requirements or the completion of any disclosure form. Seller agrees to indemnify and hold Broker harmless for any violation of any ordinance, regulation, statute or law regarding Seller's disclosure obligations.

**10. REPRESENTATIONS:** Seller represents, warrants and agrees as follows: Seller understands that he/she must comply with all federal, state and local laws concerning fair housing. Seller acknowledges that federal, state, and local laws prohibit discrimination in the sale or rental of property based on race, color, religion, sex, disability, familial status, or national origin. Seller cannot instruct Broker or any person acting as Seller's agent to convey on behalf of Seller any limitations in the sale of the Property based upon any of the foregoing as Broker is also bound by the law not to discriminate.

**10A.** All persons and/or entities authorized to sell/rent the Property have signed this Agreement, and the undersigned signature(s) include all person(s) and/or entities, or their duly authorized representatives, who have an ownership interest in the Property. If the individual signing this Agreement is acting in a representative capacity, such individual certifies that he/she is legally authorized to enter into this Agreement.

**10B.** Seller has given Broker the information regarding the Property to appear on the MLS. Seller understands that the Property information will be included in the MLS. Such information is accurate and complete and does not omit or fail to disclose any material defects regarding the Property known to Seller.

**10C.** Seller shall indemnify, defend and hold broker harmless from and against any and all claims, demands, suits, damages, liability, losses or expenses (including reasonable attorneys fees) arising out of any misrepresentation, nondisclosure, concealment nonperformance of any purchase/sale agreement, or payment of any commissions by Seller in connection with the sale of the Property, including without limitation, the inaccuracy or incompleteness of any information provided by Seller for listing on the MLS. Seller is solely responsible for any complaints made by a buyer or prospective buyer before or after possession of the Property with respect to any defects in the Property.

**11. LOCK BOX (PURCHASE):** At Sellers option, Seller may purchase a combination lock box system from a retail outlet. Seller shall hold Broker harmless from any and all liability, claim, judgment, obligations or demands, including reasonable attorneys fees, arising as a result of the lock box. Seller should remove or safeguard personal valuables while the lock box is being used. If the Property is currently being leased, Seller must comply with local laws regarding access to the premises and, in most states, advise tenants of the foregoing and obtain tenants authorization consenting to the use of a lock box, for access to the Property.

**12. OWNERS OF MULTIPLE PROPERTIES:** A single owner selling multiple Properties in the same subdivision, complex or building, must list each Property individually with Broker.

**13. LIMITATION OF BROKER'S LIABILITY:** Seller agrees that the limit of Broker's liability under this Agreement and/or related to Broker's performance of the services mentioned herein is strictly limited to the service fee paid to Broker by Seller and no more.

**14. TERMINATION OF AGREEMENT:** There is no termination fee in the event the Seller decides to withdraw his/her Property from the market by giving written notice to Broker at any time there is not then a contract pending on the Property involving a buyer who was procured by a participating licensed Real Estate Agent. A refund, minus a \$75.00 administrative charge, will only be provided if the listing is cancelled before the property listing is entered into the Multiple Listing Service (MLS) or in the event that Broker does not accept this Agreement. You the Seller will be provided a copy of the MLS Listing. Broker does not guarantee the sale of your property. **Once your property is listed on the MLS, the listing fee has been earned by Broker and there will be no refund available.**

**15. ATTORNEYS FEES & COSTS:** If a dispute arises by and between the parties or involving the subject matter of this Agreement and litigation is commenced to enforce the provisions herein or interpret the provisions herein, the prevailing party shall be due its reasonable attorneys fees and litigation costs, including appellate attorneys fees & costs by the non prevailing party.

**16. SELLER'S ACKNOWLEDGMENT OF BROKER'S LIMITED DUTIES:** This Agreement creates an Exclusive Agreement to market Seller's Property and limits the performance requirements of Broker as set forth herein. Broker has no obligation to prepare or negotiate, on Seller's behalf, a real estate contract for the sale of the Property. Seller acknowledges that selling the property may be complicated and may require professional legal assistance. Seller agrees to obtain assistance, as Seller deems necessary. No other agreement, expressed or implied, shall be held to impose any greater relationship than that set forth

herein. Seller waives any claim or cause of action it may have against Broker, its owners, agents and employees arising as a result of any act or omission of Broker. Seller accepts the responsibility to comply with all ordinances, regulations and statutes pertaining to Seller's offer for sale and sale of the Property. Seller does not waive any rights guaranteed by the regulations and statutes of the State in which those rights cannot be voluntarily waived.

**16A.** Broker is not charged with any responsibility or custody of the Property, its management, maintenance, upkeep or repair. If permitted or unless otherwise directed by Seller, Broker may provide Seller's address and telephone number in the MLS and all affiliated web sites. Local laws govern the use of lawn signs. Seller should be aware of local regulations or should consult with local authorities prior to placing a sign.

**16B.** Using the services of Broker do not create any agency or other relationship between you and Broker. Broker does not owe you any fiduciary or other duty. Broker does not actually represent you.

**16C.** Broker's service consists of Ministerial Acts, acts that a Broker or affiliated licensee performs for a person that do not require discretion or the exercise of the Broker's or affiliated licensee's own judgment.

Broker will provide such Ministerial Acts as stated in the service list of the particular product you purchase. Such acts may include one or more of the following: submitting the information you provide to the multiple listing service; providing you with pre-printed forms; providing you with names of local lender, inspectors, attorneys, insurance agents, surveyors, schools, shopping facilities, places of worship, and such other like or similar services. None of the Ministerial Acts performed by Broker shall be constructed in such a manner as to form a brokerage engagement with you.

**16D.** Broker does not provide assistance in any manner that would require her or her principles to exercise discretion or judgment. Examples of services that are not provided include: suggesting a sale's price, negotiation of Purchase and Sale Agreement. There have been isolated instances of reported burglaries of homes on which lockboxes have been placed and for which the lockbox has been alleged to have been used to access the home. In order to minimize the risk of misuse of the lockbox Broker recommends against the use of lockboxes on door handles that can be unscrewed from the outside or on other parts of the home from which the lockbox can be easily removed. Since others will have access to your property you should remove all valuables or put them in a secure place.

**16E.** Broker works to maintain her web site and services, but is not responsible for defects that may exist within her web site or any resulting loss of profits or other damages. Broker attempts to accurately enter the information you provide into the multiple listing service. However, Broker does not guarantee error-free service. If you discover any error you must promptly notify Broker so the error can be remedied. Broker is not responsible for any loss or damage suffered by the error.

Broker shall under no circumstances have any liability greater than the amount it received from you for its services. You agree to hold Broker harmless from any and all claims, causes of action, or damages arising out of or relating to your providing incomplete and/or inaccurate information to Broker.

**17. NO GUARANTEE OF SALE OF PROPERTY:** Seller understands that this Agreement does not guarantee the sale of the Property.

**18. FACSIMILE AND E-MAIL SIGNATURES:** The Broker and Seller agree that if this Agreement is sent or returned via facsimile or e-mail, such facsimile or e-mail document shall have the same legal effect as an original document and that the signature shall have the same binding effect as an original signature.

**19. ASSIGNMENT:** This Agreement may not be assigned by the Seller without the express written consent of Broker.

**20. BINDING:** This Agreement shall be binding upon the parties hereto and respective heirs, personal representatives, successors and assigns.

**21. PRIOR AGREEMENTS:** This Agreement supersedes all other Agreements entered into between the parties and in the event there is a conflict between this Agreement and any other Agreement between the parties hereto the terms and provisions of this Agreement shall control and be binding upon the parties.

**22. SEPARABILITY CLAUSE:** In the event any part of this Agreement shall be held invalid, such invalidity shall not invalidate the whole agreement, but the remaining provisions of this Agreement shall continue to be valid and binding and deemed to reflect fairly the intent and understanding of the Seller and the Broker in executing this Agreement.

**23. ENTIRE AGREEMENT:** This Agreement contains all covenants between the parties and may only be modified by writing signed by all parties hereto. There are no oral representations made that are not contained herein and no oral modifications of this Agreement are allowed.

THIS IS A LEGALLY BINDING CONTRACT. ASK TO HAVE EACH TERM YOU DO NOT UNDERSTAND FULLY EXPLAINED TO YOU SO THAT YOU UNDERSTAND THE AGREEMENT YOU ARE MAKING.

**By signing this Agreement, Seller acknowledges that (1) Seller has read all provisions and disclosures made herein before signing, (2) Seller understands all such provisions and disclosures and has entered into this Agreement voluntarily, (3) Seller has received a copy of Massachusetts Mandatory Licensee-Consumer Relationship Disclosure form.**

\_\_\_\_\_  
Seller's Signature

\_\_\_\_\_  
Seller's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**BROKER'S SIGNATURE:** \_\_\_\_\_

**LISTING ACCEPTED ON:** \_\_\_\_\_