



MEMORIAL FIRST REALTY
945 MCKINNEY STREET #343
HOUSTON, TEXAS 77002
TELEPHONE NO. (281) 738-2648
TELECOPIER NO. (281) 957-5357

EXCLUSIVE AGENCY LISTING AGREEMENT

The undersigned ("Owners") hereby appoint the undersigned broker ("Broker") to sell the property ("Property") identified below and in the Property Profile ("Profile") hereby tendered (the contents of which are hereby incorporated by reference hereto).

1. (a) Broker is appointed to sell the Property for the period set forth below and in the Profile, which period shall automatically terminate at 11:59 p.m. on the last day of such period unless extended by written agreement of Owners and Broker. Broker agrees to list the Property on the multiple listing service (MLS) and Owners hereby authorize such MLS listing.

(b) The Property shall be initially offered at the price set forth below and in the Profile. Such price may be changed by written agreement of Owners and Broker. Owners agree to pay commissions as follows. **Broker shall receive the listing fee for the State where the Property is located at the time of the execution and delivery of this Agreement. A cooperating broker (or buyers agent broker), if any, shall be paid at time of execution and delivery of the deed or installment agreement for deed for the Property ("closing") the commission set forth below and in the Profile, which may be changed by written agreement of Owners and Broker. Listing broker's fee is unequivocally earned and due when the Property is listed on the MLS. Thereafter there are no refunds.**

2. (a) No amendment or alteration to any of the terms or provisions of this Agreement shall be made or be valid or binding except upon the written and signed agreement of Owners and Broker. It is expressly provided that no amendment or alteration to the terms, with respect to the amount of commission or with respect to the time of payment of commission, shall be valid or binding unless made in writing and signed by the parties.

(b) It is illegal for either the owners or broker to refuse to display or sell to any person because of one's membership in a protected class, e.g. race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other protected class. Owners and broker acknowledge they shall also be bound by the provisions of state and local (city and/or county) human rights or fair housing ordinances if any and agree to comply with same.

(c) **Broker is being retained and compensated solely to list the Property on the MLS. Broker will however without consideration (1) make changes to the MLS Listing as Owners direct and (2) refer calls to Owners through an automated phone system. Broker is not otherwise acting as Owners' agent or in any other capacity. If Owners opted for a SUPRA Keybox, all showings to Buyers represented by REALTORS will be handled via the SUPRA Keybox and scheduled using Centralized Showing Services. If a Buyer is not represented by a REALTOR, the Owner agrees to show their property themselves and schedule, meet, greet, unlock, show, and relock the home at an agreeable time between the Owner and the non-represented prospective buyer. Owners agree to pay any broker, who brings them a buyer, the commission indicated below. Owners are free to sell the Property themselves on an unlimited basis at anytime. Broker has no control over and does not screen those who view properties.**

3. (a) Owners may cancel this Agreement at anytime by a signed letter faxed to Broker indicating the Property address and date of cancellation. Broker may cancel this agreement if in its sole judgment continuation of the listing would not be in the parties best interests by notice in writing (which may be by fax or email) two days prior to the effective date of cancellation. If for any reason Broker cancels this agreement Broker will refund the Listing Broker Fee amount of \$289 within 10 days of such cancellation to the Owners mailing address. Any other fees paid by Owners to Broker shall be considered "costs of doing business" and will not be refunded to Owners.

(b) Owners shall comply with the Real Estate Settlement Procedures Act of 1974, if applicable, and furnish all information required for compliance therewith. Owners are responsible for supplying any and all disclosure documents to prospective buyers including any necessary lead paint disclosure and property disclosure reports. Owners hereby agree to indemnify and hold Broker harmless if any listing information is inaccurate, the buyer's broker does not receive the commission due or Owners violate applicable law.

4. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, assignees, heirs, executors and representatives, except that this Agreement may not be assigned by Owners without the prior written consent of Broker. Any provision of this Agreement that is illegal, invalid, prohibited or unenforceable shall be ineffective to the extent of any such illegality, invalidity, prohibition or unenforceability and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or provisions were omitted without invalidating or impairing the remaining provisions hereof. In connection with any litigation or dispute arising out of this Agreement or the listing created hereby, Broker shall recover all costs incurred, including all attorneys' fees, from Owners. If Broker is sued or joined in arbitration for a cooperating broker's commission, Owners shall immediately pay the amount claimed plus \$1,000 (whether or not Broker is found liable for the same) to Listing Broker via cashiers check. Faxed signatures shall be deemed original signatures hereon and on all notices provided pursuant hereto.

5. Service Providers: If Broker refers Owners, or prospective buyer, to a service provider (for example, mover, Cable Company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service



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provider for the referral. Any referral fee Broker receives under this paragraph is in addition to any other compensation Broker may receive under this Listing Agreement.

6. **Confidential Information:** During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Owners except as authorized by Owners or required by law. Broker may not

disclose to Owners any confidential information regarding any other person Broker represents or previously represented except as required by law.

7. **Brokers Authority:** Broker is not authorized to execute any documents in the name of or on behalf of Owner concerning the Property set forth below.

8. **Owners Representations:** Owners represent that:

(a) Owner has fee simple title to and peaceable possession of the property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;

(b) Owners are not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;

(c) Any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;

(d) No person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;

(e) There are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;

(f) The Property is not subject to the jurisdiction of any court;

(g) All information relating to the Property Owners provide to Broker is true and correct to the best of Owners knowledge.

9. **Owners Additional Promises:** Owners agree to:

(a) Not enter into a listing agreement with another broker for the sale, exchange, or lease of the Property unless terminating this Listing agreement first;

(b) Maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;

(c) Complete any disclosure notices required by law;

(d) Amend any applicable notices and disclosures if any material change occurs during the Listing.

10. **Limitation of Liability:** Owner further acknowledges that if the property is or becomes vacant during the Listing, Owners must notify Owners' casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property or for inspecting the Property on any basis. Broker is not responsible or liable in any manner for personal injury to any person for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by:

(a) Other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property;

(b) Acts of third parties (for example, vandalism or theft);

(c) Freezing water pipes;

(d) A dangerous condition on the Property; or

(e) The Property's non-compliance with any law or ordinance.

11. Owner agrees to protect, defend, indemnify, and hold Broker harmless from any damage, cost, attorney's fees, and expenses that:

(a) Are caused by Owners, negligently or otherwise;

(b) Arise from Owners failure to disclose any material or relevant information about the Property; or

(c) Are caused by Owners giving incorrect information to any person.

12. **Mediation:** The parties agree to negotiate in good faith in an effort to resolve any dispute related to this listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.

13. **Attorney's Fees:** If owners or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

14. **Agreement of Parties:** Owners acknowledge that:

(a) This Listing is the entire agreement of the parties and may not be changed except by written agreement.

(b) Neither party may assign this Listing without the written consent of the other party.



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- (c) Owners obligation to pay Broker an earned Listing fee is binding upon Owners and Owners heirs, administrators, executors, successors, and permitted assignees.
- (d) All Owners executing this Listing are jointly and severally liable for the performance of all its terms.
- (e) If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.

15. Additional Notices to Owners are:

- (a) Broker's fees are not fixed, controlled, recommended, suggested, or maintained by the Association of Realtors, MLS, or any listing service.
- (b) Fair housing laws require the Property to be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (for example, creed, status as a student, marital status, sexual orientation, or age).
- (c) Owners may review the information Broker submits to the MLS or other listing service.
- (d) Broker advises Owners to remove or secure jewelry, prescription drugs, and other valuables.
- (e) Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay a transaction and may result in fines, penalties, and liability to Owners.
- (f) If the Property was built before 1978, Federal law requires the Owners to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazard in the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; (4) provide the buyer a period up to 10 days to have the Property inspected for such paint hazards.
- (g) **Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.**

In Witness Whereof, this Agreement has been executed by the parties as of the date stated below.

Owner(s) Signature(s)

 Broker's Signature

Michael B. Burt

 Listed Property Address (number, city, state):

 Date Agreement Commences (month, day, and year):

 Date Agreement Terminates:

One year from date agreement commences, or property is sold, or otherwise notified by Owners to terminate Listing (there are no refunds if terminated by Owners). Extensions to the listing period require an additional fee.

 Listing Price: \$ _____

 Cooperating brokerage commission: % _____
 (Should match the buyers agent commission percentage entered in your listing form. This percentage should be between 1% and 3%. The cooperating broker's commission is paid at the time of closing.)