

CLEAN DRAFT - For use during 3/17/16
SFC meeting

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT
Hawaii Association of REALTORS® Standard Form
Revised For Release

COPYRIGHT AND TRADEMARK NOTICE: This copyrighted Hawaii Association of REALTORS® Standard Form is licensed for use by the entire real estate industry on condition that there shall be no alteration of the printed portions, pagination, or paragraph numbers or breaks. The use of this form is not intended to identify the real estate licensee as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the National Association of REALTORS® and who subscribe to its Code of Ethics.

Licensee in Brokerage Firm is [] is not [] a REALTOR® and member of the National Association of REALTORS®. Seller is aware that the National Association of REALTORS® holds its members accountable for their actions through a strict Professional Code of Ethics, which includes a grievance system to address complaints. Non-members are not required to participate in the grievance system.

Property Reference or Address: _____

Tax Map Key: Div. ____/Zone ____/Sec. ____/Plat ____/Parcel ____/CPR ____ (if applicable).

Brokerage Firm _____

State License No. _____ Phone _____

Address _____

Real Estate Licensee _____

State License No. _____ Phone _____

Seller's Name _____

Authorized Representative _____

Title _____

Seller's Name _____

Authorized Representative _____

Title _____

Seller's Name _____

Authorized Representative _____

Title _____

NOTE: Prior to executing this Exclusive Right-To-Sell Listing Contract, Seller is obligated to provide Brokerage Firm with a list of prospects received from Seller's former Listing agent.

SECTION A: TERMS AND CONDITIONS BETWEEN SELLER AND BROKERAGE FIRM

A-1 **AGENCY:** The Buyer and/or Seller in a real estate transaction in Hawaii may retain a real estate Brokerage Firm as their agent. In such case, the Buyer and/or Seller is represented by the Brokerage Firm and all of its licensees. Hawaii law requires real estate licensees to disclose orally or in writing to Seller and/or Buyer whom the licensee represents. The form of representation may be one of the following:

- (a) **Seller's Agent.** Brokerage Firm represents Seller only unless a disclosed dual agency exists. Seller's Agent owes the highest duties to Seller, including confidentiality, loyalty, and due care and diligence.
- (b) **Buyer's Agent.** Brokerage Firm represents Buyer only unless a disclosed dual agency exists. Buyer's Agent owes the highest duties to Buyer, including confidentiality, loyalty, and due care and diligence.
- (c) **Dual Agent.** Brokerage Firm represents both Buyer and Seller. This commonly occurs when licensees in the Brokerage Firm representing Seller have a Buyer client looking for types of property similar to Seller's property. In such event, the Brokerage Firm and all of its licensees represent both Buyer and Seller and are dual agents. Dual agents must remain neutral in negotiations and must not advance the interest of one party over the other.

Seller [] agrees [] does not agree to Dual Agency

If Seller agrees, then a separate written Dual Agency Consent Addendum is required with the Purchase Contract under Hawaii law.

Customer. Seller's Agent can also assist Buyer as a customer. As a customer, Buyer is not represented by Seller's Agent. Seller's Agent can assist Buyer in writing the Purchase Contract, can present the Purchase Contract to Seller, and can report back to Buyer any acceptance or request for changes to the Purchase Contract.

A-2 **OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants and certifies that (i) Seller is the owner of the Property, (ii) only those named above have title to the Property, (iii) Seller has the authority to execute this Listing Contract and to sell the Property, and (iv) Seller is not a party to any other listing contract or commission agreement to sell the Property.

A-3 **EXCLUSIVE RIGHT TO SELL:** "Exclusive Right To Sell" means that Seller shall list the Property with Brokerage Firm only and that Brokerage Firm is entitled to a commission if the Property is sold by Brokerage Firm or Seller. Seller hereby employs Brokerage Firm as Seller's agent and

BROKER'S INITIALS & DATE

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Exclusive Right-To-Sell Listing Contract
RR101 Rev.

grants Brokerage Firm the exclusive and irrevocable right to sell or exchange the Property identified above and described on the attached EXHIBIT A (Property Information). Seller shall conduct all negotiations regarding the sale of the Property only through Brokerage Firm, and will refer to Brokerage Firm all communications received in any form relating to the sale of the Property from any source during the Listing Period.

A-4 **LISTING PERIOD:** Begins (date) _____ and ends at 11:59 PM (HST) on (date) _____.
Either party may end the Listing Contract with _____ () calendar days' advanced written notice to the other. However, neither party may end this Listing Contract before 11:59 PM (HST) on (date) _____ unless Seller and Brokerage Firm agree in writing, to an earlier date.

A-5 **PROTECTION PERIOD:** _____ () calendar days after the termination or expiration of the Listing Contract.

A-6 **ITEMS INCLUDED OR EXCLUDED:** Unless specifically excluded in Exhibit A which is made part of this Listing Contract, all fixtures and built-in appliances attached to the Property will be included in the sale. Personal property and staging items will be excluded.

A-7 **LISTING PRICE:** _____ Dollars
(\$ _____).

A-8 **COMPENSATION TO BROKERAGE FIRM:** Seller agrees to pay Brokerage Firm _____ Percent (%), of sales price, plus GET (General Excise Tax), or \$ _____ on the occurrence of any of the following:

- (a) Brokerage Firm, Seller, Cooperating Broker or any other person procures a Buyer (or Buyers) who offers to purchase the Property on the price and terms of this Listing Contract, or on any price and terms acceptable to Seller, during the Listing Period or any extension of the Listing Period, no matter who (including Seller) procures the Buyer.
- (b) Brokerage Firm procures a Buyer (or Buyers) ready, willing and able to pay the Listing Price and meet the other material terms of this Listing Contract, and Seller refuses to sign the Purchase Contract.
- (c) Brokerage Firm procures a ready, willing and able Buyer who meets the price and terms acceptable to Seller, executes a Purchase Contract with a Buyer and Seller subsequently defaults under the terms of the Purchase Contract
- (d) Seller, within the Protection Period specified in A-5 above, enters into an accepted Purchase Contract, exchange agreement or option to Purchase Contract with any prospect to whom the Property was presented and who is included in a written list of prospects delivered to Seller by Brokerage Firm within 10 days of the termination or expiration of the Listing Contract, which shall be payable upon closing, whether or not closing occurs during or after the Protection Period.
- (e) Seller withdraws Property from sale before the end of this Listing Contract without the consent of Brokerage Firm.
- (f) If Seller enters into an option agreement with a Buyer, Seller agrees to pay one-half of the option consideration. However, Seller will not pay more than what would have been Brokerage Firm's full commission. Seller will pay the balance of the commission, if any, and any agreed upon general excise tax when the option is exercised, even if it occurs after the expiration of the Listing Contract.
- (g) If any defaulting Buyer's deposits are forfeited, Brokerage Firm is entitled to one-half of such deposit, not to exceed what would have been Brokerage Firm's full commission.

A-9 **ADDITIONAL TERMS:** _____

A-10 **ADDENDA MADE PART OF THIS CONTRACT:** _____

SECTION B: BROKERAGE FIRM'S OBLIGATION

B-1 **Best Efforts.** Brokerage Firm agrees to use its best efforts to achieve the sale of the listed Property to a qualified Buyer at a price and upon terms acceptable to Seller.

B-2 **Marketing.** Seller will: (i) allow Brokerage Firm to place a for sale sign on the property and install a lock box on the property; (ii) allow the Brokerage Firm to advertise the property for sale by way of the MLS, internet, newspaper, radio, TV, Social Media or any other means that are in compliance with County, State, or Federal law; (iii) allow Brokerage Firm to prepare informational sheet to provide to potential Buyers and any other promotional items as Brokerage Firm deems advisable; (iv) and allow Brokerage Firm to hold Broker's Opens, Open Houses and any other special showings as Brokerage Firm deems appropriate.

B-3 **Communication.** Brokerage Firm agrees to keep Seller informed of any potential interest in the Property, and to present all offers in a timely manner.

B-4 **Negotiating.** Brokerage Firm agrees to assist Seller in evaluating and negotiating all offers.

B-5 **Escrow Process.** Brokerage Firm agrees to assist and guide Seller to fulfill all of Seller's obligations agreed to in the Purchase Contract.

B-6 **Fair Housing Laws.** Brokerage Firm shall comply with State and Federal anti-discrimination laws.

SECTION C: SELLER'S REPRESENTATIONS

Seller represents that, unless otherwise specified in writing, Seller is not aware of any of the following conditions and Seller shall promptly notify the Listing Brokerage Firm in writing if Seller becomes aware of any of these conditions during the Listing Period, which shall include any extension(s) of Listing Period.

C-1 **Notice of Default** or pending foreclosure action against the Property;

C-2 **Delinquent amounts** due under any loan or other obligation such as real property taxes, AOA, Homeowner, or Community Association dues, or child support or alimony payments;

C-3 **Bankruptcy**, insolvency or similar proceedings affecting the Property;

C-4 **Litigation**, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the value of the Property or Seller's ability to transfer the Property or title to the Property; and

C-5 **Current**, pending or proposed special assessments affecting the Property.

C-6 **Violations** of government regulations/ordinances related to the Property.

BROKER'S INITIALS & DATE

SELLER'S INITIALS & DATE

SECTION D: SELLER'S OBLIGATION

- D-1 **Cooperation.** Seller will prepare the Property for showings and open houses. Seller shall provide all pertinent information, documents, and keys, and permit access to the Property for home and other inspections including termite inspectors, appraisers, surveyors and other service providers.
- D-2 **Access.** Seller shall allow access, as needed, during reasonable hours for showings, open houses, home inspections, and as may be required by law in the case of tenant occupancy.
- D-3 **Lock Box.** Seller agrees to permit and will obtain written permission from any tenant to install a lock box or electronic key device on the Property to allow for showings and inspections.
- D-4 **Securing Valuables.** Seller agrees to secure all valuables and will instruct any occupants to secure their valuables. Brokerage Firm will not be responsible for any valuables, or for loss or damage to real or personal property.
- D-5 **Professional Advice.** Seller is advised to consult an attorney, accountant, or other appropriate professionals. Seller is not relying upon Brokerage Firm for any such advice.
- D-6 **Offers.** Seller agrees to consider all offers presented by Brokerage Firm and to act in good faith to sell the Property. Seller shall also agree to respond in writing to any offers presented by Brokerage Firm, indicating acceptance, rejection or preparing a counter offer.
- D-7 **Disclosure of Material Facts.** Pursuant to Hawaii Revised Statutes, Chapter 508D (for residential real property) and under common law (for all other real estate transactions, including the sale of vacant land) a Seller of residential real property is obligated to fully and accurately disclose in writing to a Buyer all "material facts" concerning the Property. "Material facts" are defined as "any fact, defect or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale". Seller hereby agrees to provide a written disclosure statement to a Buyer containing any fact, defect or condition, past or present, that would be expected to measurably affect the value of the Property to a reasonable person. Such disclosure statement shall be prepared in good faith with due care and shall disclose all material facts relating to the Property that (i) are within Seller's knowledge or control: (ii) can be observed from visible accessible areas or (iii) are required by Section 508D-15 of Hawaii Revised Statutes.
- (a) Pursuant to 508D-15, Seller MUST include information in the Seller's Real Property Disclosure Statement if Property lies: (i) within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration (FEMA) maps: (ii) within the boundaries of the noise exposure area shown on maps prepared by the Department of Transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport: (iii) within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy or Marine Corps airport as officially designated by military authorities or (iv) within the anticipated inundation areas designated on the Department of Defense's Civil Defense Tsunami Inundation Maps subject to the availability of maps that designate the four areas by TAX MAP KEY.
- (b) Seller understands that purposely or negligently failing to comply with this disclosure law may result in liability for damages. Seller further understands that if a written disclosure statement is not provided, or if inspection of the Property by a third party reveals facts inconsistent with or contradictory to Seller's disclosure statement, Hawaii law requires that Brokerage Firm disclose those facts to Seller, Buyer and Buyer's agent. This obligation of disclosure limits Brokerage Firm's agency duty of confidentiality. Seller also understands that if, after Seller's disclosure statement has been delivered to Buyer and prior to closing, Seller becomes aware of information which was not previously disclosed or which makes any statement in the disclosure statement inaccurate and said information directly, substantially, and adversely affects the value of the Property, then Seller shall provide an amended disclosure statement, in writing, to Buyer within ten (10) days after the discovery and in no event later than twelve noon on the last business day prior to the recorded sale of the Property.
- D-8 **Leasehold Disclosure.** If the Property is leasehold, Seller agrees to provide, at Seller's expense, a current leasehold disclosure as required by Hawaii State law. Seller authorizes Brokerage Firm to order such a disclosure from a qualified professional, if such professional service is available.
- D-9 **Fair Housing Laws.** Seller shall comply with State and Federal anti-discrimination laws.
- D-10 **Sex Offender.** Hawaii has enacted a law (Megan's Law) requiring sex offenders to register with the State Attorney General's office. If Seller has knowledge that a sex offender resides in the immediate area of the Property, Seller is required to disclose such information to Buyer.
- D-11 **Prospects From Prior Listings.** When signing this Listing Contract, Seller shall deliver to Brokerage Firm a copy of any prospect list given to Seller from any earlier listing with another brokerage firm. If another brokerage firm earns a commission because of a sale to any prospect on such a list, Seller will not be obligated to pay current Brokerage Firm any commission unless otherwise agreed.
- D-12 **Mediation and Arbitration.** If any dispute or claim in law or equity arises out of this Contract, and the parties are unable to resolve the dispute, Seller agrees to attempt in good faith to settle such dispute or claim by non-binding mediation through the Local Board of REALTORS® or, in the event the Local Board of REALTORS® does not provide mediation services, then through a mutually agreed upon mediator. If the mediation is not successful, then Seller will consider arbitration and may seek legal counsel to make this determination. It is understood that if both parties are involuntarily named as defendants in a lawsuit by a third party in any matter arising out of this Agreement, this paragraph shall no longer be binding on either party.
- D-13 **Escrow.** A bonded company shall be employed to help with the conveyance of the Property. Seller hereby irrevocably assigns to Brokerage Firm the above compensation and any agreed upon general excise tax from Seller's funds and proceeds in escrow.
- D-14 **Costs.** Seller shall pay the following, including but not limited to (i) Agreed upon commission to Brokerage Firm per A-8 above: (ii) Customary closing costs: (iii) Costs of Homeowner Association and cost of all documentation as required by Section 508D of the Hawaii Revised Statutes: (iv) Costs involved with termite or survey matters or (v) Any other fees or costs that Seller is obligated to or agrees to be responsible for in the Purchase Contract: (vi) Legal fees.

SECTION E: SELLER'S AUTHORIZATIONS

- E-1 **Other Brokerage Firms.** Seller authorizes Brokerage Firm to cooperate and share commissions with other brokerage firms.
- E-2 **Other Clients.** Brokerage Firm may have agreements with other Sellers to market and sell their property. Seller agrees, consents and waives any objections should Brokerage Firm list and show similar properties as Seller's property.
- E-3 **Release of Information.** (a) Seller authorizes Brokerage Firm and Escrow to obtain any information regarding mortgage balances, lease rents, maintenance fees, property management, collection accounts, real property taxes or like items. Some of this information will be available to prospective Buyers in MLS. (b) Seller hereby consents to publication of the Property information in MLS and to the use of this information for market studies and advice to clients or customers. Seller understands that Brokerage Firm is obligated to comply with all applicable MLS rules. MLS rules allow MLS data to be made available by the MLS to additional public Internet and social media sites unless Seller gives Brokerage Firm instructions to the contrary.

SECTION F: MISCELLANEOUS TERMS

- F-1 **Foreign Investment in Real Property Tax Act (FIRPTA): Withholding Required If Seller Is A Foreign Person.** Under the Internal Revenue Code, if Seller is a foreign person or entity (non-resident alien, corporation, partnership, trust or estate), then Buyer is generally required to withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate Internal Revenue Service ("IRS") form to the IRS. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. **Seller must complete the authorized exemption or waiver form, or Escrow will withhold/collect from Seller the required amount at closing and forward it to the IRS.**
- F-2 **Hawaii Real Property Tax Act (HARPTA): Withholding Required If Seller Is A Non-Resident Of The State Of Hawaii.** Under Hawaii law, if Seller is a non-resident person or entity (corporation, partnership, trust or estate) of the State of Hawaii, Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding. **Seller must complete the authorized exemption or waiver form, or Escrow will withhold/collect from Seller the required amount at closing and forward it to the State Department of Taxation.**
- F-3 **CONFLICT IN TERMS:** Any handwritten word in this Listing Contract prevails over any typed or printed word.
- F-4 **INDEMNIFICATION:** Seller agrees to indemnify, defend and hold Brokerage Firm harmless from actions on the part of Seller for fraud, misrepresentation or failure to disclose any material facts that may result in dispute, litigation judgement or attorney fees.

Seller and Brokerage Firm acknowledge that Seller and Brokerage Firm have read and agree to the terms and conditions of the Exclusive Right-to-Sell Listing Contract and any Addenda attached to the Listing Contract, including Exhibit A. Seller represents that if Seller is an individual, a trust, corporation, partnership, or other legal entity, and the person(s) signing below has/have the authority to sign on behalf of Seller.

Date	Signature	Name (print or type)
	Address	Phone
Date	Signature	Name (print or type)
	Address	Phone
Date	Signature	Name (print or type)
	Address	Phone
	By: _____	Date
Brokerage Firm	Principal Broker or Broker-in-Charge	

Seller acknowledges receipt of an executed copy of this Listing Contract and attached Addenda.

SELLER'S INITIALS

NOTE: THERE IS NO WARRANTY ON PLAIN LANGUAGE. An effort has been made to put this agreement into plain language, but there is no promise that it is in plain language. In legal terms, THERE IS NO WARRANTY, EXPRESSED OR IMPLIED, THAT THIS AGREEMENT COMPLIES WITH CHAPTER 487A OF THE HAWAII REVISED STATUTES, AS AMENDED. This means that the Hawaii Association of REALTORS® is not liable to any Seller, or other person who uses this form for any damages or penalty because of any violation of Chapter 487A. People are cautioned to see their own attorneys about Chapter 487A (and other laws that may apply).

BROKER'S INITIALS & DATE

SELLER'S INITIALS & DATE