



**Residential Real Estate LISTING AGREEMENT**  
Exclusive Right to Sell

OWNER/seller \_\_\_\_\_ PHONE \_\_\_\_\_  
PROPERTY \_\_\_\_\_  
ADDRESS \_\_\_\_\_, CITY \_\_\_\_\_, TOWN \_\_\_\_\_  
COUNTY \_\_\_\_\_, STATE: NEW YORK ZIP CODE \_\_\_\_\_  
LISTING AGENT: \_\_\_\_\_ PHONE: NO. \_\_\_\_\_

**1. Listing Price:** \$\_\_\_\_\_ OWNER is solely responsible for determining the listing price and shall be sold, subject to negotiation, at such price and upon such terms to which Owner(s) may agree. The word Owner refers to each and ALL parties who have ownership interest in the property and the undersigned represent(s) they are the sole and exclusive owners and are fully authorized to enter into this agreement.

**2. Contract Term:** This contract will be effective from \_\_\_\_\_ until \_\_\_\_\_. Listing will automatically terminate on the expiration date. Exception: if property is Under Contract during this period the contract will extend itself until the settlement/closing date arrives. OWNER may cancel this contract (unless OWNER has a pending offer on the table or is under contract to a buyer) at any time without any additional obligations. A status change form must be faxed or emailed with instructions to cancel the listing.

**3. Brokers Obligations:** BROKER'S obligations under this Agreement is in connection with the marketing of the Listed Property including MLS along with affiliated internet sites, advertising, sales progression and maintaining all services until home is sold, or until listing has expired or has been cancelled. BROKER does this in an attempt to connect Sellers and Buyers in the hopes to procure a sale. BROKER shall also provide New York State required forms.

**4. Broker Fee:** Owner has paid BROKER \$\_\_\_\_\_, an upfront fee for the above mentioned services at time of signing this agreement. Owner agrees to pay BROKER \$\_\_\_\_\_, once the property is sold, at time of house closing. See Addendum A for Cooperating Broker Agreement.

**5. Fair Housing:** It is agreed that the Listed Property shall be listed in full compliance with local, state, and federal fair housing laws that prohibit discrimination on the basis of race, color, religion, sex, national origin, handicap, age, marital status, and/or familial status, or other prohibited factors. Federal and State laws make it illegal for OWNER, BROKER or anyone to use the above mentioned classifications as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of the property.

**6. OWNERS Authorizations:** **a.** In order to facilitate the sale of the Listed Property, the OWNER hereby (i) grants to BROKER a non-exclusive, irrevocable royalty-free license to use, sublicense, publish, display, and reproduce any photographs, images, graphics, video recordings, virtual tours, drawings, diagrams, written descriptions, remarks, narratives, pricing information, and other copyrightable elements of or relating to the Listed Property provided by OWNER to BROKER (hereinafter referred to as OWNER Listing Content), and to prepare derivative works of the OWNER Listing Content, and to reproduce, submit to the MLS, distribute, and publicly display the OWNER Listing Content or any derivative works thereof, and (ii) grants the BROKER the exclusive right to place "FOR SALE" signs or the like on the Listed Property, to the exclusion of OWNER. OWNER represents and warrants to BROKER that the OWNER Listing Content, and the license granted to BROKER for the OWNER Listing Content, do not violate or infringe upon the rights, including any copyright rights, or any person or entity.

**b.** The OWNER may or may not authorize the use of a lockbox, and accepts any and all responsibility for any damage, loss, or injury arising from the use of the lockbox. The OWNER understands that by providing the OWNER with a lockbox, the BROKER shall not be considered the custodian of or responsible for said Listed Property, lockbox, authorized or unauthorized use of said lockbox, or items placed therein.

**c.** The OWNER authorizes and directs the Cooperating Broker to submit all offers for the Listed Property to the OWNER.

**d.** The OWNER shall provide a "Property Condition Disclosure Statement" to potential purchasers and to Cooperating Broker, unless instructed differently by owner's attorney. OWNER is entirely responsible and liable for the accuracy and completeness of the disclosures made therein, and may be liable to provide a credit of \$500.00 to the buyer if a "Property Condition Disclosure Statement" is not provided at the time of offer.

**e.** The OWNER represents and warrants that he/she has received a copy of the "Disclosure Regarding Real Estate Agency Relationships."

**f.** OWNER represents and warrants to BROKER that OWNER is not under contract with or otherwise utilizing the services of any other licensed real estate broker or agent in connection with the Listed Property.

**g.** OWNER agrees to submit a fully executed "Sales Contract" and "Status Change" form to BROKER within 24 hours after both parties have signed the agreement, and again on the day of closing. Failure to do this may result in a monetary fine issued by the MLS. These fines are passed on to the OWNER. In addition, the "HUD/Settlement Statement" (which is given to the OWNER by the attorney upon closing) must be faxed to BROKER to close out your file.

h. If OWNER agrees to sell the Listed Property to a buyer who is not represented by a real Cooperating Broker, OWNER shall require such buyer to sign a statement before transfer of title stating: "For good and valuable consideration, the sufficiency of which is hereby acknowledged, I (We) represent and warrant to OWNER and the Listing Broker that I (We) have not been represented by a Cooperating Broker in connection with the Listed Property, have not been introduced to the Listed Property by a Cooperating Broker, have not been shown the Listed Property by a Cooperating Broker, and have not had communication with a Cooperating Broker pertaining to the Listed Property.

**7. Multiple Listing Service:** The OWNER understands and agrees that the Real Estate BOARD and MLS are not the OWNER'S agents and that none of the terms of this Agreement shall make them the OWNER'S agents.

**8. Escrow:** OWNER acknowledges and agrees that BROKER will not act as an escrowee, and OWNER will not direct anyone verbally or in writing to have BROKER hold escrows or earnest money, or otherwise act as an escrowee. OWNER is advised to consult with his/her attorney prior to closing about any potential escrow monies.

**9. Subsequent Offers:** OWNER SHOULD CONSULT AN ATTORNEY REGARDING ANY SUBSEQUENT OFFERS, BECAUSE A BINDING CONTRACT FOR THE PROPERTY MAY ALREADY EXIST.

**10. LIMITATION OF LIABILITY:** In no event will BROKER, its shareholders, directors, officers, employees, or agents be liable for any damages, losses, or liability, whether based on warranty, contracts, statutes, regulations, tort, or any other legal theory. The BROKER's liability hereunder is limited to the Service Fee paid by OWNER to BROKER. If a commission was paid directly to a Cooperating Broker, OWNER agrees to make all claims for reimbursement (should such a cause arise) of said commission against the Cooperating Broker.

**11. Indemnification:** OWNER shall defend, indemnify and hold BROKER, its shareholders, directors, officers, employees, agents and representatives harmless from, any and all losses, claims, damages, liabilities and costs, including without limitation commission claims, court costs, reasonable attorney's fees and MLS penalties and fines, which arise from, are related to, or are in connection with (i) OWNER'S breach of this Agreement or violation of any federal, state or local law; (ii) OWNER'S provision of false, misleading, inaccurate or incomplete information, representations or warranties to BROKER, prospective buyer or buyers; or (iii) claims of third parties relating to the Listed Property, the sale thereof, and/or any compensation to be paid in connection with such sale (including, without limitation, a claim by the Cooperating Broker against BROKER for a commission).

**12. TYPES OF LISTINGS:** In accordance with the requirements of New York State, the undersigned Owner(s) does (do) hereby acknowledge acceptance of the following two definitions:

**a. EXPLANATION OF EXCLUSIVE RIGHT TO SELL** (As quoted verbatim from the New York Department of State): An "exclusive right to sell" listing means that if you, the owner of the

property, find a buyer for your house, or if another broker finds a buyer, you must pay the agreed commission to the present broker.

**b. EXPLANATION OF EXCLUSIVE AGENCY** (As quoted verbatim from the New York Department of State): An "exclusive agency" listing means that if you, the owner of the property, finds a buyer, you will not have to pay a commission to the broker. However, if another broker finds a buyer, you will owe a commission to both the selling broker and your present broker.

OWNER'S Initials: \_\_\_\_\_ Date: \_\_\_\_\_

**Interpretive Statement:** We are required to provide you with the above definitions by law. However, the state's definition of Exclusive Agency and Exclusive Right to Sell do not qualify as our type of listing. The definitions above only consider sales commissions and pre-date the practice of charging up-front compensation for listing real estate. The Department of State should update them to reflect modern practice but has not done so. Broker essentially offers a combination of the two listing types described above but will post your listing in the MLS as an Exclusive Right to Sell when forced to select one of the two.

**As a dual agent,** the firm and its agents cannot furnish undivided loyalty to either party.

As a dual agent, the firm and its licensee agents have a duty not to disclose confidential information given by one principal to the other principal, such as the price one is willing to pay or accept. Such information may already be known to the firm and its agents. If the information is of such a nature that the agent cannot fairly give advice without disclosing it, the agent cannot properly continue to act as an agent.

**13. TERMINATION:** Broker and Owner(s) may choose to terminate sales agreement early with a 30 day written notice and agreement. Owner(s) understands that if Owner(s) terminates the Agent's authority prior to the expiration of its term, Agent shall retain its contract rights (including but not limited to retaining upfront payment, recovery of final payment, and/or any other damages) incurred by reason of an early termination of this agreement. Owner(s) upfront payment is non-refundable.

**14. Who may negotiate for the Owner(s):** Owner(s) agree(s) to direct all inquiries to the Agent. Owner(s) elect(s) to have all offers submitted through Agent.

**15. Additional Points:** Additional Points of Agreement, if any:

Owner(s) and Agent agree that no change, amendment, modification or termination of this agreement shall be binding on any party unless the same shall be in writing and signed by the parties.

OWNERS SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

OWNERS SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

LISTING AGENT \_\_\_\_\_ DATE \_\_\_\_\_

BROKER \_\_\_\_\_ DATE \_\_\_\_\_

### Addendum A

Please check box to indicate your choice:

Owner(s) chooses to **opt-in** for Cooperating Broker Fee

Owner(s) chooses to **opt-out** of Cooperating Broker Fee

#### Cooperating Broker Fee:

If NestQuest Direct Broker and agents are selling the home and a Cooperating Broker brings an interested buyer via MLS or open house or other method, Owner(s) may choose to pay Cooperating Broker 2.5% commission. This is in addition to NestQuest Direct's agreed upon fee, as stated above.

#### Cooperating Broker Fee Agreement

If Owner(s) Choose to Pay A Commission to A Cooperating Broker in the event their client chooses to purchase your home:

**1. Cooperating Broker Fee:** If a Cooperating Broker procures the buyer, OWNER will pay 2.5% of the sale price at settlement/closing to Cooperating Broker. Broker authorizes the closing attorney to pass through the entire percentage to the Cooperating Broker. The Cooperating Broker will be representing their buyer as a Sub Agent OR Buyers Agent OR Brokers Agent as outlined in the Agency Relationship Disclosure Form. Broker will post commission (as required on the MLS) to the respective types of Cooperating Brokers with the understanding that ONLY one commission will be paid, by the OWNER, to the ONE Cooperating Broker that sells the property. There will be ONLY one commission paid out to the Cooperating Broker who procures the buyer. If the buyer is not procured by a Cooperating Broker, then no commission will be paid out at closing.

**2. Commission at Title Transfer:** should a Cooperating Broker represent, introduce, or procure a buyer who purchases the Listed Property, OWNER agrees to pay the agreed-upon commission previously stated upon transfer of title. OWNER and BROKER authorize the closing agent/attorney to pay the Cooperating Broker commission directly from the sale proceeds upon the transfer of title, thereby saving you, the

OWNER, the step of issuing a check to Listing BROKER and Listing BROKER issuing a check back to the Cooperating Broker.

**3. OWNER agrees** to require all visitors who see the interior of the Listed Property without the assistance of a Cooperating Broker to sign a visitor's log. This log shall be created and retained by OWNER until six months after the transfer of title or expiration of this Agreement, whichever occurs later. If the prospective purchaser answers "yes" to working with an Agent (on the sign-in log), it is further understood by OWNER that a Cooperating Broker is entitled to a commission if home is sold to that buyer. If the prospective purchaser answers "no," that purchaser could still choose to be represented by a Cooperating Broker in a number of different circumstances, including, but not limited to, returning to the property with a Cooperating Broker and/or having an offer presented on his/her behalf by a Cooperating Broker. In such cases, a commission would be due and payable by OWNER.

**4. If a licensed real estate broker** presents proof that he has performed any of the above, OWNER would then pay the Cooperating Broker as defined in this Agreement). OWNER agrees that OWNER is ultimately responsible for payment of the commission provided for herein. If a Cooperating Broker is not paid a commission that he is due, the Cooperating Broker may choose to take legal action. The Buyer's statement provided for in this paragraph is merely a precautionary action to help the OWNER collect the Commission due to the Cooperating Broker if the Buyer has circumvented a Cooperating Broker who is due a commission in connection with the sale of the Listed Property. **A COPY OF THIS STATEMENT SHALL BE FAXED TO BROKER ALONG WITH CLOSING DOCUMENTS.**

**5. Dispute Resolution:** OWNER understands that should the Cooperating Broker take the Listing Broker to arbitration or court, OWNER will appear to testify if requested by the BROKER regardless of whether the venue has a legal right or jurisdiction to subpoena the OWNER. OWNER consents to all service and/or notifications by Certified Mail. OWNER agrees to permit the BROKER to assign his/her rights for damages from the Owner for breach of the contract to the Cooperating Broker.

Should the Cooperating Broker prevail against the BROKER for a failure to pay commission and said unpaid commission was never paid by the OWNER to the BROKER, OWNER indemnifies and holds harmless BROKER and agrees to pay all damages awarded by an Arbitrator or a Court of Law to the Cooperating Broker.

OWNER agrees to be responsible for all legal fees incurred by BROKER to defend any claims arising out of OWNER'S breach of this contract or fees incurred by the BROKER to collect fees provided by this agreement.

If, for any reason, the Cooperating Broker is not paid the commission set forth herein on the due date (or the closing agent or OWNER's lawyer does not pay said commission directly to the Cooperating Broker at closing), the OWNER shall immediately establish an escrow account with a party mutually agreeable to BROKER and OWNER and shall place into said escrow an amount equal to the applicable commission set forth herein. These monies shall be held in escrow until the parties' rights to the escrow monies have been determined (i) by the mutual agreement of the parties hereto, (ii) by order of a court of competent jurisdiction, or (iii) by some other process to which the parties hereto agree to in writing.

All claims, disputes, or other matters in question arising out of or relating to this Agreement, the Listed Property and/or the commission set forth herein shall be determined by arbitration before an arbitrator in the County of Westchester, State of New York, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator shall be final, and judgment may be rendered upon it in accordance with applicable law in a court of competent jurisdiction. In any proceeding to enforce any provision of this Agreement, or for damages caused by breach thereof or default thereunder, the prevailing party shall be entitled to reasonable attorney's fees, costs, and related expenses, such as expert witness fees, and fees paid to investigators. In the event the BROKER hires an attorney or collection agent to enforce the collection of any brokerage commission due hereunder and is successful in collecting all or any portion thereof with or without commencing an action, proceeding, or arbitration, OWNER agrees to pay such attorney's fees, costs, and expenses relating to the collection thereof.

OWNERS SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

OWNERS SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

LISTING AGENT \_\_\_\_\_ DATE \_\_\_\_\_

BROKER \_\_\_\_\_ DATE \_\_\_\_\_