



EXCLUSIVE RIGHT TO SELL AGREEMENT LISTING AGREEMENT

In consideration of the covenants herein contained, Ray Smith, Sole Property Owner(s) (hereinafter called "OWNER") and Highgarden Real Estate Real Estate Company (hereinafter called "BROKER"), agree as follows:

For the period of time beginning on \_\_\_\_\_, \_\_\_\_\_, and ending at midnight on \_\_\_\_\_, Owner hereby grants to Broker the sole and exclusive right to sell the real property known as:

Lot \_\_\_\_\_ Block \_\_\_\_\_ Section \_\_\_\_\_ Subdivision \_\_\_\_\_

Address \_\_\_\_\_

Tax Map # ON MLS \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

County of \_\_\_\_\_, State of South Carolina.

The real estate described herein includes all improvements, fixtures, appurtenances, and the additional property, if any, described here. Storage shed, swing set, etc. Washer, Dryer, Fridge, etc.

1. CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)

Owner acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Owner.

Owner acknowledges that after entering into this written agency contract, Broker might request a modification in order to act as a dual agent or a designated agent in a specific transaction.

If asked:

- Permission to act as a dual agent will not be considered.
Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written Dual Agency Agreement.
Permission to act as a designated agent will not be considered.
Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written Designated Agency Agreement.

2. COMPENSATION TO OTHER AGENTS

Broker has advised Owner of Broker's general company policy regarding cooperating with and compensating other agents. Owner authorizes the Broker to cooperate and to compensate the following: (CHECK ALL APPLICABLE CHOICES)

never [ ] Subagents [x] Buyer Agents [x] Dual Agents [x] Designated Agents [ ] None (If this box is checked, property cannot be placed in the multiple listing service.)

3. TERMS: As follows:

A. Broker agrees to employ Broker's best efforts to sell or to secure a contract for the sale of the property for a price of \_\_\_\_\_ Dollars

(\$ 450,000 ) and in return Owner agrees to pay Broker a fee of \$ \_\_\_\_\_ or a commission of always 6 % of gross sales price if Broker, Owner, another broker, or any other person or company produces a Buyer who is ready, willing, and able to purchase the property on the terms described above or on any terms acceptable to Owner. Owner understands that Broker shall pay cooperating agents a fee of \$ \_\_\_\_\_ or a commission of 3 % of gross sales price. Owner and Broker agree that there shall be no variation or exception in the amount of the fee or commission to be paid, unless specified under Paragraph 26. The brokerage fee shall be earned, due and payable when an agreement to purchase, option, exchange, lease or trade is signed by Owner. However, if Owner shall fail or refuse to sell the described property for the price and terms set forth herein, or if Owner shall fail or refuse to complete the sale of such property under any written Agreement to Buy and Sell Real Estate to which Owner has agreed, Broker's full fee shall be due and payable by Owner.

[ ] OWNER, [ ] OWNER, AND [ ] BROKER HAVE READ THIS PAGE.

You all pages



Owner agrees to pay all costs, including reasonable attorney's fees, which may be incurred by Broker in the collection of a fee due by Owner under this Agreement.

Broker agrees to defer the commission until the closing date or extension thereof stated in the agreement or until default by Owner. Deferral is agreed to solely as an accommodation to Owner and such deferral shall in no way be construed as a waiver of the brokerage fee. Closing Attorney is hereby irrevocably directed to deduct and pay said Broker's fee from the proceeds of the sale.

If the property is sold within 90 days of the expiration or termination of this Agreement (which shall be the "protection period") to a Buyer to whom the property was shown by Owner, Broker, another broker, or any other person or firm during the term of this Agreement, Broker's full fee shall be payable by Owner. The protection period shall be terminated if Owner enters into a listing agreement with another broker during the protection period.

B. For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in the subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of the ownership interest in any corporation, limited partnership, partnership, or other entity.

**4. EARNEST MONEY:** Owner authorizes and designates Escrow Agent, as designated by the sales agreement, to accept and hold on behalf of Owner any earnest money or escrow deposit made in accordance with the terms of any agreement to buy and sell real estate for the property. In the event of default or forfeiture by a prospective buyer, Owner will reimburse Escrow Agent any costs incurred by Escrow Agent including attorney's fees as a result of the release of payment to Owner of any of the earnest money deposited, and such reimbursement may be made by Broker from the earnest money deposit. All earnest money will be deposited in Escrow Agent's escrow account.

**OWNER UNDERSTANDS THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, BROKER WILL NOT DISBURSE EARNEST MONEY TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.** *Highgarden uses attorney to hold escrow*

**5. SIGNS:** Owner grants to Broker the exclusive right to display "For Sale," "Under Contract," "Sale Pending," (or other similar) signs on the property and to remove other such signs.

**6. BROKER'S DUTY:** Broker agrees to employ the best efforts of Broker and Broker's agents and staff to secure a contract of sale for the described property upon such terms as may be agreeable to Owner. Broker's efforts shall include directing the efforts of Broker's organization to bring about the sale, advertising the described property as Broker deems advisable in those advertising media of merit customarily used in the area, furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property, and keeping Owner informed as to the progress of Broker's efforts in finding a Buyer for the described property. Owner understands the Broker makes no representation or guarantee as to the sale of the property. Upon the termination or completion of this Agreement, Broker shall keep confidential all information received during the course of this Agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

**7. BROKER LIABILITY LIMITATION:** *Owner agrees Broker provided Owner with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Broker, Owner agrees that he shall pay Broker's attorney fees and that Broker, shall not be liable to Owner, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omission, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of Broker shall not exceed the amount set forth herein. Owner will indemnify and hold harmless and pay attorneys fees for Broker from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Broker. Owner agrees that there is valid and sufficient consideration for this limitation of liability and that Broker is the intended third-party beneficiary of this provision.*

**8. OWNER'S DUTY:** Owner agrees as follows:

- A. To furnish Broker with complete and reliable information concerning ownership and the operation of the property, and any encumbrances or liens affecting the property; and
- B. To inform Broker of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the property; and
- C. To permit inspection and showing of the property by Broker, Broker's Agents, Subagents, Buyer's Agent, and by such agents, subagents and prospective buyers as deemed reasonably necessary by Broker, and to cooperate in the scheduling and carrying out of such showings and inspections as is necessary; and
- D. To permit the offering for sale of the property to prospective buyers without regard to age, sex, race, creed, color, religion, national origin, handicap or familial status; and
- E. To permit Broker to incur, or pay on behalf of Owner reasonable expenses for repairs, inspection, utilities, maintenance, or similar expenses not to exceed \$ NA for each separate expense, and to reimburse Broker, as necessary, upon receipt of the statement of expenses; and

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- F. To allow closing attorney to pay Broker's compensation in an amount equal to the compensation provided above from Owner's proceeds at time of closing; and
- G. To grant to Broker the authority and approval to list and publish all sales data pertaining to the sale and closing of the hereinabove described property. Owner understands and acknowledges that sales data are published for the use and information of the members of all the Boards/Associations of REALTORS® and the Multiple Listing Services (MLS) of which Broker is a member; for their use of same in marketing and selling of all properties listed in said publication; and
- H. To permit Broker to take photographs of the Owner's property described herein for advertising and marketing purposes in any advertising medium of the Broker's choice. Owner understands and acknowledges that all marketing materials, including but not limited to photographs, brochures, and websites, developed for the sale of the subject property shall remain the property of the Broker; and
- I. To convey marketable title to the buyer in fee simple free from all liens except those stipulated herein, subject to existing zoning and government restrictions, applicable owner's association assessments and restrictive conditions and covenants of record which do not materially affect the present use of the property; and
- J. To authorize Owner's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date; and
- K. Not to deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received directly and immediately to the Broker; and
- L. To authorize the Broker, in response to inquiries from buyers or cooperating brokers, to divulge the existence of offers on the property; and
- M. To furnish Broker with written instructions regarding the confidentiality of information upon termination or completion of this Agreement which was received during the course of this Agreement in accordance with South Carolina law.

**9. PROPERTY INFORMATION/SELLER'S PROPERTY DISCLOSURE STATEMENT:** Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. Owner agrees to defend, indemnify, and hold harmless the Broker, Broker's agents, or subagents, including indemnification for attorney's fees and court costs, from any and all claims arising out of any information or omission of information presented to Broker by Owner. Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed, and to hold said Broker harmless for any liabilities or damages arising from such defects. Owner will not hold Broker liable for the Owner's refusal or failure to provide a prospective purchaser with a disclosure statement. Owner agrees to allow Broker to provide copies of the disclosure statement to prospective buyers. The Owner understands and agrees that Broker has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

**10. DISCLOSURE:** Owner authorizes Broker to disclose information about the property to Broker's agents, subagents, prospective buyers, and all inquiring parties. Such disclosure shall be in accordance with Broker's company policy. Owner hereby authorizes anyone having a lien against the property including the mortgage holder, to disclose complete information about the lien to Broker and Closing Attorney or Agent.

**11. TAXES:** Owner covenants and agrees to comply with the provisions of the South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of owners who are not residents of South Carolina as defined in the said statute. The payment of rollback taxes, if applicable, and past personal property taxes, if applicable, shall be negotiated between the Owner and any prospective buyer.

**12. COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws), an addendum will be attached to the sales agreement incorporating the required disclosures. The payment of any necessary surveys shall be negotiated between the Owner and any prospective buyer.

**13. MULTIPLE LISTING SERVICE:** The property  shall be  shall not be entered into the Multiple Listing Services of which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. Owner agrees that Broker may compensate an agent representing the buyer from the fee described above.

**14. LOCKBOX:** Owner  agrees  does not agree for a MLS lock box to be installed on the property to facilitate showing and inspection of the property. Owner acknowledges and agrees that neither Broker, nor Broker's agents, subagents, or anyone showing the property through the MLS, shall be responsible for any damage to, or loss of personal property, or to the realty, except such damage or loss as may be caused by the negligence of such party.

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Owner further acknowledges that Broker nor MLS is an insurer against the loss of personal property and agrees to release Broker and MLS from any responsibility therefore.

**15. INTERNET MARKETING:** Owner  agrees  does not agree that the listing may be placed in electronic marketing mediums including, but not limited to, the internet, MLS Internet Data Exchange (IDX) program or other similar on-line computer services and to share listing data, including the property address, with other members of MLS for marketing and advertising purposes only. Owner further agrees to permit other real estate firms who belong to any listing service of which Broker is a member to advertise the listing on the internet in accordance with the listing service rules and regulations.

**16. OTHER OFFERS:** Owner understands that the Broker's responsibility to present offers to purchase to the Owner for Owner's consideration terminates at the closing of the subject property or expiration of this Agreement, whichever occurs first.

**17. MARKETING THE PROPERTY:** The Broker shall not continue marketing the property after an offer has been accepted, unless requested in writing by the Owner to do so.

**18. NO CONTROL OF COMMISSION RATES OR FEES:** The Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the board/association, the MLS, or by any persons not a party to the listing agreement. The subagency compensation paid by the Listing Broker to a Cooperating Broker or Buyer's Broker in respect to any listing is established by the Listing Broker in Broker's offer of subagency, and is not fixed, controlled, suggested, recommended or maintained by the board/association, the MLS or by any persons other than the Listing Broker.

**19. MAINTENANCE:** Owner agrees to maintain the property, including lawn, shrubbery, and grounds until the day of closing or possession, whichever occurs first. Owner also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, Owner shall deliver the premises to the Buyer with no broken panes; no torn or missing door screens or window screens; and with no missing or broken hardware, lighting, or plumbing fixtures.

**20. AGREEMENT TO SELL:** When a Buyer is found for said property, the Owner shall enter into a written sales agreement which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the prorations of taxes, rents, and applicable property expenses.

**21. LEAD-BASED PAINT:** For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this Agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this Agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this Agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect Your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4582(d), as amended.

**22. MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

**23. FAIR HOUSING:** Owner and Broker agree that this property is offered without regard to race, color, religion, sex, handicap, familial status, or national origin and is listed in full compliance with local, state, and federal fair housing laws.

**24. FACSIMILE:** The parties agree that this Agreement may be communicated by use of a fax, or other secure electronic means, including but not limited to the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**25. ENFORCEMENT:** The parties agree that Broker may take action to enforce this Agreement or collect any associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this Agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.

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26. OTHER TERMS AND CONDITIONS: \* Agent shall not input listing into MLS until notified to do so by Seller \* (gives you time to stage, get pics, etc)

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

Owner: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Witness: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Owner: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Witness: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Owner's Mailing Address: \_\_\_\_\_

Real Estate Firm: \_\_\_\_\_ Phone: \_\_\_\_\_

By: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

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