Type **ER**

EXCLUSIVE RIGHT TO SELL/RENT
LISTING CONTRACT LEGAL LANGUAGE

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. NO REPRESENTATION IS MADE AS TO THE LEGAL OR TAX CONSEQUENCES OF THIS CONTRACT. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

1. **EXCLUSIVE RIGHT TO SELL AND/OR RENT.** In consideration of the acceptance by the undersigned licensed Arizona real estate broker ("Broker") of the terms of this Listing Contract and Broker's promise to endeavor to effect a; ☐ sale, ☐ rental, ☐ sale and/or rental, of the property described below ("Premises"), I or we, as owner(s) ("Owner"), employ and grant Broker the exclusive and irrevocable right commencing on_____, _____, and expiring at 11:59 p.m. _____, _____, to sell, rent, exchange, or option the Premises described in Paragraph 3.
NOTE: Owner acknowledges that signing more than one Exclusive Right to Sell/Rent or other form of listing contract for the same term could expose the Owner to liability for additional commissions.

2. **PRICE.** The listing price shall be: **Sale** $ _____ **Rental** $ _____ per month , plus (in the case of a rental) all applicable lease or rental (transaction privilege) taxes, to be paid as described in the Owner's Profile Sheet ("Data Entry Form"), or such other price and terms as are accepted by Owner.

3. **THE PREMISES.**
   a. **Location Information.**

_____
Street Address City/Town County

_____
Legal Description Assessor #

   b. **Fixtures and Personal Property.** Except as excluded in Section 3(c) below, any sale or rental of the Premises shall include all existing fixtures on the Premises, any existing personal property specified in Section 3(c) below, and all of the following items of personal property, to the extent located on the Premises:

- free standing range/oven
- built in appliances
- light fixtures
- ceiling fans
- towel, curtain/drapery rods
- draperies/other window coverings
- attached floor coverings
- pool/spa equipment (including all mechanical and cleaning systems
- flush-mounted speakers
- attached fireplace equipment
- window/door screens, sun screens
- storm windows and doors
- shutters and awnings
- garage door opener(s) and control(s)
- attached media antennas/satellite dishes
- security and/or fire systems and/or alarms
- central vacuum hoses, and attachments
- landscaping, fountains and lighting
- water-misting systems
- solar systems
- pellet, wood-burning or gas-log stoves
- timers
- mailbox
- storage sheds
- water softeners
- water purification system

   c. **Appliances and Additional Existing Personal Property.** The Premises shall include the following appliances which are presently located in or upon the Premises: ☐ **Refrigerator** ☐ **Washer** ☐ **Dryer**
   ☐ **Other** _____
   Additional items of personal property included in sale: _____
   _____
   _____
   Fixtures and leased items NOT included in sale:_____
   _____
   _____

4. **ACCESS AND LOCKBOX.** Owner acknowledges that a lockbox and any other keys left with or available to Broker will permit access to the Premises by Broker or any other broker, with or without potential purchasers or tenants ("Prospects"), even when Owner or occupant is absent. Owner further acknowledges that, from time to time, unauthorized persons may have gained access to properties using lockboxes. Owner acknowledges that neither the Arizona Regional Multiple Listing Service ("ARMLS"), nor any Board or Association of REALTORS®, nor any broker (including Broker), is insuring Owner or occupant against theft, loss or vandalism resulting from any such access. Owner is responsible for taking such steps as may be necessary to secure and protect the Premises during any time that a lockbox is being used and obtaining appropriate insurance.

   _____ (Owner's Initials). Owner ☐ does / ☐ does not authorize Broker to install and use, on the Premises, a lockbox containing the key to the Premises. If the Premises is occupied by someone other than Owner, Owner will provide to the

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For Broker's office use only:
Broker's File/Lot No._____ Date:_____ For Use with Data Entry Forms 1, 2, 3

Broker the occupant's written permission for the installation of the lockbox and the publication and dissemination of the occupant's name and telephone number.

5. **AGENCY RELATIONSHIPS.** Owner understands that Broker is Owner's agent with respect to this Listing. Owner understands that Broker, either acting directly or through one or more licensees within the same brokerage firm, may represent a Prospect interested in the purchase or rental of the Premises. Owner authorizes the Premises to be shown to any such Prospect and understands that Broker may legally represent both Owner and Prospect in a transaction with the knowledge and informed consent of both parties.

6. **COMPENSATION TO BROKER.** Owner agrees to compensate Broker as follows:

a. **RETAINER.** Broker acknowledges receipt of a non-refundable retainer fee of $ _____ payable to Broker for initial consultation, research and other services.

b. **COMMISSIONS.** If Broker produces a ready, willing and able purchaser or tenant in accordance with this Listing Contract, or if a sale, rental, option or exchange of the Premises is made by Owner or through any other broker, or otherwise, during the exclusive term of this Listing Contract, Owner agrees to pay Broker a commission of:

For a: Sale: _____ **Rental:** _____

of the Purchase/Lease Price or a commission of a substantially similar allocable amount if the transaction is structured as other than a purchase or lease.

With respect to any holdovers or renewals of rental, regardless of whether this Listing Contract has expired, Owner agrees to pay a commission of _____

The same amount of sale or rental commission shall be due and payable to Broker if, without the consent of Broker, the Premises is withdrawn from this Listing Contract, otherwise withdrawn from sale or rental, or is rented, transferred, or conveyed by Owner through any other broker or otherwise.

c. **COOPERATION WITH AND COMPENSATION TO OTHER BROKERS.** With regard to this Listing Contract, Broker intends to cooperate with all other brokers except when not in Owner's best interest:

☐ and, in the case of a purchase, to offer compensation in the amount of _____ % of the gross purchase price or $ _____ to a buyer's broker, who represents the interest of the buyer(s), and not the interest of Owner in a transaction;

☐ or, in the case of a lease, to offer compensation in the amount of _____ % of the gross lease price as calculated for the entire term of the initial lease, or $ _____ to a tenant's broker, who represents the interest of the tenant(s), and not the interest of Owner in a transaction.

Furthermore, Broker may offer referral compensation to a referring broker who has no broker relationship with the buyer/tenant or Owner. If not specified above, Owner authorizes Broker to share all such compensation with other brokers in any manner acceptable to Broker.

d. **PAYMENT FROM ESCROW OR RENT.** Owner instructs the escrow company, if any, to pay all such compensation to Broker in cash or certified funds as a condition to closing or upon cancellation of the escrow, and irrevocably assigns to Broker, to the extent necessary, money payable to Owner at the closing or cancellation of escrow. Broker is authorized to deduct compensation from any rent or other monies received on behalf of Owner.

e. **PURCHASE BY TENANT.** If during the terms of any rental of the Premises, including any renewals or holdovers, or within _____ days after its termination, any tenant, or his heirs, executors, or assigns shall buy the Premises from Owner, the sale commission described in Paragraph 6(b) shall be deemed earned by and payable to Broker.

f. **AFTER EXPIRATION.** After the expiration of this Listing Contract, the same commissions, as appropriate, shall be payable if a sale, rental, exchange, or option is made by Owner to any person to whom the Premises has been shown or with whom Owner or any broker has negotiated concerning the Premises during the term of this Listing Contract, (1) within _____ days after the expiration of this Listing Contract, unless the Premises has been listed on an exclusive basis with another broker, or (2) during the pendency, including the closing, of any purchase contract or escrow relating to the Premises that was executed or opened during the term of this Listing Contract, or (3) as contemplated by Paragraph 6(e).

g. **FAILURE TO COMPLETE.** If completion of a sale or rental is prevented by default of Owner, or with the consent of Owner, the entire sale or rental commission, as appropriate, shall be paid to Broker by Owner. If any earnest deposit is forfeited for any other reason, Owner shall pay a brokerage fee equal to the lesser of one-half of the earnest deposit or the full amount of the commission.

h. **CONSTRUCTION.** Listing Contract shall be construed as limiting applicable provisions of law relating to when commissions are earned or payable. In the event of any express disagreement between any provision of this Listing Contract and the

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terms of applicable law, the applicable provision of this Listing Contract shall be deemed as modified to the minimum extent necessary to ensure compliance with applicable law.

7. **LISTING BROKER OBLIGATIONS AND AUTHORITY.** Broker agrees to make diligent and continued efforts to sell/lease the Premises.
   a. Owner authorizes Broker to place appropriate transaction signs on the Premises, including "For Sale" signs and "Sold" signs OR "For Lease" and "Leased" signs.
   b. Owner authorizes Broker to obtain information relating to the present mortgage(s) on the Premises.
   c. Owner authorizes Broker to provide the information on the Listing/Data Entry Form, and any photographs of the Premises, to ARMLS for publishing and dissemination, in whole or in part, in printed or electronic form, including via the Internet, to ARMLS participants and the general public, even after the cancellation or expiration of the Listing. Broker is authorized to report the sale, exchange, option or rental of the Premises, and its price, terms and financing, for dissemination through ARMLS or otherwise to authorized ARMLS participants and to the public and for use by companies engaged in selling information for various purposes, including but not limited to, appraisals or evaluations of tax assessments.
   d. Owner authorizes Broker to market the Premises as Broker deems advisable, including marketing the Premises on the Internet unless limited in (7)(d)(i) or (7)(d)(ii) below.
      (Owner opt-out) (Check one if applicable)
      ☐ (i) Owner does not authorize Broker to display the Listing on the Internet.
      ☐ (ii) Display the Listing on the Internet except the street address of the Premises shall not be displayed on the Internet.
      Owner understands and acknowledges that if Owner selects option (ii), consumers who conduct searches for listings on the Internet will not see information about the listed Premises in response to their search.
   e. Virtual Office Websites: Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOW"). An automated estimate of market value or reviews and comments about a Premises may be displayed in conjunction with a Premises on some VOWs. Anyone who registers on a Virtual Office Website may gain access to such automated valuations or comments and reviews about any Premises displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments/reviews (blogs) about the Premises.
      (Owner opt-out) (Check if applicable)
      ☐ (i) Owner does not authorize an automated estimate of the market value of the Premises (or hyperlink to such estimate) to be displayed in immediate conjunction with any listing information relating to Premises.
      ☐ (ii) Owner does not authorize third parties to write online comments or reviews about the Premises or the listing of the Premises (or display a hyperlink to such comments or reviews) in immediate conjunction with any listing information relating to the Premises.
   f. Broker reserves the right to cancel this Listing Contract unilaterally for cause, which shall include, but is not limited to, Broker's good faith belief that any service requested of Broker or any action undertaken by anyone other than Broker is (or could be determined to be) in violation of any applicable law.

8. **ROLE OF BROKER.** Owner acknowledges that Broker is not responsible for the custody or condition of the Premises or for its management (except under separate contract), maintenance, upkeep or repair.

9. **DOCUMENTS.** In connection with any sale or rental of the Premises, Owner consents to the use of the standard form of purchase or rental contract used by Broker and all other standard documents used by Broker and the escrow and title companies.

10. **REALTOR® STATUS.** ☐ This agent is a REALTOR® member of the _____ Association/Board of REALTORS® and subscribes to the REALTOR® Code of Ethics. ☐ This agent is not a member of any REALTOR® Association/Board, but as a Subscriber to the Arizona Regional Multiple Listing Service, Inc., has agreed to abide by the Standards of Conduct of MLS Subscribers.

11. **OWNER OBLIGATIONS.** In consideration of Broker's obligations, Owner agrees to:
   a. Cooperate with Broker in carrying out the purpose of this Listing Contract, including referring immediately to Broker all inquiries regarding the Premises' transfer, whether by purchase or any means of transfer.
   b. Provide Broker with keys to the Premises and make the Premises available for Broker to show during reasonable times.
   c. Inform Broker prior to leasing, mortgaging or otherwise encumbering the Premises.
   d. Inform Broker of any past due HOA, tax or other Premises related fees. During the term of this Listing Contract, Owner agrees to continue disclosing to Broker all additional information of the type required by the preceding sentence promptly after Owner becomes aware of any such information.
   e. **Complete and return to Broker a Seller Property Disclosure Statement ("SPDS") form if the premises is to be sold, and/or any disclosures required by the Arizona Residential Landlord and Tenant Act if the premises is to be leased. These disclosures are designed to disclose pertinent property information. Broker shall have no responsibility, in whole or part, for the preparation of the SPDS form nor any disclosures required in the Arizona Residential Landlord and Tenant Act.**

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f. If applicable, sign and deliver to the escrow company a certificate indicating whether Owner is a foreign person or non-resident alien pursuant to the **Foreign Investment in Real Property Tax Act (FIRPTA).**

g. Provide a **Disclosure of Lead-Based Paint and Lead-Based Paint Hazards** as required by the U.S. Department of Housing and Urban Development, if any Premises structure was built before 1978.

h. Deliver a completed **Affidavit of Disclosure** in the form required by law to a buyer within (5) days after purchase contract acceptance, if the Premises is located in an unincorporated area of the county, and five or fewer parcels of property other than subdivided property are being transferred.

12. **INSURANCE.** Owner acknowledges that Owner's or occupant's property could be damaged or stolen or persons visiting the Premises could be injured. Owner shall be responsible for obtaining appropriate insurance to cover such possible events.

13. **GENERAL WARRANTIES BY OWNER.** Owner represents and warrants:

a. **CAPACITY.** Owner has the legal capacity, full power and authority to enter into this Listing Contract, deliver marketable title to the Premises and consummate the transactions contemplated hereby on Owner's own behalf or on behalf of the party Owner represents, as appropriate.

b. **ADVERSE INFORMATION.** Owner has disclosed to Broker all material latent defects and information concerning the Premises known to Owner, including all material information relating to: connection to a public sewer system, septic tank or other sanitation system; the existence of any tax, judgment or other type of lien; past or present infestation by or treatment for wood-destroying pests or organisms; and past or present repair of the Premises for damage resulting from wood-destroying pests or organisms. During the term of this Listing Contract, Owner agrees to continue disclosing to Broker all additional information of the type required by the preceding sentence promptly after Owner becomes aware of any such information by updating SPDS or other written notice.

c. **CORRECT INFORMATION.** All information concerning the Premises in this Listing Contract, including the Data Entry Form relating to the Premises, or otherwise provided by Owner to Broker or to any Prospect is, or will be at the time provided, and shall be at close of escrow or occupancy by a tenant, true, correct and complete. Owner agrees to notify Broker promptly if there is any material change in such information until the latest to occur of the expiration of this Listing Contract, any close of escrow or occupancy by a tenant.

d. **USE OF LISTING CONTENT; INTELLECTUAL PROPERTY LICENSE.** Unless Owner delivers to Broker a written certification, expressly prohibiting the dissemination to a multiple listing service of the listing and any listing information relating to the Premises, Owner acknowledges and agrees that all photographs, images, graphics, video recordings, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to the Premises provided by Owner to Broker or Broker's agent (the "Owner Listing Content"), or otherwise obtained or produced by Broker or Broker's agent in connection with this Listing Contract (the "Broker Listing Content"), and any changes to the Owner Listing Content or the Broker Listing Content, may be filed with one or more multiple listing services, included in compilations of listings, and otherwise distributed, publicly displayed and reproduced, subject to the limitations listed in Section 7 of this Listing Contract. Owner hereby grants to Broker a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish, display, and reproduce the Owner Listing Content, to prepare derivative works of the Owner Listing Content, and to distribute the Owner Listing Content or any derivative works thereof, subject to the limitations listed in Section 7 of this Listing Contract. This non-exclusive license shall survive the termination of this Listing Contract for any reason whatever. 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, of any person or entity. Owner acknowledges and agrees that as between Owner and Broker, all Broker Listing Content is owned exclusively by Broker, and Owner has no right, title or interest in or to any Broker Listing Content.

14. **UTILITIES.** During the term of this Listing Contract, Owner shall maintain continuous service to the Premises of all utilities which are currently connected to the Premises.

15. **RELIEF OF LIABILITY.** Broker is hereby relieved of any and all liability and responsibility for everything stated in Paragraphs 11.e, 11.f, 11.g, 12, and 13.

16. **INDEMNIFICATION.** Owner agrees to indemnify and hold Broker, all Boards or Associations of REALTORS®, ARMLS and all other brokers harmless against any and all claims, expenses, liabilities, damages and losses arising from (i) any misrepresentation, breach of warranty or breach of a promise by Owner in this Listing Contract, (ii) any incorrect information supplied by Owner, (iii) any facts concerning the Premises not disclosed by Owner, including any facts known to Owner relating to adverse conditions or latent defects, (iv) the use of a lockbox, or (v) any injury or damage to persons or property in connection with the marketing or showing of the Premises. This indemnification shall survive Broker's performance and any transfer of title.

17. **OTHER OWNERS AND PROSPECTS.** Owner understands that other owners may make offers to sell or rent or may sell, rent, exchange or option properties similar to the Premises through Broker. Owner consents to any agency representation by Broker of such other owners before, during and after the expiration of this Listing Contract and understands that the Premises probably will not be presented or shown to every Prospect encountered by Broker.

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18. **ATTORNEYS' FEES.** In any action or proceeding to enforce any provision of this Listing Contract, or for damages sustained by reason of its breach, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees, as set by the court or arbitrator and not by a jury, and all other related expenses, such as expert witness fees, fees paid to investigators and court costs. Additionally, if any broker hires an attorney to enforce the collection of any commission payable pursuant to this Listing Contract, and is successful in collecting some or all of such commission without commencing any action or proceeding, Owner agrees to pay such broker's reasonable attorneys' fees and costs and Owner also agrees to pay interest at the legal rate on all compensation and other amounts owed or due to broker from the time due until paid in full.

19. **DEPOSITS.** Owner authorizes brokers to accept earnest deposits on behalf of Owner and to issue receipts for such earnest deposits.

20. **RECOMMENDATIONS.** If Broker recommends a builder, contractor, escrow company, title company, pest control service, appraiser, lender, home inspection company or home warranty company or any other person or entity to Owner for any purpose, such recommendation shall be independently investigated and evaluated by Owner, who hereby acknowledges that any decision to enter into any contractual arrangement with any such person or entity recommended by Broker will be based solely upon such independent investigation and evaluation.

21. **SUBSEQUENT PURCHASE OR LEASE OFFERS.** Broker acknowledges that Owner has the right to accept subsequent offers until the close of escrow in the case of a sale or until occupancy by a tenant in the case of a rental. Owner understands that any subsequent offers accepted by Owner must be backup offers, namely, contingent on the cancellation or other nullification of any contracts arising from the acceptance of earlier offers. Broker will change or maintain the correct MLS Listing status in accordance to the ARMLS Rules and Regulations and any associated policies.
(Check if applicable) ☐ Accept backup offers. ☐ Withhold verbal offers. ☐ Withhold all offers once Owner accepts a purchase or lease contract for the Premises.

22. **EQUAL HOUSING OPPORTUNITY.** The Premises will be presented in compliance with federal, state and local fair housing laws and regulations.

23. **TIME OF ESSENCE.** Time is of the essence in the performance of the obligations contained in this Listing Contract.

24. **COUNTERPARTS AND ELECTRONIC COPIES.** This Listing Contract may be executed in any number of counterparts by the parties hereto. All counterparts so executed shall constitute one Listing Contract binding upon all parties hereto, notwithstanding that all parties do not sign the same counterpart. Any legible electronic copy of the Listing Contract which indicates that the Listing Contract was fully executed shall be treated as an original Listing Contract.

25. **CONSTRUCTION OF LANGUAGE AND GOVERNING LAW.** The language of this Listing Contract shall be construed according to its fair meaning and not strictly for or against either party. Words used in the masculine, feminine or neuter shall apply to either gender or the neuter, as appropriate. All singular and plural words shall be interpreted to refer to the number consistent with circumstances and context. Whenever the words "include", "includes" or "including" are used in this Listing Contract, they shall be deemed to be followed by the words "without limitation". If this Listing Contract is used for a rental, exchange, or option instead of a sale of the Premises, all language in this Listing Contract relating to the sale of Premises shall be construed to apply as appropriate, to a rental, exchange, or option. For example, Owner shall be deemed to be Exchanger, Optionor, or Landlord respectively. This Listing Contract shall be governed by the laws of the State of Arizona.

26. **TAXES AND REGISTRATION.** Owner acknowledges that a rental property must be registered with the County Assessor's Office and may be subject to a tax on gross receipts and a special rental classification for property taxes. Owner agrees to obtain appropriate licenses and pay fees and taxes when due. Owner agrees to indemnify and hold Broker harmless for any such tax liability, including penalties and interest.

27. **ADDITIONAL TERMS.**

_____

_____

_____

_____

_____

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☐ Additional addendum/addenda attached.

28. **ENTIRE AGREEMENT.** This Listing Contract including the Data Entry Sheet, plus any attached exhibits and any addenda or supplements signed by Owner and Broker, shall constitute the entire agreement between Owner and Broker and supersede any other written or oral agreements between Owner and Broker. It is the intention of the parties that this Listing Contract shall be a legally binding contract once it has been signed by Owner and Broker even though none, or only some, of the pages have been initialed by Owner. This Listing Contract can be modified only by a writing signed by Owner and Broker. THE TERMS AND CONDITIONS IN THIS LISTING CONTRACT PLUS ALL INFORMATION ON THE DATA ENTRY FORM ARE INCORPORATED HEREIN BY REFERENCE. COMMISSIONS PAYABLE FOR THE SALE, RENTAL OR MANAGEMENT OF PREMISES ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS® OR MULTIPLE LISTING CONTRACT SERVICE OR IN ANY MANNER OTHER THAN BY NEGOTIATION BETWEEN THE BROKER AND THE OWNER. BY SIGNING BELOW, OWNER ACKNOWLEDGES THAT HE HAS READ, UNDERSTANDS AND ACCEPTS ALL TERMS AND PROVISIONS CONTAINED HEREIN AND THAT HE HAS RECEIVED A COPY OF THIS LISTING CONTRACT.

Print Name of Owner		Print Name of Owner		
Street		City/Town	State	Zip
Phone	Fax	Owner's email Address		
Owner's Signature	Mo/Da/Yr	Owner's Signature		Mo/Da/Yr

ADDITIONAL OWNER(S) (If applicable)

Print Name of Owner		Print Name of Owner		
Street		City/Town	State	Zip
Phone	Fax	Owner's email Address		
Owner's Signature	Mo/Da/Yr	Owner's Signature		Mo/Da/Yr

☐ Additional Owner information attached.

In consideration of Owner's representations and promises in this Listing Contract, Broker agrees to endeavor to effect a sale, rental, exchange, or option in accordance with this Listing Contract.

Firm Name (Broker)		Preferred Phone	Fax

By: _____

Agent's Signature	Agent Name (Printed)	Date (Mo/Da/Yr)	Agent's Email

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For Broker's office use only:
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