

REAL ESTATE RELATIONSHIPS DISCLOSURE

(This document is NOT a contract between you and this firm. This document is being provided to you as a consumer as you have not indicated to this agent you are a client with a written contract to another real estate firm).

As required by South Dakota Law, each firm has a responsible broker who must provide a written disclosure of the specific agency/brokerage relationships their firm may establish **PRIOR** to their agent discussing your confidential buying, selling, or leasing objectives of real estate or business opportunity. The following agency relationships are permissible under South Dakota law.

The office policy of The Real Estate Group (firm) is to provide the relationships marked. This disclosure was provided by Keith Carlyle (agent) on behalf of Keith Carlyle (responsible broker).

When all agents of this firm represent only you:

☐ **Single Agency** is when a firm and all of its agents represent only you and advocate for only your interests during a transaction. If at any time during the transaction any agent of the same firm represents both you and the other party, limited agency applies.

When only individually named agent(s) of this firm represents you:

☒ **Appointed Agency** is when a responsible broker names a specific agent(s) of the firm to represent only you and advocate for only your interests during a transaction. Agents within the firm who have not been specifically appointed do not represent you and cannot advocate for your interests. If at any time during the transaction the responsible broker or a non-appointed agent within the firm represents the other party, limited agency applies to the responsible broker. If at any time during the transaction your appointed agent(s) represents both you and the other party, limited agency applies.

When all agents of this firm represents both purchasers and owners:

☐ **Limited Agency** is when a firm represents both sides to a transaction and no agent within the firm solely represents you or solely advocates for your interests. Limited agency may only occur with prior written permission from both sides to a transaction. Within limited agency, the limited agent is required to represent the interests of you and the other party equally, and the agent cannot disclose your confidential information to the other party unless legally required to by law.

When a broker does not represent either party to a contract:

☐ **Transaction Brokerage** is when a broker or agent assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction.

Acknowledgment: I have been provided a copy of this disclosure indicating the brokerage and agency relationships offered by this firm. If this is a residential transaction, I also acknowledge the agent has given me a copy of the Consumer Real Estate Information Guide in booklet/printed format, or, if not provided, I authorize the agent to provide the guide electronically, as an attachment or link, to access the electronic version of the guide, at _____ (e-mail).

| | | | |
|--------------|--|--|------|
| Signature(s) | | | Date |
|--------------|--|--|------|

When you choose **not** to have an agency relationship with a firm:

I acknowledge the firm/agent named above does not represent me as a client. If I am a customer to a real estate transaction I understand the firm/agent may be acting as an agent for the other party of the transaction.

Signature(s) _____ Date _____



EXCLUSIVE LISTING AND AGENCY AGREEMENT

BLACK HILLS ASSOCIATION OF REALTORS®



Client: _____

Responsible Broker and Brokerage Firm: Keith Carlyle / The Real Estate Group
(hereinafter referred to as *Broker*)

Start Date: _____ **Expiration Date:** _____ at midnight. If Client enters into a purchase agreement during the term of this agreement, the termination of this agreement shall be the date of closing under said purchase agreement, or if the transaction does not close, the date which the parties agree to discontinue negotiating. This agreement can be terminated with mutual written consent of the parties.

1. Creation of Agency. The Broker, as agent for the Client, negotiates and advocates on behalf of the Client, performs the terms of any written agreement made with the Client, and promotes the interest of the Client with the utmost good faith, loyalty, and fidelity. The Client should carefully read all documents to assure that they adequately express Client's understanding of the transaction and protection of your own interests. The Client represents no other Broker has been employed as an exclusive agent for real estate defined in Section 2 and agrees to protect, defend, indemnify and hold Broker harmless from the claims, liability, and expenses, including reasonable attorney's fees, arising by reason of the claim of any other broker in compensation as the result of a transaction that is within the scope of this agreement. Not all agency options may be offered by broker.

A. Single Agency: When a firm and all of its agents represent **only** you and advocate for **only** your interests during a transaction.

The Client further authorizes:

B. Appointed Agency: The broker appoints _____ as your agent, to represent **only** you and advocate for **only** your interests. Upon signing this agreement, agents within the firm who have not been specifically named do not represent you and cannot advocate for your interests. Confidential information can only be shared with the responsible broker Keith Carlyle and the designated broker Justin Carlyle / Mitch Mudlin, unless you provide written permission. The responsible broker may appoint other affiliated licensees to be your agent during the term of this agreement should the appointed agent not be able to fulfill the terms of this agreement or by written agreement between you and the responsible broker. An appointment of another or additional affiliated licensee does not relieve the first appointed agent of any duties owed to you.

Limited agency rules apply to the responsible broker when a purchaser client of this firm inquires about your property under contract for sale/lease with this firm. The responsible broker can legally be the limited agent of both parties of a transaction with your knowledge and written consent of you and the other party.

Your appointed agent(s) can legally be a limited agent for an in-company transaction with your knowledge and written consent of you and the other party.

(If this broker/firm does not offer appointed agency representation initial N/A below)

C. Limited Agency: All licensees of the brokerage firm owe you the duties as described in single agency until a purchaser client of this firm inquires about your property under contract for sale/lease with this firm. At this time a limited agency relationship exists, however, limited agency **may only occur** with prior written permission of the parties of the potential in-company transaction. In a limited agency relationship the broker, directly or through one or more agent, may not be able to continue to provide services previously provided to you, such as:

- No longer providing advice or advocating for your interests, or the purchaser's interests, to the detriment of either party.

Unless you give written consent, a limited agent cannot:

- Disclose personal confidences of one party or the other party, unless required by law
- Disclose a buyer is willing to pay more, or a seller is willing to accept less, than the asking price or lease rate offered for the property;
- Disclose the motivating factors for any client, buying, selling, or leasing the property;
- Disclose a client will agree to financing terms other than those offered.

The client acknowledges and consents as *initialed*:

I agree to appointed agency and the appointed agent(s) named in 1B: Yes ☐ ☐ No ☐ ☐ N/A ☐ ☐

I agree to limited agency representation, as described in 1C: Yes ☐ ☐ No ☐ ☐ N/A ☐ ☐

THIS IS A LEGAL AND BINDING CONTRACT, IF NOT FULLY UNDERSTOOD, SEEK LEGAL ADVICE

☐ RE Residential ☐ LD Land ☐ MF Multi-Family ☐ CI Commercial ☐ BI Business/Industry

2. **LEGAL DESCRIPTION.** The undersigned Seller warrants that he/she is the owner of record of the property or has the written authority to execute this Agreement on behalf of the owner of record and hereby grants the undersigned Broker, for the above term, the exclusive irrevocable right and privilege to sell the following property legally described as:

County: _____, State _____

Also known as: _____

3. **TERMS:** For the sum of \$ _____, on the following terms: _____

or, with Seller's consent, for any sum or on other terms which price includes all encumbrances, taxes, assessments and discount points charged at time of closing by mortgagee, as agreed upon by Buyer and Seller.

4. **MULTIPLE OFFERS:** Seller acknowledges when in a multiple offer situation, all responses are directed by the Seller and at their discretion.

5. **PERSONAL PROPERTY:** The following personal property shall be conveyed by Seller to Buyer, free of liens and without warranty of condition, by bill of sale at closing and in accordance with its terms:

6. **DEFINITION:** The term "sale" shall be deemed to include any exchange, trade, lease or option to purchase to which the Seller consents. In the event of a sale, the Broker is permitted to represent and receive compensation from both parties.

7. **PROFESSIONAL FEE:**

Total fee for services provided to be _____ % or \$ _____ of the total selling price plus all applicable sales tax.

1. _____ % or \$ _____ to Listing Agent of total sale price plus applicable sales tax
2. _____ % or \$ _____ to cooperating Buyers Agent of total sale price plus applicable sales tax

A. Transaction fee of \$ _____ plus applicable sales tax.

If a purchaser is procured for the property by the Broker, by any other cooperating broker, by the Seller, or by any other person at the price and upon the terms stated above, or at any other price or upon any other terms accepted by the Seller during the term of this Agreement or if exchanged or optioned during the term of this contract and said option is exercised, or if within _____ days after the expiration of this agreement, the property is sold to any person to whom the property was shown the Seller agrees to pay compensation as stated above. Seller further agrees that Broker or Broker's authorized representative may act as escrow agent for all money, transaction papers, and documents associated with this transaction. If this property is listed with another licensed real estate broker after expiration of this listing, this contract shall be null and void in its entirety. In the event that an option is accepted by the Seller, all money received for said option shall be divided _____ to the Seller and _____ to the Broker with the Broker not to receive more than the above agreed upon professional fee. The Broker and Seller, as parties to this agreement, agree that a party in breach of any of the covenants, promises or obligations arising under this contract shall be liable and responsible for attorney's fees and costs that may result from enforcement thereof as against the party in breach.

8. **EARNEST MONEY:** All earnest money deposits shall be held by the Listing Company or Escrow Closing Agent until the sale is closed. If earnest money deposited by the Buyer is forfeited, the earnest money, less expenses, shall be divided _____ % to Seller and _____ % to Listing Office. However, in no case may the Listing Office's share exceed the compensation stated herein. Seller understands that per SDCL 36-21A-81, both Buyer and Seller must agree in writing to release of earnest money.

9. **PROCEEDS DISBURSEMENT:** It is agreed that the Listing Office and/or Closing Agent shall hold the balance of the sales price for account of Seller until all expenses incurred on the Seller's behalf, relating to the sale of this property, have been paid.

Seller(s) and Listing Office Broker/Agent KC by have read this page
(Initials) (Initials)

10. TRANSFER OF TITLE: Seller represents the title of the property to be good and merchantable and hereby warrants that all known encumbrances, liens or clouds on title are disclosed. In the event of a sale, exchange or trade, Seller, at their expense, will convey to the Buyer good and merchantable title to said property by Warranty Deed or such other conveyance instrument, sufficient to convey good and merchantable title, properly signed and with the necessary State Transfer Fee for recording paid by Seller. Further, Seller, at their expense, shall promptly furnish to the Buyer an Owner's Policy of Title Insurance in the amount of the purchase price.

11. NON-DISCRIMINATION: This property is offered for sale regardless of race, religion, creed, color, sex, handicap, familial status, ancestry, national origin, or any other protected class under law.

12. MULTIPLE LISTING SERVICE: Any listing taken on a contract to be filed with the multiple listing service is subject to the rules and regulations of the service upon signature of the seller(s).

13. SELLER AUTHORIZES BROKER, BY INITIALS IN THE APPROPRIATE SPACE TO:

1. List and market the herein property with the local MULTIPLE LISTING SERVICE (MLS) within 48 hours pursuant to MLS Rules and Regulations.

Yes ☐ ☐ No ☐ ☐

2. Withhold the herein property from the local MULTIPLE LISTING SERVICE (MLS) by completing and signing a Certification to Withhold Property Listing from Multiple Listing Service form.

Yes ☐ ☐ No ☐ ☐

a. Seller understands that withholding property from the MLS impacts property exposure by NOT marketing to all other area REALTORS®.

Yes ☐ ☐ No ☐ ☐

b. Seller understands that withholding property from the MLS impacts property exposure by NOT notifying potential buyers working with other REALTORS® or using the MLS online website.

Yes ☐ ☐ No ☐ ☐

Listing agent shall file said Certification to Withhold with the MLS within 48 hours (a signed copy of the Certification to Withhold will be provided to the Black Hills Association of REALTORS®).

3. Seller authorizes broker, by initials in the appropriate space to:

a. Place a FOR SALE sign on the property.

Yes ☐ ☐ No ☐ ☐

b. Place a LOCKBOX on the property.

Yes ☐ ☐ No ☐ ☐

c. Cooperate with other Brokers, including Brokers representing a buyer, and Seller further agrees Broker may compensate selling Brokers.

Yes ☐ ☐ No ☐ ☐

d. Request mortgagee, if any, to release financial information to listing office.

Yes ☐ ☐ No ☐ ☐

e. Request utility companies to release utility information to listing office.

Yes ☐ ☐ No ☐ ☐

f. Advertise by computerized or other media.

Yes ☐ ☐ No ☐ ☐

14. SELLER'S PROPERTY DISCLOSURE STATEMENT: Seller hereby agrees to indemnify and hold Broker and Brokers agent harmless from any claim(s) arising out of misrepresented or incomplete disclosure statements made by Seller. Seller agrees to fill out a Seller's Property Disclosure Statement, if applicable, and have it available for inspection on the premises. By state law (SDCL 43-4-38) this disclosure must be shared with other Brokers and potential Buyers before a Purchase Agreement is written.

☐ The parties acknowledge that no disclosure statement is required by reason of the following: _____

15. LEAD PAINT DISCLOSURE: Seller shall complete and submit a lead-based paint disclosure if property is residential and built prior to 1978 as required by federal regulation.

16. AGENCY DISCLOSURE: The seller acknowledges that they have received a copy of an Agency Relationship Disclosure.

Seller(s) ☐ ☐ and Listing Office Broker/Agent KC by ☐ ☐ have read this page
(Initials) (Initials)

- 17. AGENT OBLIGATIONS:** Regardless of representation, the broker shall: Disclose all known material facts about the property which could affect the Client's use or enjoyment of the property, disclose information which could have a material impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately to questions concerning the property, and deal honestly and fairly with all parties.
- 18. DISPUTE RESOLUTION:** Seller agrees that any dispute or claim arising out of or relating to the sale of this property shall be submitted to mediation in accordance with the rules and procedures of the Black Hills Association of REALTORS® Sellers/Buyers Dispute Resolution System. Any costs of mediation will be shared equally between the Buyer and Seller. Seller acknowledges receipt of the "Dispute Resolution System – Mediation" pamphlet.
- 19. TAX CONSEQUENCES:** The Seller acknowledges that there may be tax consequences arising out of the sale of this property and that they are advised to seek competent tax advice.
- 20. OTHER:**

The undersigned hereby agree to the above terms and acknowledge receipt of a copy of this agreement.

Dated this _____

Seller's Name - Printed or Typed _____

X _____
Seller's Signature

Seller's Name - Printed or Typed _____

X _____
Seller's Signature

The Real Estate Group
Listing Company _____

Keith Carlyle by agent signing below
Designated Broker's Signature _____

Listing Agent _____

Listing Agent's Signature

Copyright © 2018 Black Hills Association of REALTORS®. All Rights Reserved.

This form is authorized for the use of the members of the Black Hills Association of REALTORS® only. (revised) BHAR 9/18

Page 4 of 4