

# EXCLUSIVE AGENCY AGREEMENT

**THIS IS A LEGALLY BINDING CONTRACT ("AGREEMENT"). IF NOT FULLY UNDERSTOOD, WE RECOMMEND CONSULTING AN ATTORNEY BEFORE SIGNING.**

I/WE \_\_\_\_\_ ("OWNER") the OWNER of property

located at \_\_\_\_\_ ("PROPERTY")

do hereby give you, World Properties Int'l Sea to Sky Realty, Inc. ("LISTING BROKER") the exclusive agency to sell the PROPERTY for

\$ \_\_\_\_\_ from 12:01 A.M. on \_\_\_\_/\_\_\_\_/20\_\_\_\_ until 11:59 P.M. on \_\_\_\_/\_\_\_\_/20\_\_\_\_ ("LISTING PERIOD") and to make an offer of compensation to all participants of the OneKey Multiple Listing Service, LLC (OneKey MLS) authorized under law to receive a commission. OWNER and LISTING BROKER agree that they are contractually bound by this AGREEMENT as of the Effective Date.

Further, OWNER and LISTING BROKER agree that no marketing, promotion, sales activity, or showing of the PROPERTY shall take place until the LISTING CONTENT is entered into the OneKey MLS system and made available to other OneKey Participants on \_\_\_\_\_ (insert date).

No provision of this AGREEMENT is intended to nor shall be understood to establish or imply any contractual relationship between the OWNER and OneKey MLS and/or any REALTOR® Associations nor has OneKey MLS and/or any REALTOR® Associations in any way participated in any of the terms of this AGREEMENT, including the commission to be paid.

## COMPENSATION

1. The OWNER hereby agrees to pay the COOPERATING BROKER (broker working with the buyer/buyer's agent) a total commission in the amount of \_\_\_\_\_% (must be 1% or greater). OWNER is not paying LISTING BROKER a commission, only the upfront fee. Owner also agrees that if the buyer is procured by a licensed real estate agent/broker of the LISTING BROKER, (we have agents also) said commission shall be paid to the LISTING BROKER. If you, the OWNER, sell the PROPERTY on your own without a Broker, then you will own no commission to any Broker when title closes.

## CANCELLATION, TERMINATION AND VIOLATIONS

2. OWNER may cancel this listing agreement at anytime through written communication by email. LISTING BROKER may also cancel/terminate this listing agreement without refund if OWNER repeatedly fails to comply with MLS rules and policies after BROKER has instructed OWNER on the rules and policies of the MLS. OWNER is responsible for paying any fees from violations incurred from actions of the OWNER. BROKER may use its discretion to terminate the listing immediately if it is found the listing contains deliberate falsified information, in any way deceiving to the public or if there has been a credit card chargeback. If a listing has been ordered and paid for, but Owner decides not to use the service prior to submission to MLS, Broker will refund payment back to Owner less \$25 for service charge. No refunds once the property information has been submitted into the MLS. Owner may not cancel this agreement when an offer by a cooperating broker has been presented and the Owner has not replied in writing to the other party. Owner must first reject any offers PRIOR to a binding contract of sale with other party acknowledgement then cancel this agreement. Once the property is under contract, this agreement cannot be canceled.

## REPORTING OF SALE/STATUS CHANGE NOTIFICATION **\*\*Very Important\*\***

3. The OWNER acknowledges and agrees that OWNER MUST notify Broker by email within 24 HOURS of status change of property (Status change = Accepted Offers, Signed Contracts, & Closing.) The Broker will need buyer name, town from, purchase price, and agent info to update MLS. Owner agrees and acknowledges that any fines from MLS to Broker resulting from late notification of property status change will be the Owner's responsibility.

3a. The Owner acknowledges and agrees to forward a copy of the Real Estate Sales Agreement, Deal Sheet or Contract by email, within 48 hours of receiving it.

## WHAT WE PROVIDE

4. A. Broker submits Owner's property to the MLS with information provided by Owner. Broker will not be responsible for information it has been supplied. The Broker will not be responsible for any computer glitches/downtime (although rare) resulting from MLS.

B. MLS syndicates data to many real estate websites including Realtor.com, Trulia, Zillow, etc. including but not limited to other real estate brokerage companies websites. Broker does not have any control over what websites or categories the MLS chooses or omits their syndication feed to. Broker may manually submit Owner's property listing to other popular real estate websites as well for an additional fee.

C. Forwarding of any emails manually to OWNER regarding their listing done in a timely manner.

D. Transferring of calls regarding listing direct to Owner via the given contact number.

E. Up to 36 photos on MLS and unlimited changes to listing ie: open houses, price, commission, description, etc.

F. Broker provides support to Owner regarding price, offers and negotiations, etc. during the listing period. Broker can handle entire transaction for an upgraded plan.

G. Broker does not provide any additional marketing. Additional marketing can be purchased separately.

## AUTHORIZATION FOR "FOR SALE" SIGN AND OTHER SERVICES

5. LISTING BROKER \_\_\_\_\_ (is) \_\_\_\_\_ (is not) authorized to place a "For Sale" sign on the PROPERTY. (Check one)

6. LISTING BROKER \_\_\_\_\_ (is) \_\_\_\_\_ (is not) authorized to use a lockbox. (Check one)

7. OWNER \_\_\_\_\_ (gives permission) \_\_\_\_\_ (does not give permission) to the LISTING BROKER to share keys to the PROPERTY with cooperating brokers. (Check one)

## RENTAL OF PROPERTY

8. Should the OWNER desire to rent the property during the period of this agreement, the OWNER may do so on his own at anytime. If the OWNER wishes a rental listing on the MLS, it is considered a separate and independent listing and shall be treated as such and will require a separate agreement and payment.

## USE OF AUDIO RECORDING DEVICES

9. OWNER are advised that it is in violation of NYS Penal Law to mechanically overhear a conversation by having any device (or devices) recording, streaming, or otherwise documenting the conversation of an individual during real estate-related activities at the property (open houses, showings etc.) if you are not a party to that conversation. If such a device is present and will be operating at any time a potential Buyer is viewing the property, the OWNER understands that the listing agent must disclose the presence of the device. The property (check one) does \_\_\_\_\_ does not \_\_\_\_\_ have a device that can mechanically overhear a conversation.

## ADDITIONAL POINTS

10. Additional Points of Agreement, if any:

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### ALL MODIFICATIONS TO BE MADE IN WRITING

11. OWNER and LISTING BROKER 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.

### MAINTENANCE OF PROPERTY

12. OWNER is responsible for the condition, maintenance and/or utilities for the PROPERTY including snow removal and lawn maintenance. OWNER agrees to indemnify and hold harmless the LISTING BROKER and cooperating brokers from any claim arising out of personal injuries to any persons injured on the PROPERTY and/or loss or damage to personal property except if caused by the gross negligence of the LISTING BROKER or cooperating broker. OWNER shall have the right to select counsel in such event, subject to the approval of the LISTING BROKER and/or cooperating broker, which approval shall not be unreasonably withheld.

### HOME EQUITY THEFT PROTECTION ACT

13. OWNER acknowledges that OWNER is aware of the Home Equity Theft Prevention Act and particularly the provisions of Section 265 of the Real Property Law of the State of New York. In order to ensure compliance with same, OWNER warrants and represents that:

- (a) OWNER is not in default of any mortgage affecting real property by reason of there being payments due and unpaid on any mortgage for two (2) months or more;
- (b) there are no actions pending against the real property to foreclose a mortgage; and
- (c) the PROPERTY is not shown as an active property on a tax lien sale list and all real estate taxes have been paid through the next lien date.

Owner is subject to \_\_\_a, \_\_\_b and/or \_\_\_c above and LISTING BROKER must notify OWNER'S attorney prior to the issuance of a sales contract.

14. In the event that the above circumstances change after the execution of this listing agreement, OWNER hereby covenants and agrees that OWNER will communicate with LISTING BROKER regarding any of the matters referred to above in subparagraph (a), (b) or (c) and to keep LISTING BROKER fully apprised of same.

### ESCROW AND RECOVERY OF FEES

15. (a) Escrow. If, for any reason, LISTING BROKER is not paid the compensation set forth herein on the due date, OWNER shall establish an escrow account with a party mutually agreeable to LISTING BROKER and OWNER or a title insurance agent or company, and shall place into said escrow account an amount equal to the compensation set forth herein. The escrow monies shall be paid by OWNER to said escrow agent and shall be held in escrow until the parties' rights to the escrow monies have been determined (i) by the written agreement of the parties; (ii) pursuant to an arbitration award; (iii) by order of a court of competent jurisdiction; or (iv) some other process to which the parties agree to in writing.

(b) Commission Escrow Act. Alternatively, LISTING BROKER shall have the right to exercise LISTING BROKER's rights under the Commission Escrow Act and specifically, Real Property Law Section 294-b. The provisions of said law may require the deposit of the commission claimed by LISTING BROKER, with the County Clerk in the County in which the property is located. Notice is hereby given in accordance with Section 294-b(4)(k) as follows:

**AT THE TIME OF CLOSING, YOU MAY BE REQUIRED TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK IN THE EVENT THAT OWNER DOES NOT PAY THE BROKER HIS OR HER COMMISSION AS SET FORTH HEREIN. YOUR OBLIGATION TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK MAY BE WAIVED BY THE BROKER.**

(c) Attorney Fees. In any action, proceeding or arbitration to enforce any provision of this AGREEMENT, or for damages caused by default, the prevailing party shall be entitled to reasonable attorney fees, costs and related expenses, such as expert witness fees and fees paid to investigators. In the event LISTING BROKER hires an attorney to enforce the collection of any commission due hereunder and is successful in collecting all or any portion thereof with or without commencing a legal action or proceeding, OWNER agrees to pay the reasonable attorney fees, costs and related expenses incurred by LISTING BROKER.

### INDEMNITY

16. In the event any claim or action is commenced against the LISTING BROKER or a cooperating broker as a result of the LISTING BROKER or cooperating broker obeying the lawful instructions of the OWNER, then, and in such event, the OWNER hereby agrees to defend, indemnify and hold harmless the LISTING BROKER or cooperating broker in any such claim or action. OWNER shall have the right to select counsel in such event, subject to the approval of the LISTING BROKER and/or cooperating broker, which approval shall not be unreasonably withheld.

### PROPERTY CONDITION DISCLOSURE

17. As the owner of residential real property, OWNER must complete and sign a Property Condition Disclosure Statement as required by Real Property Law §462(2) and cause it, or a copy thereof, to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. A copy of the Property Condition Disclosure Statement containing the signatures of both the buyer and the OWNER must be attached to the real estate purchase contract. If OWNER acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement previously provided, OWNER must deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. In no event, however, will OWNER be required to provide a revised Property Condition Disclosure Statement after the transfer of title from OWNER to the buyer or after the buyer has commenced occupancy of the PROPERTY. OWNER should seek the advice of their attorney regarding the filling out and exchange of the Property Condition Disclosure Statement or any questions as to OWNER's obligations under the law.

### COPYRIGHT NOTICE

18. The OWNER authorizes the LISTING BROKER to enter information and any photograph, image, graphics or video recording, virtual tours, drawings, written descriptions, remarks, narratives, pricing information, and other copyrightable elements relating to the PROPERTY whether taken by the LISTING BROKER's agent, supplied by OWNER, or otherwise ("LISTING CONTENT"), into a listing content compilation owned by OneKey MLS. The OWNER understands and agrees that said compilation is exclusively owned by OneKey who alone possesses the right to publish said compilation in any media form it deems appropriate. LISTING CONTENT

may be aggregated with that of other properties listed by participants in OneKey MLS, computer online networks and websites and become copyrightable data pursuant to agreements with LISTING BROKER and such other third parties. By the act of submitting any LISTING CONTENT to OneKey MLS, the LISTING BROKER has been authorized to grant and also thereby does grant authority to OneKey MLS to include the LISTING CONTENT in its copyrighted MLS compilation and also in any statistical report. OneKey MLS may license, sell, lease, and commercially utilize its compilation. Among other uses OneKey MLS may license or sell the LISTING CONTENT to aggregators who will aggregate the LISTING CONTENT and resell the same. If any LISTING CONTENT is delivered by OWNER to the LISTING BROKER for use in the OneKey MLS compilation, by virtue of such delivery and the execution of this AGREEMENT, the OWNER hereby represents and warrants that the OWNER either: (1) holds all intellectual property rights including the copyrights of the LISTING CONTENT; or (2) has a nonexclusive, perpetual, royalty-free, worldwide license to copy, distribute, display, create derivative works, and publicly perform the LISTING CONTENT and the right to grant sublicenses through multiple tiers.

19. OWNER hereby grants to LISTING BROKER a non-exclusive, irrevocable, worldwide, royalty free license to use, sublicense through multiple tiers, publish, display, reproduce and distribute the LISTING CONTENT or any derivative works thereof. OWNER agrees to indemnify LISTING BROKER from any claim of infringement relating to the same. OWNER acknowledges and agrees that as between OWNER and LISTING BROKER, all LISTING CONTENT developed by either the OWNER or the LISTING BROKER is deemed owned exclusively by LISTING BROKER, and OWNER has no right, title or interest in it.

**PENDING CONTRACT PRICE**

20. OWNER hereby authorizes LISTING BROKER to provide OneKey® MLS with the pending contract price for their property at the time when the subject property status is marked "Pending" on OneKey® MLS for the sole purpose of aggregating this information with similar data for statistical purposes only. Individual pending contract data shall not be accessible by OneKey® MLS Participants, Subscribers or consumers and only aggregated data reports shall be made available. No individual pending contact data shall be shared, sold or distributed to any person or source.

**ACKNOWLEDGEMENT**

21. OWNER has read and understands this LISTING AGREEMENT and does hereby acknowledge receipt of a copy thereof. ALL ORAL OR PRIOR AGREEMENTS BETWEEN THE PARTIES ARE HEREBY MERGED INTO THIS AGREEMENT AND THE PARTIES AGREE THAT THEIR RELATIONSHIP SHALL BE GOVERNED SOLELY BY THIS AGREEMENT. This AGREEMENT is the entire agreement between the parties and may not be changed except in a writing signed by both parties. This LISTING AGREEMENT shall be binding upon the parties hereto, and their respective heirs, successors, or assigns as of the EFFECTIVE DATE. For purposes of this LISTING AGREEMENT, "OWNER" refers to each and all parties who have an ownership interest in the PROPERTY and the undersigned OWNER represents that he/she is/are the sole and exclusive owner and is fully authorized to enter into this LISTING AGREEMENT. As used in this LISTING AGREEMENT, the neuter includes the masculine and feminine, the singular includes the plural and the plural includes the singular, as the context may require. OWNER and LISTING BROKER understand that all extensions of this LISTING AGREEMENT must be done in writing and automatic renewals are specifically prohibited by 19 NYCRR§175.15. Any change to the LISTING AGREEMENT which would make the PROPERTY unavailable for sale through the OneKey MLS, including but not limited to any withdrawal, cancellation, reduction in term of listing or termination thereof, must be in writing signed by the LISTING BROKER or authorized representative/manager in order to have any binding legal force and effect.

**EQUAL OPPORTUNITY IN HOUSING**

22. OWNER and LISTING BROKER agree that the above listed property is to be listed and marketed in compliance with all Federal, State, Municipal and Local fair housing, human rights and civil rights laws concerning discrimination in the sale/rental of properties. OWNER and LISTING BROKER agree not to discriminate against any Protected Class in the sale/rent of the Property.

**23. PLEASE INITIAL BELOW**

\_\_\_/\_\_\_ **EXPLANATION:** 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. An "exclusive agency" listing means that if you, the OWNER of the PROPERTY, find 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 presentbroker.

**PARTIES SIGNATURES**

OWNER \_\_\_\_\_

Date: \_\_\_\_\_

OWNER \_\_\_\_\_

Date: \_\_\_\_\_

LISTING BROKER (Auth. Rep) World Properties Int'l Sea to Sky Realty, Inc.

Date: \_\_\_\_\_

LISTING AGENT Matthew Hart

Date: \_\_\_\_\_

The "EFFECTIVE DATE" of this Agreement shall be latest date entered alongside the parties' signatures