

# **FAULKENBERRY REALTY, LLC**

## **EXCLUSIVE RIGHT TO BUY BUYER AGENCY CONTRACT**

**1. APPOINTMENT OF BROKER:** By this contract \_\_\_\_\_ ("Buyer") appoints Broker in Charge of **Faulkenberry Realty, LLC** Company ("Broker") as Buyer's exclusive agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

**2. PURPOSE OF AGENCY:** Buyer desires to purchase or lease real property (which may include items of personal property) described as follows: \_\_\_\_\_  
Type:  Residential  Commercial  Industrial  Vacant Land  Other \_\_\_\_\_  
General Description: \_\_\_\_\_  
Approximate Price Range: \$ \_\_\_\_\_  
General Location: \_\_\_\_\_  
Preferred Terms: \_\_\_\_\_  
Other: \_\_\_\_\_

**3. BROKER'S DUTIES:** (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) if the Broker is not representing the seller, the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) if the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall **not** disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure; (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. 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.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

#### **4. BUYER'S DUTIES. BUYER AGREES TO:**

**(A) Work exclusively with Broker and its Affiliated licensees during the term of this agreement by:** (1) viewing any property (previewing, etc.) only with Broker or Broker's designated representative and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.

**(B) Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by:** (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.

**(C) Provide Broker and its Affiliated Licensees the following information:** (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.

**(D) To authorize Buyer'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.**

**5. COMPENSATION OF BROKER: Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer.** In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): **(CHECK ALL APPLICABLE SECTIONS)**

- a. **Retainer Fee:** Buyer will pay Broker a nonrefundable retainer fee of \$ \_\_\_\_\_ due and payable upon the signing of this contract. This fee shall or shall not be credited against the Brokerage fee
- b. **Service Fee:** Buyer shall pay Broker a Service Fee of \$ \_\_\_\_\_ to be paid on \_\_\_\_\_, \_\_\_\_\_ whether or not Buyer purchases any property. **(Check applicable sub-section.)**
- This Service Fee shall be the only fee due Broker from Buyer under the terms of this Contract.
- This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned.
- This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters into a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Service Fee will be credited against the Brokerage Fee as defined below.
- c. **Brokerage Fee:** Buyer shall pay Broker a Brokerage Fee which is the greater of \$ \_\_\_\_\_ or \_\_\_\_\_% of the purchase or total lease price (renewal, if applicable) of any property purchased or leased by Buyer, including "For Sale by Owner" properties. If within days after the expiration of this Contract Buyer purchases or leases any property which Broker has negotiated during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. Broker shall use his best efforts to obtain payment of the Brokerage Fee out of the transaction, but Buyer shall have the obligation to pay Broker the Brokerage Fee set forth in this Contract if Broker cannot obtain payment of such fee out of the transaction. Any fees paid by the seller or seller's agent shall be credited against the Brokerage fee.
- d. **Brokerage Fee:** Broker shall obtain payment of the Brokerage Fee out of the transaction. Broker shall be paid by the cooperating broker as stated in the Multiple Listing Service or as agreed to by the Broker and cooperating broker, or as agreed to by the Broker and Seller in a "For Sale By Owner" transaction. Buyer shall not be responsible for paying Broker the Brokerage fee.

**6. TERM OF AGENCY:** Broker's authority to act as Buyer's exclusive agent under the terms of this Contract shall begin on \_\_\_\_\_, \_\_\_\_\_ and shall end at 11:59 p.m. on \_\_\_\_\_, \_\_\_\_\_.

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

\_\_\_\_\_ Buyer 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 Buyer. **(SEE PAGE 5 OF THIS AGREEMENT)**

Buyer acknowledges that after entering into this written agency contract, agent 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 Buyer agrees, Buyer 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 Buyer agrees, Buyer will execute a separate written **Designated Agency Agreement**.

**8. OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

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**9. INDEMNIFICATION OF BROKER:** Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

**10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY:** The Broker  does or  does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

**11. NONDISCRIMINATION:** Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination on the basis of race, creed, color, religion, national origin, sex, familial status, marital status, age or disabilities.

**12. PROFESSIONAL COUNSEL:** Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

**13. 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 Buyer 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.

**14. SEX OFFENDER REGISTRY INFORMATION:** The Buyer and Broker agree that during the course of the agency relationship, referred to in the above mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

**15. ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

**16. CONTINGENCIES:** \_\_\_\_\_  
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**17. FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and 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.

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THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

\_\_\_\_\_  
**Buyer's Signature** Date Time

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

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

\_\_\_\_\_  
**Buyer's Signature** Date Time

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

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

Buyer's Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**FAULKENBERRY REALTY, LLC**

Real Estate Company \_\_\_\_\_ Broker/Associate Licensee Date Time

Real Estate Firm Address \_\_\_\_\_ **PO Box 446** **Kershaw** **SC** **29067**  
Mailing City State Zip Code



**FAULKENBERRY REALTY**

REAL ESTATE BROKERAGE & TIMBERLAND INVESTMENTS  
www.FaulkenberryRealty.com

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## Agency Relationships in South Carolina

The SC Real Estate License Law, in Section 40-57-139 (A) (1) and (2), requires a real estate licensee to provide you this brochure and a meaningful explanation of agency relationships offered by the licensee's Company. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate Company. Associated licensees may work only through a broker-in-charge. **In other words, when you choose to work with any real estate licensee, your business relationship is legally with the Company and not with the associated licensee.**

A real estate Company and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic **customer** services, or through **client**-level agency representation. The services you can expect will depend upon the legal relationship you establish with the Company. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a **customer** or a **client**.

### **Now You Are a Customer of the Company**

South Carolina license law defines customers as buyers or sellers who choose NOT to establish an agency relationship. The law requires real estate licensees to perform the following **basic duties** when dealing with **any** real estate buyer or seller as customers:

- Present all offers in a timely manner
- Account for money or other property received on your behalf
- Provide an explanation of the scope of services to be provided
- Be fair and honest and provide accurate information
- Disclose "adverse material facts" about the property or the transaction

**Unless or until you enter into a written agreement with the Company for agency representation, you are considered a "Customer" of the Company, and the Company will not act as your agent. As a Customer, you should not expect the Company or its licensees to promote your best interest, or keep your bargaining information confidential.**

Customer service does not require a written agreement; therefore, you are not committed to the Company in any way.

### **You Can Become a Client**

Clients receive more services than customers. If client status is offered by the real estate Company, you can become a client by entering into a written agency agreement requiring the Company and its associated licensees to act as an agent on your behalf and promote your best interests.

If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this brochure in a timely manner.

A seller becomes a client of a real estate company by signing a formal listing agreement with the Company. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the Company which becomes the agent for the seller.

A buyer becomes a client of a real estate Company by signing a formal buyer agency agreement with the Company. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the Company which becomes the agent for the buyer.

If you enter into a written agency agreement, as a Client, you can expect the real estate Company to provide the following client-level services:

- Obedience
- Loyalty
- Disclosure
- Confidentiality
- Accounting and
- Reasonable care and skill

### **Single Agency**

When the Company represents only one client in the same transaction (the Seller or the Buyer), it is called single agency

### **Dual Agency**

Dual Agency exists when the real estate Company has two clients in one transaction – a seller client and a buyer client.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to represent both you and the other client in a disclosed Dual Agency Relationship.

### **Disclosed Dual Agency**

In a disclosed dual agency, the Company's representation duties are limited because a buyer and seller have recognized conflicts of interest. Both clients' interest are represented by the Company. **As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell.**

Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

### **Designated Agency**

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency. Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer(s) client(s) and identifies the property.

### **What to Look For in Any Agreement**

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

- Can I work with other Companies during the time of the Agreement?
- What will happen if I buy or sell on my own without the agent?
- When will this agreement expire?
- How will the Company be paid for its services?
- Does this Company represent both buyers and sellers as clients?
- If so, what are the choices if two clients become involved in one transaction?
- What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. **Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences.**

### **It's Your Choice**

As a real estate consumer in South Carolina, it is your choice as to the type and nature of service you receive.

- You can choose to remain a customer and represent yourself while the Company represents the other party.
- You can choose to hire the Company for representation through a written agreement.
- If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you – the South Carolina Real Estate Consumer.

**This brochure has been approved by the S.C. Real Estate Commission for use in explaining representation issues in real estate transactions and consumers rights as a buyer or seller. Reprinting is permitted provided no changes or modifications are made.**