



## LISTING AGREEMENT

THE SECTIONS HIGHLIGHTED IN RED WITH ARROWS HAVE FIELDS THAT REQUIRE INFORMATION YOU WILL NEED TO FILL IN OR IMPORTANT INFORMATION THAT WARRANTS EMPHASIS. PLEASE REMEMBER TO INITIAL THE BOTTOM OF EVERY PAGE AND SIGN THE LAST PAGE.

1. **PARTIES:** The parties to this agreement (the Listing) are:

Seller: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Broker: ListingSpark

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone \_\_\_\_\_ E-Mail: \_\_\_\_\_

2. **PROPERTY:** "Property" means the land, improvements, and accessories described below, except for any described exclusions.

A. Land: Lot, Block, Subdivision and county will be populated in the MLS listing by a Listing Spark representative.

Review the MLS listing once it is complete and inform Listing Spark of any errors or corrections that need to be made.

B. Improvements: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing, and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above-described real property.

C. Accessories: The following related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, controls for satellite dish system, controls for garage door openers, entry gate controls, door keys, mailbox keys, above-ground pool, swimming pool equipment and maintenance accessories, and artificial fireplace logs.

**D. Exclusions:** The following improvements and accessories will be retained by Seller and must be removed prior to delivery of the property at the time of closing and funding:

\_\_\_\_\_  
\_\_\_\_\_  
—

**E. Owner's Association:** The property \_\_\_IS \_\_\_IS NOT subject to mandatory membership in a

property owners' association.

### 3. LISTING PRICE:

Seller(s) will utilize their secure, password protected user account on ListingSpark.com to enter their properties listing price. Once the List Price is submitted through the ListingSpark system, that price will be used in any and all marketing resources for the sale of the property including but not limited to the local MLS and property information displayed on ListingSpark.com. Seller(s) will enter any price changes throughout the listing through the same user account. Once a price change has been submitted through ListingSpark.com the MLS will be updated within 2 business days. Seller(s) acknowledge that ListingSpark has advised that all parties with an ownership stake in the property listed for sale participate in all pricing decisions, including the original list price and any subsequent price changes throughout the life of the listing. It is the responsibility of the ListingSpark account holder to make all parties aware of listing information submitted to ListingSpark.

**Sellers will be provided market data through ListingSpark.com or from a ListingSpark representative in the way of recent Sold, Active, and Pending Listings. The homes of the ListingSpark subscribers (clients) in most cases are sight unseen by ListingSpark employees; thus, ListingSpark can in no way offer concrete guidance or any final decisions on pricing. It is up to the Seller to set the Listing Price of the home. ListingSpark advises home sellers to have an unbiased third party home appraiser offer an appraisal. Home sellers are not required to set their price based on any information provided by ListingSpark or a third party appraiser. At any point throughout the listing, home sellers can make price reductions, price increases, or obtain new market data to re-evaluate pricing decisions. ListingSpark provides no guarantees of final sales prices or net proceeds at closing. It is recommended to utilize title companies to aid in obtaining information of closing costs and other settlement charges associated with the closing of a home. ListingSpark offers no warranties obtained by any outside title companies or appraisers.**

### 4. TERM:

**This listing will automatically expire 365 days after the execution of this agreement and will require an extension signed by all parties to continue the listing beyond that time period.**

A. This Listing begins upon the date subscriber signs up for Listing Spark services, and continues until the date the account is closed by subscriber or the date the property closes and funds and the lockbox is returned.

B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

**C. The listing can be canceled any time with written notice (emails from the account holder/subscriber are acceptable) the date of notice will determine the "termination date" of the listing. If the seller is actively negotiating a contract or under contract with a listing, the listing account must remain active until the date of closing and funding or with written proof the contract is terminated. ListingSpark is responsible for entering accurate data into the MLS throughout the period when a transaction is under contract until the date of closing.**

### 5. BROKER'S FEE:

**A. Listing Fee:** Compensation for Listing Spark services are outlined in the "Listing Terms and

Conditions”

**Your ListingSpark Listing is based on a fee of \_\_\_\_\_ of that fee will be paid upfront as a nonrefundable deposit, and the remaining \_\_\_\_\_ will be collected at the time of closing.**

Listing Spark Clients can upgrade their listing through the Listing Spark site at any time. All upgrades shall either be billed to the credit card on file at the time of the purchase of upgrade or they may be charged to the client at closing. Available upgrades and charges are listed in detail on ListingSpark.com

**B. Fees to Cooperating Broker (Buyer's Agent):**

**Listing Spark will market/advertise a cooperating broker's commission based on the value entered at ListingSpark.com and stated below. At any point, Listing Spark clients have the right to change or adjust that commission through ListingSpark.com and that value will be changed in all marketing outlets including but not limited to the MLS. The final commission paid to a cooperating broker is determined in the sales contract and any related documents or addenda. Listing Spark cannot guarantee buyers or their agents will list the same advertised commission in the sales contract or related addendums. It is the sellers' sole responsibility to ensure that the commission paid to a cooperating broker as stated in the sales contract or related addendums is agreeable to the seller. In many cases the commission paid to a cooperating broker is listed on a page of the contract or an addendum that is not signed by the seller.**

1. MLS Participant: If the other broker (buyer's representation) is a participant in the MLS in which the listing is filed, Seller will offer to pay the other broker:

i. If the other broker represents the buyer \_\_\_\_\_% of the sales price (must be within a range of 2%-3%) will be paid as commission to the cooperating broker at closing.

2. Non MLS Participant: A Non MLS Participant broker or agent will not have access to MLS data regarding your home or have the ability to utilize the digital lockbox. For this reason all appointments/showings must be made between cooperating broker and seller. Seller has the right to determine the commission payable to a Non MLS Participant cooperating broker.

i. If the other broker representing the buyer is a Non MLS Participant \_\_\_\_\_% of the sales price will be paid as commission to the cooperating broker at closing.

**C. Fees Associated With an Un-Represented Buyer:**

In the event a buyer expressly denies any representation by a cooperating broker (buyer's agent) or a ListingSpark agent (Intermediary), there will be no commission payable to a cooperating broker (buyer's agent) or a ListingSpark agent (intermediary). In this instance, a \$0 transaction fee will be payable to ListingSpark at the time of closing and listed on the closing statement (HUD-1). ListingSpark will provide the buyer with all documentation necessary for the transaction and ensure documentation is completed properly and presented to the title company. ListingSpark in this instance will only represent you as the seller.

D. County: If necessary, all additional amounts payable to Broker outside of amounts due under paragraph 5A are to be paid in cash in \_\_\_\_\_, Texas.

E. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect

and disburse to Broker all amounts payable to broker under this Listing.

## 6. LISTING SERVICES:

Broker will file this Listing with one or more Multiple Listing Services (MLS) by the earlier of the time required by MLS rules or 3 business days after all critical data required by the seller is submitted. Seller authorizes Broker to submit information about this Listing and the sale of the Property to the MLS.

**Notice: MLS rules require Broker to accurately and timely submit all information the MLS requires for participation including sold data. Subscribers to the MLS may use information for market evaluation or appraisal purposes. Any information filed with the MLS becomes the property of the MLS for all purposes. Submission of information to MLS ensures that persons who use and benefit from the MLS also contribute information.**

## 7. ACCESS TO THE PROPERTY:

A. Authorizing Access: Authorizing access to the Property means giving permission to another person to enter the Property, disclosing to the person any security codes necessary to enter the Property, and lending a key to the other person to enter the property, directly or through a lockbox. To facilitate the showing and sale of the Property, Seller instructs Broker and their representatives to: (1) access the property at reasonable times (2) authorize other brokers, their associates, inspectors, appraisers, and contractors to access the Property at reasonable times; and

B. Scheduling Companies: Broker may engage the following companies to schedule appointments and to authorize others to access the Property: Brokers, centralized showing services, licensed agents, licensed home inspectors and appraisers.

C. Lockbox: A lockbox is a locked container placed on the Property that holds a key to the Property. A lockbox makes it more convenient for brokers, their associates, inspectors, appraisers, and contractors to show, inspect, or repair the Property. The lockbox is opened by a special combination, key, or programmed device so that authorized persons may enter the Property, even in Seller's absence. Using a lockbox will probably increase the number of showings, but invokes risks (for example, unauthorized entry, theft, property damage, or personal injury). Neither the Association of REALTORS® nor MLS requires the use of a lockbox. If you decide not to utilize the lockbox inform Listing Spark immediately so the MLS report viewable by cooperating brokers and agents is accurate at all times.

This listing includes iBox lockboxes, which must be returned by the end of the tenth (10th) full business day after a listing either closes or is cancelled. In the event the iBox lockbox is not returned, there will be a one hundred and fifty dollar (\$150.00) fee billed to the credit card on file. The account will not be considered closed until we have either received the iBox lockbox in normal working condition or the \$150.00 penalty fee has been paid.

(1) Broker \_\_\_ is \_\_\_ is not authorized to place a lockbox on the Property.

(2) If tenant occupies the Property at any time during this Listing, Seller will furnish Broker a written statement, signed by all tenants, authorizing the use of a lockbox or Broker may remove the lockbox from the Property.

D. Liability and Indemnification: When authorizing access to the Property, Broker, other brokers, their associates, any lockbox provider, or any scheduling company are not responsible for personal injury or property loss to Seller or any other person. Seller assumes all risk of any loss, damage, or injury. Except for a loss caused by Broker, Seller will indemnify and hold Broker

harmless from any claim for personal injury, property damage, or other loss.

#### **8. INTERMEDIARY:**

A. Intermediary Status: All Listing Spark Clients will allow intermediary status. This means that Broker may show the Property to interested prospective buyers who Broker represents. If a prospective buyer who Broker represents offers to buy the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.

(1) If a prospective buyer who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospective buyer to the prospective buyer for the same purpose.

(2) If a prospective buyer who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospective buyer; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.

(3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

**Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:**

- **may not disclose to the prospective buyer that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;**
- **may not disclose to Seller that the prospective buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospective buyer;**
- **may not disclose any confidential information or any information Seller or the prospective buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;**
- **may not treat a party to the transaction dishonestly; and**
- **may not violate the Real Estate License Act.**

#### **9. CONFIDENTIAL INFORMATION:**

During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any confidential information regarding any other person Broker represents or previously represented except as required by law.

**10. BROKER'S AUTHORITY:**

A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, facilitate the negotiations between buyer or their representative and the seller for the sale of the Property.

1. Broker is authorized to market the listing in accordance with the terms and information provided by the seller on ListingSpark.com

B. In addition to other authority granted by this Listing, Broker may:

1. Advertise the Property by means and methods as Broker determines, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the property and related information in any media and the Internet;

2. Place a "For Sale" sign on the Property and remove all other signs offering the Property for sale or lease;

3. Furnish comparative marketing and sales information about other properties to prospective buyers;

4. Disseminate information about the Property to other brokers and to prospective buyers, including applicable disclosures or notices that Seller is required to make under law or contract;

5. Obtain information from any holder of a note secured by a lien on the Property;

6. Accept and deposit earnest money in trust in accordance with a contract for the sale of the Property.

7. Disclose the sales price and terms of sale to other brokers, appraisers, or other real estate professionals;

8. In response to inquiries from prospective buyers and other brokers, disclose whether the Seller is considering more than one offer, provided that Broker will not disclose the terms of any competing offer unless specifically instructed by the Seller;

9. Advertise, during or after this Listing ends, that Broker "sold" the Property; and

10. Place information about this Listing, the Property, and a transaction for the property on an electronic transaction platform (typically an Internet-based system where professionals related to the transaction such as title companies, lenders, and others may receive, view, and input information).

C. Broker is not authorized to execute any document in the name of on the behalf of Seller concerning the property.

**11. SELLER'S REPRESENTATIONS:**

Except as provided by Paragraph 15, Seller represents that:

A. Seller has fee simple title to and peaceable possession of the property and all its improvements and fixtures, unless rented, and the legal capacity to convey the Property;

B. Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the property that is or will be in effect during this Listing;

C. any pool or spa and any required enclosures, fences, gates, and latches comply with all applicable laws and ordinances;

- D. no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
- E. there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the property;
- F. the Property is not subject to the jurisdiction of any court;
- G. all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge;
- H. All property related details will be verified by homeowners to ensure the accuracy of such details prior to submitting them to Listing Spark; and
- I. The name of any employer, relocation company, or other entity that provides benefits to Seller when selling the Property is: \_\_\_\_\_

**12. SELLER'S ADDITIONAL PROMISES: Seller agrees to:**

- A. Cooperate with Broker to facilitate the showing, marketing, and sale of the Property;
- B. Not rent or lease the Property during this Listing without providing prior notice to the broker;
- C. Not enter into a listing agreement with another broker for the sale, exchange, or lease of the Property to become effective during this Listing;
- D. Maintain any pool and all required enclosures in compliance with all applicable laws and ordinances;
- E. Provide Broker with copies of any leases or rental agreements pertaining to the Property and advise Broker of tenants moving in or out of the Property;
- F. Complete any disclosures or notices required by law or a contract to sell the property; and
- G. Amend any applicable notices and disclosures if any material changes occur during this Listing.

**13. LIMITATION OF LIABILITY:**

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to injuries or damages caused by: (1) Other brokers, their associates, inspectors, appraisers, and contractors who are authorized to access the Property; (2) Acts of third parties (for example, vandalism or theft); (3) Freezing water pipes; (4) A dangerous condition on the property; or (5) The Property's non-compliance with any law or ordinance.**
- C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damage, costs, attorney's fees, and expenses that: (1) Are caused by Seller, negligently, or otherwise; (2) Arise from Seller's failure to disclose any material or relevant information about the Property; or (3) Are caused by Seller giving incorrect information to any person.**

**14. DEFAULT:**

If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of the Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing. If a sales

price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for purposes of computing Broker's fee. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

**15. MEDIATION:**

The parties agree to negotiate in good faith in an effort to resolve any dispute related to this Listing that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute will be submitted to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the cost of mediation equally.

**16. ATTORNEY'S FEES:**

If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party will be entitled to recover from the non-prevailing party all costs of such proceedings and reasonable attorney's fees.

**17. ADDENDA AND OTHER DOCUMENTS:**

Addenda that may be a part of this Listing and other documents that

Seller may need to provide are: A. Information about Brokerage Services B. Seller's Disclosure Notice (5.008, Texas Property Code); C. Seller's Disclosure of Information on Lead-Based Paint and Lead Based Paint Hazards (required if Property was built before 1978) D. Residential Real Property Affidavit (T-47 Affidavit; related to existing survey); E. MUD, Water District, or Statutory Tax District Notice (Chapter 49, Texas Water Code); F. Request for information from an Owner's Association; G. Request for Mortgage Information H. Information about Mineral Clauses in Contract Forms; I. Information about On-Site Sewer Facility; J. Information about Property Insurance for a Buyer or Seller; K. Information about Special Flood Hazard Areas; L. Condominium Addendum to Listing; M. Lockbox Authorization by Tenant. N. Seller's Authorization to Release and Advertise Certain Information.

**28. AGREEMENT OF PARTY**

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligation to pay an earned fee is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assignees.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail address specified in Paragraph 1.

**19. ADDITIONAL NOTICES:**

- A. Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended,**



suggested, or maintained by the Association of REALTORS®, MLS, or any listing Service. B. Fair housing laws require the Property to be shown and made available to all persons without regard to race, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional classes (for example creed, status as a student, marital status, sexual orientation, or age).

C. Seller may review the information Broker submits to an MLS or other listing service.

D. Broker advises seller to remove or secure jewelry, prescription drugs, and other valuables.

E. Statutes or ordinances may regulate certain items on the Property (for example, swimming pools and septic systems). Non-compliance with the statutes or ordinances may delay the transaction and may result in fines, penalties, and liability to Seller.

F. If the Property was built before 1978, Federal law requires the Seller to: (1) provide the buyer with the federally approved pamphlet on lead poisoning prevention; (2) disclose the presence of any known lead-based paint or lead-based paint hazards on the Property; (3) deliver all records and reports to the buyer related to such paint or hazards; and (4) provide the buyer a period up to 10 days to have the Property inspected for such paint or hazards.

G. Broker cannot give legal advice. READ THIS LISTING CAREFULLY. If you do not understand the effect of this Listing, consult an attorney BEFORE signing.

H. All property related details must be verified by homeowners to ensure their accuracy before submitting to Listing Spark. Listing Spark will not warrant any property specific details given by home owners in their listings. Inaccurate or offensive property details may result in fines from the local board of realtors and/or MLS system. All fines and penalties issued to Listing Spark as a result of inaccurate information **including contractual and closing status** or offensive language submitted by home sellers will be billed to client's account.

20: Payments will be capped after the third month. No further charges will occur after the 3rd payment.

\_\_\_\_\_  
Broker's Printed Name                      License No.    Seller    Date

By: \_\_\_\_\_

Broker's Associate's Signature                      Date    Seller    Date