EXCLUSIVE LISTING AND AGENCY AGREEMENT
BLACK HILLS ASSOCIATION OF REALTORS®

Client: City of Rapid City

Responsible Broker and Brokerage Firm: Kelly Howie
RE/MAX Advantage
(hereinafter referred to as Broker)

Start Date: September 7, 2022 Expiration Date: March 7, 2023 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 N/A 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 N/A and the designated broker N/A, 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 \___\___
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:

Lot 5, Owen Hibbard Subdivision, Rapid City, Pennington County, South Dakota

County: Pennington, State SD
Also known as: 6163 Mt. Rushmore Rd.

3. TERMS: For the sum of $530,000.00, on the following terms: Cash, New Loan

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:

none

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 5.5% or $ of the total selling price plus all applicable sales tax.
A. 2.5% or $ to Listing Agent of total sale price plus applicable sales tax
B. 3.0% or $ to cooperating Buyers Agent of total sale price plus applicable sales tax

Transaction fee of $0.00 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 180 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 100% to the Seller and 0% 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 100% to Seller and 0% 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 ___________________________ 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**:

   A. __________ List and market the herein property with the local MULTIPLE LISTING SERVICE (MLS) on or before __________________________ (date).

   - [x] Place a FOR SALE sign on the property.
   - [ ] Place a LOCKBOX on the property.
   - [x] Cooperate with other Brokers, including Brokers representing a buyer, and Seller further agrees Broker may compensate selling Brokers.
   - [x] Advertise or market the property.

OR

   B. __________ Withhold the herein property from the local MULTIPLE LISTING SERVICE (MLS). Seller understands property shall not be marketed to the public. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays, digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

   A Certification to Withhold Property Listing From Multiple Listing Service will be signed by the Seller(s) and held on file with the Brokerage Firm.

14. **SELLER’S PROPERTY DISCLOSURE STATEMENT**:

   A. 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.

   - [x] The parties acknowledge that no disclosure statement is required by reason of the following: land only

   B. The following disclosure is provided to help sellers and buyers with respect to home surveillance devices. The property (check one) [ ] has [ ] does not have a video or audio surveillance device/system. The device/system (check one) [ ] does [ ] does not capture audio.

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.

Seller(s) __________________________ and Listing Office Broker/Agent __________________________ have read this page

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

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. 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.

19. OTHER:
   1) If Listing agent sells property, total commission will be reduced to 5%
   2) Contract will auto renew for 6 months on March 7, 2023 at the same terms and conditions unless a party gives notice of the desire to not have the contract renew at least 30 days before the renewal term commences.

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

Date ________________________________

City of Rapid City
Seller’s Name - Printed or Typed

X
Seller’s Signature


X
Seller’s Signature

RE/MAX Advantage
Listing Company

Designated Broker’s Signature

Ed Dreyer / Kristen Andrews
Listing Agent

Listing Agent’s Signature