

# BEVERLY-HANKS & ASSOCIATES BUYER AGENCY AGREEMENT



STATE OF NORTH CAROLINA, County of \_\_\_\_\_

Date \_\_\_\_\_ ("Buyer"), hereby employs **Beverly-Hanks & Associates** as the Buyer's exclusive agent ("Agent") to assist the Buyer in the acquisition of real property which may include any purchase, option and/or exchange on terms and conditions acceptable to Buyer. The individual agent who signs this Agreement on behalf of the Firm shall, on behalf of the Firm, be primarily responsible for ensuring that the Firm's duties hereunder are fulfilled; however, it is understood and agreed that other agents of the Firm may be assigned to fulfill such duties if deemed appropriate by the Firm. For purposes of this Agreement, the term "Firm," as the context may require, shall be deemed to include the individual agent who signs this Agreement and any other agents of the Firm.

**Buyer represents that, as of the commencement date of this Agreement, the Buyer is not a party to a buyer representation agreement with any other real estate firm. Buyer has received a copy of the "Working with Real Estate Agents" brochure and has reviewed it with Agent. Buyer further represents that Buyer has disclosed to Agent information about any properties of the type described in paragraph 1 below that Buyer has visited at any open houses or that Buyer has been shown by any other real estate agent.**

**1. TYPE OF PROPERTY:**  Residential (improved and unimproved)       Commercial (improved or unimproved)  
 Other \_\_\_\_\_

(a) General location (county): \_\_\_\_\_

(b) Other \_\_\_\_\_

**2. DURATION OF AGENCY:** Agent's authority as Buyer's exclusive Agent shall begin \_\_\_\_\_ and, subject to paragraph 4, shall expire at midnight, \_\_\_\_\_. This Agreement constitutes the entire agreement between Buyer and Firm relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. This Agreement may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument. No modification of any of the terms of this Agreement shall be valid, binding upon the parties, or entitled to enforcement unless such modification has first been reduced to writing and signed by both Buyer and Firm. Buyer acknowledges and understands that this Agreement constitutes a binding contract between Buyer and Firm. Either party may terminate this Exclusive Buyer Agency Agreement before the stated expiration date by delivering written notice to the other.

**3. EFFECT OF AGREEMENT:** Buyer intends to acquire real property of the type described in paragraph 1. *By employing Firm as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for such property through Firm, and to refer to Firm all inquiries received in any form from other real estate firms, prospective sellers or any other source, during the time this Agreement is in effect.*

**4. COMPENSATION OF FIRM:** (a) Subject to the terms of this Agreement, Buyer understands that Firm may provide assistance in the acquisition of listed or unlisted properties. In most cases the Firm will be compensated by the Listing Firm or the Seller. For improved property, the minimum fee accepted by this Firm for services rendered is 3% of the purchase price if paid by cooperating firm or 6% if Firm works directly with the Seller. For unimproved property, the minimum fee accepted by this Firm is 5% of the purchase price if paid by cooperating firm or 10% if Firm works directly with Seller.

(b) If additional compensation, incentive, bonus, rebate and/or other valuable consideration ("Additional Compensation") is offered through the MLS or otherwise, this Firm shall disclose in a timely manner the promise or expectation of receiving any such Additional Compensation and confirm the disclosure in writing before Buyer makes or accepts an offer to buy. (NOTE: NCAR Form #770 may be used to confirm the disclosure of any such Additional Compensation)

Buyer Initials   Agent Initial

Buyer chooses the following option:

[Buyer(s): Initial only ONE]

Buyer wishes to only be informed about or shown properties in which Firm's minimum fee will be paid by Seller or Seller's Agent.

**OR**

If Buyer purchases property where the compensation offered by the listing firm and/or seller is less than the Fee, or where no compensation is offered by either the listing firm or the seller, Buyer and Firm agree that Buyers will pay the difference between the Fee and the compensation offered unless prohibited by law. Firm will timely inform Buyer if the compensation offered is less than expected. *Buyer agrees to conduct all negotiations for such property through Firm, and to refer to Firm all inquiries received in any form from other agents, salespersons, prospective sellers or any other source, during the time this Agreement is in effect.*

(c) The compensation, shall be deemed earned and payable under any of the following circumstances:

- i. If, during the term of this Agreement, Buyer, any assignee of Buyer or any person/legal entity acting on behalf of Buyer directly or indirectly enters into an agreement to purchase, option, and/or exchange any property of the type described above regardless of the manner in which Buyer was introduced to the property; or
- ii. At closing or upon Buyer's default of any purchase agreement. If Buyer defaults, the total compensation that would have been due to the Firm will be due and payable immediately in cash from the Buyer. No assignment of rights in real property obtained for Buyer or any assignee of Buyer or any personal/legal entity acting on behalf of Buyer pursuant to this Agreement shall operate to defeat any of Agent's rights under this Agreement.
- iii. If, within \_\_\_\_\_ days after expiration of this Agreement, Buyer enters into contract to acquire property introduced to Buyer by Firm during the term of this Agreement, unless Buyer has entered into a valid buyer agency agreement with another real estate firm.
- iv. If, having entered into an enforceable contract to acquire property during the term of this Agreement, Buyer defaults under the terms of that contract.

**5. DISCLOSURE OF BUYER'S IDENTITY:**

(a) unless otherwise stated in Paragraph 6 below, Firm has Buyer's permission to disclose Buyer's identity.

(b) In accordance with NC General Statutes Section 93A-12, if a dispute regarding the return or forfeiture of any earnest money deposit arises between Buyer and the seller of any real property Buyer may agree to purchase, the escrow agent holding the deposit may deposit the disputed monies with the appropriate Clerk of Court following written notice to the parties. In the event of any such dispute, Buyer directs Firm to disclose Buyer's last known mailing address to the escrow agent upon request to enable the escrow agent to comply with the notice requirement of such law.

**6. ADDITIONAL PROVISIONS:**

**7. OTHER POTENTIAL BUYERS:** Buyer understands that other prospective purchasers represented by Agent may seek property, submit offers, and contract to purchase property through Agent, including the same or similar property as Buyer seeks to purchase. Buyer acknowledges, understands and consents to such representation of other prospective purchasers by Agent through its sales associates.

**8. FIRM'S DUTIES:** During the term of this Agreement, Firm shall promote the interests of Buyer by: (a) performing the terms of this Agreement; (b) seeking property at a price and terms acceptable to Buyer; (c) presenting in a timely manner all written offers or counteroffers to and from Buyer; (d) disclosing to Buyer all material facts related to the property or concerning the transaction of which Firm has actual knowledge; and (e) accounting for in a timely manner all money and property received in which Buyer has or may have an interest. Unless otherwise provided by law or Buyer consents in writing to the release of the information, Firm shall maintain the confidentiality of all personal and financial information and other matters identified as confidential by Buyer, if that information is received from Buyer during the brokerage relationship. In satisfying these duties, Firm shall exercise ordinary care, comply with all applicable laws and regulations, and treat all prospective sellers honestly and not knowingly give them false information. In addition, Firm may show the same property to other buyers, represent other buyers, represent sellers relative to other properties, or provide assistance to a seller or prospective seller by performing ministerial acts that are not inconsistent with Firm's duties under this Agreement.

Upon closing of any sale of property not entered in a listing service of which Firm is a member, Buyer authorizes Firm to submit pertinent information concerning the property, including sales price, to such listing service.

Buyer Initials  Agent Initial

**9. BUYER'S DUTIES:** Buyer agrees to cooperate with Firm in the acquisition of real property of the type described in paragraph 1, including, but not limited to:

- (a) working exclusively with Firm during the term of this Agreement
- (b) immediately referring to Firm information about any properties Buyer may have an interest in examining
- (c) complying with the reasonable requests of Firm to supply any pertinent financial or personal data needed to fulfill the terms of this Agreement
- (d) being available for reasonable periods of time to examine properties
- (e) examining properties only by appointments made by or through Firm and accompanied by an agent of Firm
- (f) conducting all negotiations and communication through Firm
- (g) conducting all due diligence on property in consultation with Firm
- (h) pay for all products and/or services required in the examination and evaluation of properties (examples: surveys, water/soil tests, title reports, property inspections, etc.).

**10. NON-DISCRIMINATION: THE AGENT (FIRM) SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT. FURTHER REALTORS HAVE AN ETHICAL DUTY TO CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OR GENDER IDENTIFY OF ANY PARTY OR PROSPECTIVE PARTY TO THIS AGREEMENT.**

**11. OTHER PROFESSIONAL ADVICE:** In addition to the services rendered to Buyer by the Firm under the terms of this agreement. Buyer is advised to seek other professional advice in matters of law, taxation, financing, insurance, surveying, wood-destroying insect infestation, structural soundness, engineering, and other matters pertaining to any proposed transaction. Although Firm may provide Buyer the names of providers who claim to perform such services, Buyer understands that Firm cannot guarantee the quality of service or level of expertise of any such providers. Buyer agrees to pay the full amount due for all services directly to the service provider whether or not the transaction closes. Buyer also agrees to indemnify and hold Firm harmless from and against any and all liability, claim, loss, damage, suit, or expense that Firm may incur either as a result of Buyer's selection and use of any such providers or Buyer's election not have one or more of such services performed.

- Buyer acknowledges receipt of a sample copy of an Offer to Purchase and Contract for review purposes.
- Buyer acknowledges receipt of a copy of the brochure *Questions and Answers on: Home Inspections*.
- Buyer acknowledges receipt of a sample copy of a Professional Services Disclosure and Election form for review purposes.

**12. HOME WARRANTY:** The seller of any property Buyer may be interested in in buying may or may not provide a home warranty as a part of the sale. If the seller does not provide a home warranty, Buyer may elect to purchase one. Buyer understands that although Agent will assist Buyer in identifying available home warranty products, Buyer must refer specific questions regarding coverage afforded by any such products to the provider thereof. If Firm assists Buyer in obtaining a home warranty, and a fee is offered to Firm by the person or entity through or from which any home warranty is obtained as compensation to Firm for its assistance in obtaining the home warranty, and Buyer hereby consents to Firm's donating all of such fees to the W. Neal Hanks, Sr. Memorial Fund.

**13. "MEGAN'S LAW":** Buyer should exercise whatever due diligence Buyer deems necessary with respect to information on any sexual offenders registered under Chapter 14 of the North Carolina General Statutes (NCGS 14-208.5 et seq.). Such information may be obtained by contacting the local Sherriff's Department or on the internet at <http://sbi.jus.state.nc.us/DOJHAHT/SOR/Default.htm> ."

**14. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No modification of any of the terms of this Agreement shall be valid, binding upon the parties, or entitled to enforcement unless such modification has been reduced to writing and signed by the parties.

**15. MEDIATION:** If a dispute arises out if or related to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. If the need for mediation arises, the parties will choose a mutually acceptable mediator and will share the cost of mediation equally.

**(NOTE: Buyer should consult with Agent before visiting any resale or new homes or contacting any other real estate agent representing sellers, to avoid the possibility of confusion over the brokerage relationship and misunderstandings about liability for compensation.)**

Buyer Initials   Agent Initial

16. CONFIDENTIALITY OF OFFERS: Real estate brokers are prohibited by N.C. Real Estate Commission rule from disclosing the price or other material terms contained in a party's offer to purchase, sell, lease, rent or option real property to a competing party without the express authority of the party making the offer. Firm hereby advises Buyer of the possibility that sellers or seller's representative may not treat the existence, terms, or conditions of any offers Buyer may make as confidential. Additionally, sellers may elect not to disclose or authorize seller's agent to disclose the existence of any other offer(s).

17. **DUAL AGENCY:** Buyer has received a copy of the "Working With Real Estate Agents" brochure and has reviewed it with Firm. Buyer understands that the potential for dual agency will arise if Buyer becomes interested in viewing property listed with Firm. Firm may represent more than one party in the same transaction only with the knowledge and informed consent of all parties for whom Firm acts.

(a) **Disclosure of Information.** In the event Firm serves as a dual agent, Buyer agrees that without permission from the party about whom the information pertains, Firm shall not disclose to the other party of the following information:

- (1) that a party may agree to price, terms, or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

(b) **Firm's Role as Dual Agent.** If Firm serves as agent for both Buyer and a seller in a transaction, Firm shall make every reasonable effort to represent Buyer and seller in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Buyer and seller. Buyer understands and acknowledges that:

- (1) Prior to the time dual agency occurs, Firm will act as Buyer's exclusive agent;
- (2) In its separate representation of Buyer and seller, Firm may obtain information which, if disclosed, could harm the bargaining position of the party providing such information to Firm;
- (3) Firm is required by law to disclose to Buyer and seller any known or reasonably ascertainable facts.

Buyer agrees Firm shall not be liable to Buyer for (i) disclosing material facts required by law to be disclosed, and (ii) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

(c) **Buyer's Role.** Should Firm become a dual agent, Buyer understands and acknowledges that:

- (1) Buyer has the responsibility of making Buyer's own decisions as to what terms are to be included in any purchase and sale agreement with a seller client of Firm;
- (2) Buyer is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Buyer and seller and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;
- (3) Buyer has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;
- (4) Buyer may seek independent legal counsel to assist Buyer with the negotiation and preparation of a purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a purchase and sale agreement

Should Firm become a dual agent, Buyer waives all claims, damages, losses, expenses or liabilities other than for violations of the North Carolina Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Buyer shall have a duty to protect Buyer's own interests and should read any purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Buyer wants included in said agreement.

(d) Designated Agent Option (Initial only if applicable).

**N/A** Buyer hereby authorizes the Firm to designate an individual agent(s) to represent the Buyer, to the exclusion of any other individual agents associated with the Firm. The individual designated agent(s) shall represent only the interests of the Buyer to the extent permitted by law.

(e) **Dual Agency Compensation.** If the Firm acts as a dual agent (including designated agency), the total fee the Firm expects to receive for its services in representing both Buyer and the Seller shall be a minimum of 6% of the purchase price for improved property and a minimum of 10% of purchase price for unimproved property. If compensation is more or less than the stated compensation the Agent shall disclose to Buyer before Buyer makes an offer.

THIS WILL IN NO WAY AFFECT OR MODIFY THE AMOUNT OF THE FEE SET FORTH IN PARAGRAPH 4 ABOVE THAT FIRM EXPECTS TO RECEIVE FOR ITS SERVICES IN REPRESENTING BUYER UNDER THIS AGREEMENT. In the event Buyer is interested in purchasing a property where the Firm's total fee is different from that described in this subparagraph (e), the Firm shall timely disclose the fee to Buyer and confirm it in writing before Buyer makes or accepts an offer to buy or sell any such property.

Buyer Initials   Agent Initial

(NOTE: Buyer should consult with Firm before visiting any resale or new homes or contacting any other real estate firm representing sellers, to avoid the possibility of confusion over the brokerage relationship and misunderstandings about liability for compensation.)

Buyer and Firm each hereby acknowledge receipt of a signed copy of this Agreement.

The undersigned Buyer acknowledges having received a copy of the "Working with Real Estate Agents" brochure and has reviewed it with Agent.

Buyer \_\_\_\_\_  
Print Name \_\_\_\_\_ Signature \_\_\_\_\_

Contact Information: \_\_\_\_\_  
Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_ Email \_\_\_\_\_

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

Buyer \_\_\_\_\_  
Print Name \_\_\_\_\_ Signature \_\_\_\_\_

Contact Information: \_\_\_\_\_  
Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_ Email \_\_\_\_\_

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

Entity Buyer: \_\_\_\_\_  
(Name of LLC/Corporation/Partnership/Trust/etc.)

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Information: \_\_\_\_\_  
Home \_\_\_\_\_ Work \_\_\_\_\_ Cell \_\_\_\_\_ Email \_\_\_\_\_

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

Firm: \_\_\_\_\_ Phone: \_\_\_\_\_  
Print Real Estate Firm Name

By: \_\_\_\_\_  
Individual Agent Signature \_\_\_\_\_ Individual License # \_\_\_\_\_ Date \_\_\_\_\_

Office: \_\_\_\_\_

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

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