

Agency Agreement – Owner - South Dakota (Listing Agreement)

Property Address: 305 S. Main Ave, Colton, SD

Client: Larry K. & Loretta R. Berens

Responsible Broker and Brokerage Firm: Sutton Auctioneers & Land Brokers, LLC
(hereinafter referred to as *Broker*)

Start Date: March 4, 2024 Expiration Date: June 6, 2024 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. The Client authorizes the Broker, as Client's X exclusive/_____ non-exclusive agent, to identify and communicate to Client Purchasers appearing to have interest in purchasing the real estate described in Section 2.

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 _____ 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 _____ and the designated broker _____, 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 LB N/A

I agree to limited agency representation, as described in 1C: Yes LB No N/A

Property Address: 305 S. Main Ave, Colton, SD

2) **Description of Property.** The Client warrants that Client is the owner of record of the property; or Client's representative has the written authority, attached, to execute this agreement on behalf of the owner of record and hereby grants the undersigned Broker, for the term of this agreement, the right to sell or lease the property legally described as:

Lots 11 & (Ex. RY) Lot 12 Block 5 Colton City 1st Addn., Minnehaha County, SD

Also known as: 305 S. Main Ave City: Colton, SD Zip: 57018

Property listed is for (mark one or both): Sale Lease

A. **Sales Price:** For the sum of To be sold at Public Auction
\$ _____, on the following terms: Cash

or other terms, by written acceptance, to Client.

B. **Lease Terms** (if applicable) N/A

Seller represents the title of the property to be good and merchantable and hereby represents that all known encumbrances, liens or clouds on title are disclosed. In the event of a sale, exchange or trade, Seller at Seller's expense will convey good and merchantable title to said property by Warranty Deed or sufficient conveyance instrument to Buyer, thereof. In the event of an undisclosed encumbrance that results in cancellation by Buyer, discharge of Buyer from purchase price and/or assumption by Buyer who is credited on the purchase price for the undisclosed encumbrances, liens, or cloud on title, Seller shall be liable to Broker for fee outlined in Section 3 as though contract of sale was not canceled. Seller acknowledges that there may be tax consequences arising out of the sale of this property and is advised to seek competent tax advice.

3) **Broker Services and Compensation**

A. The fee for services provided by broker will be 4 % or \$ _____ of the selling price plus applicable sales tax. IF Broker Co-op applies total commission will be 5%
B. Client authorizes broker as *initialed*:
1. Cooperate with brokers who represent buyers Yes LB / _____ No _____ / _____
2. Compensate cooperating brokers 2 % or \$ _____ Yes LB / _____ No _____ / _____

C. If Broker is an exclusive agent, and during the period of this agreement the property is sold by Client, Broker, a cooperating broker, or anyone else; or if Broker is a non-exclusive agent and the property is sold to a Purchaser identified by Broker and submitted to Client in writing; or should any of the aforementioned produce a Purchaser ready, willing, and able to purchase the property; Client agrees to pay compensation as stated above.

D. If within 30 days after the expiration or mutual written termination of this contract a sale is made to any person to whom the property has been shown during the listing period, Client agrees to pay the broker as stated above. If this property is listed with another real estate licensee after expiration or mutual termination, this contract shall be null and void in its entirety.

E. The term "sale" shall be deemed to include any exchange or trade to which Seller consents. In the event of an exchange or trade, Broker is permitted to represent and receive compensation from both parties. No compensation is owed if Client is in an exclusive agreement with another Broker.

F. Broker may act as escrow agent for all money, papers, and documents associated with this transaction.

4) **Authorizations.** Seller authorizes Broker as *initialed*:

A. Advertise by computerized or other media. Yes LB / _____ No _____ / _____
B. Place a firm marketing sign on property. Yes _____ / _____ No _____ / _____
C. Install a lockbox on the property. Yes _____ / _____ No _____ / _____
D. Request mortgagee to release information to Broker. Yes _____ / _____ No _____ / _____
E. Request utility companies to release information to Broker. Yes _____ / _____ No _____ / _____
F. Disclose to buyers or buyers' agents that Seller has received other offers. Yes ✓ / _____ No _____ / _____

Property Address: 305 S. Main Ave, Colton, SD

- 5) **Personal Property.** The following personal property is included in the stated price and shall be conveyed by Seller to Buyer, free of liens and without warranty of condition, by a bill of sale at closing and in accordance with its terms:
Kitchen Appliances & washer-dryer to stay w/ House
- 6) **Disclosures.** Seller(s) shall complete and submit a property condition disclosure statement as required by SDCL 43-4-38, unless exempt pursuant to SDCL 43-4-43, with this listing agreement. Seller(s) shall complete and submit a lead-based paint disclosure if property is residential and was built prior to 1978 as required by federal regulation.
- 7) **Nondiscrimination.** Client and Broker will not participate in any act that unlawfully discriminates on the basis of race, color, creed, religion, sex, disability, familial status, country of national origin or any other category protected under federal, state or local law.
- 8) **Modification.** No modification of any of the terms of this agreement shall be valid or binding upon the parties, unless such modifications have first been reduced to writing and signed by both parties.
- 9) **Other Instructions.** Kitchen Appliances, Washer & Dryer to stay w/ house. All auction advertising to be paid by seller. In event of no sale, property to remain listed at price acceptable to seller. Closing costs & title ins. to be split 50-50

THIS IS A LEGALLY BINDING CONTRACT. If you have questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding further or SEEK LEGAL ADVICE

Client: Loretta Berens Date: 3-4-24 Phone: 605-351-7840
Client: Larry Berens - by POA LB Date: _____ Phone: _____
Address: _____
City: _____ State: _____ Zip: _____
E-mail address: _____

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.

Broker/Firm: Sutton Auctioneers & Land Brokers, LLC
By Agent: [Signature] Date: 3-4-24

REAL ESTATE RELATIONSHIPS DISCLOSURE

(This document is NOT a contract between you and this firm. This document is being provided to you as a consumer as you have not indicated to this agent you are a client with a written contract to another real estate firm).

As required by South Dakota Law, each firm has a responsible broker who must provide a written disclosure of the specific agency/brokerage relationships their firm may establish **PRIOR** to their agent discussing your confidential buying, selling, or leasing objectives of real estate or business opportunity. The following agency relationships are permissible under South Dakota law.

The office policy of Sutton Auctioneers & Land Brokers, LLC (firm) is to provide the relationships marked. This disclosure was provided by (agent) Jared D. Sutton on behalf of Charles (Chuck) A. Sutton (responsible broker).

When all agents of this firm represent only you:

Single Agency is when a firm and all of its agents represent **only** you and advocate for **only** your interests during a transaction. If at any time during the transaction any agent of the same firm represents both you and the other party, limited agency applies.

When only individually named agent(s) of this firm represents you:

Appointed Agency is when a responsible broker names a specific agent(s) of the firm to represent **only** you and advocate for **only** your interests during a transaction. Agents within the firm who have not been specifically appointed do not represent you and cannot advocate for your interests. If at any time during the transaction the responsible broker or a non-appointed agent within the firm represents the other party, limited agency applies to the responsible broker. If at any time during the transaction your appointed agent(s) represents both you and the other party, limited agency applies.

When all agents of this firm represents both purchasers and owners:

Limited Agency is when a firm represents both sides to a transaction and no agent within the firm solely represents you or solely advocates for your interests. Limited agency **may only occur** with prior written permission from both sides to a transaction. Within limited agency, the limited agent is required to represent the interests of you and the other party equally, and the agent cannot disclose your confidential information to the other party unless legally required to by law.

When a broker does not represent either party to a contract:

Transaction Brokerage is when a broker or agent assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction.

Acknowledgment: I have been provided a copy of this disclosure indicating the brokerage and agency relationships offered by this firm. If this is a residential transaction, I also acknowledge the agent has given me a copy of the Consumer Real Estate Information Guide in booklet/printed format, or, if not provided, I authorize the agent to provide the guide electronically, as an attachment or link, to access the electronic version of the guide, at _____ (e-mail).

Signature(s) X Loretta Berens Date 3-4-24

When you choose **not** to have an agency relationship with a firm:

I acknowledge the firm/agent named above does not represent me as a client. If I am a customer to a real estate transaction I understand the firm/agent may be acting as an agent for the other party of the transaction.

Signature(s) _____

Date _____