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Buyer Representation Agreement - Commercial Mandate for Purchase

Form 540

for use in the Province of Ontario

GENERAL USE: This Form is a contract between a Buyer and a real estate company that gives the real estate company permission to act on the Buyer's behalf in the purchase of a property. Assuming the Buyer is a Client of the real estate company, the Real Estate Council of Ontario (Ontario's governing body) REBBA Code of Ethics requires that Salespeople have a written Buyer Representation Agreement presented for signature prior to an offer being presented on behalf of the Buyer.

IDENTIFICATION OF PARTIES, PROPERTY AND TIME FRAME: The section at the top identifies the parties involved in the Agreement and sets the time frame for which the contract is valid. The REBBA 2002, Code of Ethics requires the Buyer's initials on this Form if the Agreement period extends beyond six months.

This is an Exclusive Buyer Representation Agreement

BETWEEN:

BROKERAGE: (the "Brokerage"),

ADDRESS:

..... Tel. No. Fax. No.

AND

BUYER: (the "Buyer"),

ADDRESS:

The Buyer hereby gives the Brokerage the **exclusive and irrevocable authority** to act as the Buyer's agent

commencing at on the day of, 20.....
(a.m./p.m.)

and expiring at 11:59 p.m. on the day of, 20..... (Expiry Date)

{ Buyer acknowledges that the time period for this Agreement is negotiable between the Buyer and the Brokerage, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), if the time period for this Agreement exceeds six months, the Brokerage must obtain the Buyer's initials. }

.....
(Buyer's Initials)

for the purpose of locating a real property meeting the following general description:

Property Type (Use):

.....

GEOGRAPHIC LOCATION AND PROPERTY TYPE: This is the area within which the Buyer and real estate company agree that the Buyer is interested in buying or leasing a property as described.

Geographic Location:

.....

WARRANTY: The Buyer is warranting that the Buyer has not entered into any buyer representation agreement with another real estate brokerage.

The Buyer hereby warrants that the Buyer is not a party to a representation agreement with any other registered real estate brokerage for the purchase of a real property of the general description indicated above.

.....
(Buyer's Initials)

1. DEFINITIONS AND INTERPRETATIONS: *This section of the form defines the terms that follow in the document, including Seller, Buyer, purchase, etc.*

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Mandate"):

"Buyer" includes purchaser and a "seller" includes a vendor or a prospective seller, vendor. A "real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or an agreement to purchase or transfer shares or assets. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For the purposes of this Agreement, the definition of "Buyer" in the phrase "any property of interest to the Buyer that came to the Buyer's attention from any source whatsoever" shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the property.

INITIALS OF BROKERAGE:

INITIALS OF BUYER(S):

2. **SERVICES PROVIDED BY THE BROKERAGE:** *The services that the Brokerage is to provide are set out here.*

2. **SERVICES PROVIDED BY THE BROKERAGE:** It is understood that the Brokerage may assist the Buyer with any or all of the following services, and any other services, as agreed to between the Buyer and the Brokerage:

- to identify the needs of the Buyer.
- to locate available properties that may meet the Buyer's needs.
- to assist the Buyer in negotiations for the purchase of any property of interest to the Buyer (subject to the special provisions for Multiple Representation described below).
- Other: (Attach Schedule if additional space is required)

3. **RESPONSIBILITIES OF THE BUYER:** *While the Brokerage will be providing services, the Buyer also has obligations under this Agreement. One of these will include the obligation respecting commission. The Brokerage is directed to obtain commission from the Listing side but the ultimate responsibility lies with the Buyer.*

3. **RESPONSIBILITIES OF THE BUYER:** In consideration of the Brokerage undertaking to assist the Buyer, the Buyer agrees to:

- co-operate with the Brokerage with respect to the Brokerage providing any or all of the services described above, as agreed to between the Buyer and the Brokerage.
- work exclusively with the Brokerage for the purchase of a real property that meets the Buyer's needs.
- advise the Brokerage immediately of any property of interest to the Buyer that came to the Buyer's attention from any source whatsoever during the currency of this Agreement.
- submit through the Brokerage all offers by the Buyer during the currency of this Agreement to purchase a real property of the general description indicated above.
- submit through the Brokerage all offers by the Buyer within days after expiration of this Agreement for the purchase of any property that came to the Buyer's attention from any source whatsoever during the currency of this Agreement.

The Buyer agrees the Brokerage is entitled to be paid a commission of

The Buyer authorizes the Brokerage to receive payment of commission from the seller of the property or the seller's agent. Should the Brokerage be unable to obtain an agreement in writing from the seller or the seller's agent to pay the full commission described above, the Buyer will be so informed in writing prior to submitting an offer to purchase and the Buyer will pay the commission for the transaction, or any deficiency in the amount of commission described above, directly to the Brokerage.

The Buyer agrees to pay such commission as described above even if a transaction contemplated by an agreement to purchase agreed to or accepted by the Buyer or anyone on the Buyer's behalf is not completed, if such non-completion is owing or attributable to the Buyer's default or neglect. The Buyer understands that a failure to negotiate and submit offers through the Brokerage as described herein will make the Buyer liable for payment of commission to the Brokerage. The payment of commission by the seller to the Brokerage will not make the Brokerage the agent for the seller. All amounts set out as commission are to be paid plus applicable taxes on such commission.

4. **REPRESENTATION:** *This paragraph confirms that the real estate company and the salesperson have explained the different types of agency and other relationships that may occur in a real estate transaction. When the Buyer is considering entering into an Agreement of Purchase and Sale with a Seller that is a client of the Brokerage, that is Multiple Representation and consent from both the Buyer and Seller is required.*

4. **REPRESENTATION:** The Buyer acknowledges that the Brokerage has provided the Buyer with written information explaining agency relationships, including information on Seller Representation, Sub-Agency, Buyer Representation, Multiple Representation and Customer Service.

The Brokerage shall assist the Buyer in locating a real property of the general description indicated above and shall represent the Buyer in an endeavour to procure the acceptance of an agreement to purchase such a property.

The Buyer acknowledges that the Buyer may not be shown or offered all properties that may be of interest to the Buyer.

The Buyer hereby agrees that the terms of any buyer's offer or agreement to purchase the property will not be disclosed to any other buyer. The Buyer further acknowledges that the Brokerage may be entering into buyer representation agreements with other buyers who may be interested in the same or similar properties that the Buyer may be interested in buying and the Buyer hereby consents to the Brokerage entering into buyer representation agreements with other buyers who may be interested in the same or similar properties without any claim by the Buyer of conflict of interest. The Buyer hereby appoints the Brokerage as agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase a property negotiated by the Brokerage.

MULTIPLE REPRESENTATION: The Buyer hereby acknowledges that the Brokerage may be entering into listing agreements with sellers of properties the Buyer may be interested in buying. In the event that the Brokerage has entered into or enters into a listing agreement with the seller of a property the Buyer may be interested in buying, the Brokerage will obtain the Buyer's written consent to represent both the Buyer and the seller for the transaction at the earliest practicable opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Buyer understands and acknowledges that the Brokerage must be impartial when representing both the Buyer and the seller and equally protect the interests of the Buyer and the seller in the transaction. The Buyer understands and acknowledges that when representing both the Buyer and the seller, the Brokerage shall have a duty of full disclosure to both the Buyer and the seller, including a requirement to disclose all factual information about the property known to the Brokerage.

However, The Buyer further understands and acknowledges that the Brokerage shall not disclose:

- that the seller may or will accept less than the listed price, unless otherwise instructed in writing by the seller;
- that the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
- the motivation of or personal information about the Buyer or seller, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the Buyer should offer or the price the seller should accept; and
- the Brokerage shall not disclose to the Buyer the terms of any other offer.

INITIALS OF BROKERAGE: 

INITIALS OF BUYER(S): 

However, it is understood that factual market information about comparable properties and information known to the Brokerage concerning potential uses for the property will be disclosed to both Buyer and seller to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Buyer understands and agrees that the Brokerage also provides representation and customer service to other buyers and sellers. If the Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Brokerage's relationship to each seller and buyer.

5. **FINDERS FEE:** *This clause provides consent in the event the Brokerage or salesperson receives a finder's fee or other reward as part of the transaction. This fee may come from a mortgage company. It should be noted that specific consent will be required when it actually happens.*
5. **FINDERS FEES:** The Buyer acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Buyer consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
6. **CONSUMER REPORTS:** *The following paragraph notifies the Buyer that a personal or credit check may be obtained and referred to.*
6. **CONSUMER REPORTS: The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
7. **INDEMNIFICATION:** *The Buyer acknowledges that the Salesperson and the Brokerage are not qualified to determine the physical condition of the property and the Buyer agrees that the Brokerage will not be liable for any defects.*
7. **INDEMNIFICATION:** The Brokerage and representatives of the Brokerage are trained in dealing in real estate but are not qualified in determining the physical condition of the land or any improvements thereon. The Buyer agrees that the Brokerage and representatives of the Brokerage will not be liable for any defects, whether latent or patent, to the land or improvements thereon. All information supplied by the seller or the listing brokerage may not have been verified and is not warranted by the Brokerage as being accurate and will be relied on by the Buyer at the Buyer's own risk. The Buyer acknowledges having been advised to make their own enquiries to confirm the condition of the property.
8. **ENVIRONMENTAL INDEMNIFICATION:** *The Buyer agrees to indemnify the Brokerage and its representatives with respect to any issues resulting from any contaminants or environmental problems.*
8. **ENVIRONMENTAL INDEMNIFICATION:** The Buyer agrees to indemnify and save harmless the Brokerage and representatives of the Brokerage from any liability, claim, loss, cost, damage or injury as a result of any property of interest to the Buyer being affected by any contaminants or environmental problems.
9. **USE AND DISTRIBUTION OF INFORMATION:** *In order to ensure compliance with privacy laws the Buyer consents to use and disclosure of personal information for such purposes as may be necessary in order to give effect to provisions of this Agreement. Further the information that comes as a result of a lease transaction may be retained by the Brokerage and the real estate board for future reference.*
9. **USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Brokerage in connection with the purchase or prospective purchase of the property.
The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes and for such other use of the information as the Brokerage and/or board deems appropriate in connection with the listing, marketing and selling of real estate, including conducting comparative market analyses.
The Buyer acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.
10. **CONFLICT OR DISCREPANCY:** *If something is added to the Agreement (usually in a Schedule) then the provision(s) that were added override the text (preset) provisions in the form.*
10. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any provisions added to this Agreement, shall constitute the entire Authority from the Buyer to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
11. **SUCCESSORS AND ASSIGNS:** *In the event one of the parties dies before completion of this Agreement their heirs and executors are bound by the Agreement.*
11. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
12. **ELECTRONIC COMMUNICATION:** *This Agreement, if necessary, may be sent via electronic means and still be binding on all parties.*
12. **ELECTRONIC COMMUNICATION:** This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Buyer by electronic means shall be deemed to confirm the Buyer has retained a true copy of the Agreement.
13. **ELECTRONIC SIGNATURES:** *This clause provides consent if the parties use electronic signatures with respect to this Agreement.*
13. **ELECTRONIC SIGNATURES:** If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time.
14. **SCHEDULE(S):** *If additional terms or a specific form or document is added to the form then it is referred to here.*
14. **SCHEDULE(S)** attached hereto form(s) part of this Agreement.

INITIALS OF BROKERAGE:

INITIALS OF BUYER(S):



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BROKERAGE SERVICES: This section states that the company representing the Buyer will assist the Buyer in locating a property with a general description as indicated above and endeavor to obtain the acceptance of an Offer for the Buyer.

THE BROKERAGE AGREES TO REPRESENT THE BUYER IN LOCATING A REAL PROPERTY OF THE GENERAL DESCRIPTION INDICATED ABOVE IN AN ENDEAVOUR TO OBTAIN THE ACCEPTANCE OF AN AGREEMENT TO PURCHASE A PROPERTY ON TERMS SATISFACTORY TO THE BUYER.

BINDING THE BROKERAGE: The Salesperson signs this on behalf of the Brokerage.

..... (Authorized to bind the Brokerage) (Date) (Name of Person Signing)

BUYER ACKNOWLEDGMENT: The Buyer acknowledges having read and understood the terms of the Buyer Representation Agreement.

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

.....
(Name of Buyer)

..... (Signature of Buyer/Authorized Signing Officer) (Seal) (Date) (Tel. No.)

..... (Signature of Buyer/Authorized Signing Officer) (Seal) (Date) (Tel. No.)

DECLARATION OF INSURANCE: The Declaration of Insurance is signed by the Salesperson/Broker stating that they carry insurance as required by the Real Estate and Business Brokers Act.

DECLARATION OF INSURANCE	
The Salesperson/Broker/Broker of Record (Name of Salesperson/Broker/Broker of Record)
hereby declares that he/she is insured as required by REBBA.	
..... (Signature(s) of Salesperson/Broker/Broker of Record)

ACKNOWLEDGEMENT OF COPY: The Buyer acknowledges that they understand the terms of the Agreement and that they have received a copy of the document.

ACKNOWLEDGEMENT

The Buyer(s) hereby acknowledge that the Buyer(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the day of, 20

..... (Signature of Buyer/Authorized Signing Officer) (Date)

..... (Signature of Buyer/Authorized Signing Officer) (Date)