



VermontRealtors®



EXCLUSIVE RIGHT TO MARKET COMMERCIAL VACANCY BUSINESS OR COMMERCIAL PROPERTY AGREEMENT Non-Designated Agency Firm

THIS IS A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING

Owner of Real Estate Dana A Bessette Estate Trust

Owner of Personal Property/Other Assets (if applicable) \$0.50

Property Address 154 Rt 15 West, Hardwick, VT 05843

Price \$25.50/sq ft mod gross lease

(modified gross - lessor paying TAXES + INS.)

1. Type of Property. (Check All That Apply) ☒ Commercial Real Estate With Buildings and Improvements ☐ Commercial Real Estate - Land Only
☐ Operating Business Enterprise ☐ Restaurant/Inn ☐ Bed & Breakfast ☐ Operating Farm

2. Description of Real Estate. AREA TO BE LEASED 4,100 SF

- A. Owner's deed is recorded in Volume _____ at Page _____ of the _____ Land Records;
B. Parcel ID # 21004-00000
C. SPAN# 282-089-10135
D. Approximate size of Real Estate: 3.52 Acres or _____ Square Feet
Source: ☐ Survey ☐ Owner's Deed ☒ Tax Bill ☐ Other Source _____
E. If commercial building(s)/improvement(s) are part of the Real Estate, building(s) and improvement(s) consist of approximately 4100 +/- Square Feet
Source: ☐ Survey ☐ Owner's Deed ☒ Tax Bill ☐ Other Source _____
F. Other Description of Real Estate:
4100 +/- sq ft commercial space and allocated parking spaces

3. Personal Property/Other Assets. ☐ (Check if applicable) The Property that is the subject of this Agreement also includes, in addition to the Real Estate, all assets of Owner used in connection with the Property as an ongoing business entity, including furniture, fixtures, equipment, inventory, contracts, accounts and other assets used in the operation of Owner's business. The ~~intangible~~ intangible of the business, goodwill, website, all prepaid advertising and similar items are included in the Property being marketed by Listing Agency. Unless otherwise agreed in writing, accounts receivable and cash are not included in the Property being marketed. If property in addition to that generally described above is included in the Property being marketed, it is described as follows:

Owner acknowledges and agrees that it is not necessary to provide schedules or descriptions of each item of personal property/other assets being offered for sale in order to describe the Property being marketed by Listing Agency under this Agreement.

If Owner is a business entity, it is a ☐ Sole Proprietorship ☐ Corporation ☐ Partnership ☒ Limited Liability Company (LLC)
☐ Joint Venture ☐ Other (Describe) Estate Trust 154 ROUTE 15 WEST, LLC

4. Grant of Exclusive Right to Market Property to Listing Agency. Owner hereby agrees that 154 Rt 15 West, Hardwick, VT 05843, as Listing Agency, is hereby given for the period set forth herein, the sole and exclusive right, power and authority to act as Owner's agent for the listing, marketing, sale, lease (including leases with options to purchase) or sale of stock or other ownership interests in the entity owning the Property that is the subject of this Agreement. This Agreement prohibits the listing and marketing of the Property with any other broker or salesperson or the offering of the Property for sale at auction during the period set forth herein. Owner agrees to direct all inquiries concerning this Property from whatever source to Listing Agency during the period of this Agreement which shall include inquiries from the general public and all other real estate agents. Any failure to do so shall constitute a substantial breach of this Agreement. Owner agrees to fully cooperate with Listing Agency in the marketing of the Property. If Owner is an entity other than an individual, the principal owners/members of the entity are as follows: Dana A Bessette Estate Trust, Karen Moore, Trustee

5. Compensation to Listing Agency. Owner acknowledges that the compensation to be paid under this Agreement is solely and entirely a matter of negotiation between Owner and Listing Agency and is not in any way controlled, fixed or pre-established. Owner agrees to pay Listing Agency compensation for its services as follows:

- A. _____ % of the sales price of the real estate/personal property and other assets;
B. A fee of _____ irrespective of the sales price of the real estate/personal property and other assets;
C. A fee determined as follows: 10% of the 1st year lease price, 5% of the 2nd year, none thereafter

Lesser
-Seller's Initials



D. Compensation Addendum Attached: ☐ Yes ☒ No

E. If the Real Estate is to be leased, a lease compensation addendum scheduling payments to Listing Agency on account of the lease agreement is attached: ☐ Yes ☒ No

The compensation to be paid to Listing Agency shall be based upon the entire consideration paid to Owner, however allocated or accounted for, including payments made on account of goodwill, endowment, covenants not to compete, consulting agreements and liabilities assumed by Purchaser. The terms and conditions of this Agreement and the compensation to be paid to Listing Agency shall apply to any merger, consolidation, recapitalization, sale or exchange of stock or other ownership interests of the entity owning the Property. If the Real Estate is leased by Owner to Purchaser or other third party (see lease compensation addendum attached, if applicable), and an option to purchase, right of first refusal or other comparable provision is part of or associated with the lease agreement, in the event the option/right of first refusal is exercised, Owner agrees to pay Listing Agency the applicable compensation set forth in this section based on the sale or exchange price of the Real Estate resulting from the exercise of the option to purchase or right of first refusal.

6. **Listing Agency as Non-Designated Agency Firm.** Listing Agency provides real estate brokerage services exclusively as a Non-Designated Agency Firm. As such, Listing Agency and all brokers and salespersons in the Firm represent all of the Firm's clients as a Non-Designated Agency Firm. Listing Agency and all of its brokers and salespersons owe Owner the duties of a fiduciary. Listing Agency provides brokerage services to both sellers and buyers and enters into agreements with buyers to provide brokerage services as a buyer's agency. Owner acknowledges and consents to such representation. However, Listing Agency shall not act as the real estate agency for both Owner and any buyer of the Property with whom Listing Agency has a buyer agency agreement. In the event a buyer with whom Listing Agency has a buyer agency agreement develops an active and substantial interest in Owner's Property, the differing interests of Owner and the prospective buyer concerning the same property creates a conflict of interest for Listing Agency. If this occurs, Listing Agency is required to terminate either this Agreement or its buyer agency agreement with that Buyer.

7. **Additional Provisions Regarding Compensation.** Owner agrees to pay Listing Agency the above commission if, during the term of this Agreement, the Property is sold or exchanged or Owner enters into an agreement for the sale or exchange of the Property and all closing contingencies to be performed by the purchaser under such agreement are satisfied. Owner also agrees to pay Listing Agency the commission set forth in this Agreement if the Property is subject to a right of first refusal or option to purchase, and is sold to the holder of the option or right of first refusal or option to purchase as a result of Listing Agency presenting Owner with an offer to purchase the Property or as a result of any other marketing efforts by Listing Agency. In addition, if, prior to the Expiration Date of this Agreement, Listing Agency presents an offer at or above the price stated herein or at any other price established during the term of this Agreement (or any extension thereof), with no closing contingencies that provides for a closing within a reasonable period of time from the date of the offer, Owner will pay the commission set forth herein whether or not Owner accepts that offer.

If this Agreement expires prior to the closing of any agreement for the sale or exchange of the Property entered into by Owner during the term of this Agreement, Listing Agency shall be entitled to the commission set forth above whether or not this Agreement is renewed or extended beyond the Expiration Date. In addition, Owner authorizes Listing Agency to provide brokerage services with respect to any agreement for sale or exchange of the Property entered into during the term of this Agreement up to the closing of such agreement, whether or not this Agreement is renewed or extended beyond the Expiration Date. This authorization extends only to activities of Listing Agency concerning a sale or exchange agreement for the Property made during the term of this Agreement and does not authorize or obligate Listing Agency to provide brokerage services concerning any other offer or agreement concerning the Property after the Expiration Date. If an Agreement for the sale or exchange of the Property has been entered into but has not yet closed prior to the Expiration Date, Listing Agency recommends that this Agreement be renewed or extended at least through the closing date of such agreement.

Owner also agrees to pay the full commission due under this Agreement if, within 3 month(s) after the Expiration Date or earlier termination of this Agreement, Owner directly or indirectly enters into a purchase and sale contract, sale, exchange or closing of the sale or exchange of the Property and Listing Agency is the procuring cause thereof. For purposes of this Agreement, Listing Agency will be regarded as the procuring cause of such agreement, sale, exchange or closing if its efforts are the foundation upon which the negotiations are begun that result in a purchase and sale contract, sale, exchange or closing. If Owner sells, exchanges or closes the Property, directly or indirectly, to anyone who has made an oral or written offer to purchase the Property through Listing Agency, procuring cause will be deemed established. Listing Agency shall provide Owner with written notice of all persons on account of whom it may be entitled to a commission under this paragraph within ten (10) calendar days after the Expiration Date or earlier termination of this Agreement. Owner will not be obligated to pay Listing Agency the commission if, at the time of such sale, exchange, agreement to sell, exchange or closing, Owner has entered into a valid, bona fide Exclusive Right to Market Agreement relating to the Property with any other licensed broker, salesperson or brokerage firm and such agreement contains terms and conditions, including duration and compensation, similar to those set forth in this Agreement. Owner acknowledges that the terms of this paragraph and any time period set forth herein are not applicable to the compensation to be paid to Listing Agency in the event the real estate is leased and is thereafter sold pursuant to an option to purchase or right of first refusal contained in or associated with the lease agreement, irrespective of when the sale pursuant to the option or right of first refusal occurs. The compensation provisions of Section 5 are applicable to any sale occurring as a result of the exercise of any such option to purchase or right of first refusal.

8. **Listing Agency's Authority.** Owner authorizes Listing Agency to list the Property for sale or exchange, to advertise, show and market the Property as Listing Agency deems appropriate, to negotiate for offers on the Property and to present all offers, whether oral or written, to Owner up to and including the Expiration Date of this Agreement. Owner understands that, during the term of this Agreement, Listing Agency will be marketing other properties that may be of the same general nature as Owner's Property. Owner consents to Listing Agency representing other owners and marketing other properties during the term of this Agreement. Neither the listing of anything else in this Agreement constitutes a legally binding offer by Owner to any purchaser to sell the Property at that price or at any other price or terms. The decision to accept any purchaser's offer that may be presented is Owner's exclusive decision. Listing Agency has no authority to accept or agree to any offers on Owner's behalf.

9. **Assistance of Other Brokers/Submittal of Listing to MLS.** Owner authorizes Listing Agency to enter into agreements to engage the services of other

Signature
of Seller/Initials

licensed brokers or salespersons as part of Listing Agency's marketing efforts. In addition, if Listing Agency is authorized by a Multiple Listing Service (MLS) to submit listings to it, in the event Owner has authorized Listing Agency to do so in this Agreement, Listing Agency shall submit this listing to the MLS to offer broker agency, in cooperation with buyer brokers, or both, to other MLS participants as part of Listing Agency's marketing efforts. In such case, Listing Agency shall market the Property in accordance with the procedures, rules and regulations of the MLS. Additionally, Listing Agency is authorized to provide sales information, including the selling price of the Property including any concessions set forth in the Purchase and Sale Contract or any addenda thereto, to the MLS which is, in turn, authorized to calculate and disseminate such information.

10. Authorization for Broker's Agents Cooperation Agreements. Listing Agency is authorized to engage the services of other brokers, salespersons or brokerage firms through agency cooperation agreements ("Broker's Agents"). These Broker's Agents may assist in marketing the property as agents of the Listing Agency. They are not agents of Owner. Listing Agency is authorized to permit such Broker's Agents to show, market, and negotiate for offers to purchase or exchange the property, but neither Listing Agency nor any Broker's Agent is authorized to accept or agree to any offers on Owner's behalf. In authorizing the use by Listing Agency of Broker's Agents, Owner shall have no responsibility for the actions or inactions of such Broker's Agents and shall have no responsibility to any Broker's Agents for the payment of any commission or fee. Listing Agency's policy is to compensate Broker's Agents _____ % commission of the contract price, or \$ _____.

11. Authorization for Buyer's Agents Cooperation Agreements. Owner authorizes Listing Agency to offer, accept and enter into cooperation agreements for the allocation of the commissions or fees paid to Listing Agency under this Agreement with licensed brokers, salespersons or brokerage firms who represent prospective purchasers of the Property ("Buyer's Agents"). In authorizing Listing Agency to enter into cooperation agreements with Buyer's Agents, Owner shall have no responsibility to any Buyer's Agent for the payment of any commission or fees. Owner understands that such Buyer's Agents do not act as Owner's agents or as agents of Listing Agency. Owner shall have no responsibility for the actions or inactions of such Buyer's Agents. Listing Agency's policy is to compensate Buyer's Agents _____ % commission of the contract price, or \$ _____.

12. Interest On Purchaser's Contract Deposit/Forsfeit of Purchaser's Contract Deposit. Owner acknowledges that if any contract deposit is held by Listing Agency or other real estate broker, and if the amount of interest on any such contract deposit is reasonably expected to equal less than One Hundred Dollars (\$100.00), the contract deposit will be placed in a pooled interest bearing trust account and the interest on the contract deposit will be remitted to the Vermont Housing Finance Agency (VHFA) to be used for the benefit of affordable housing programs in Vermont pursuant to Vermont's Interest on Real Estate Trust Accounts law. In the event any contract deposit or portion thereof is paid to Owner as a result of a breach or claimed breach of a Purchase and Sales Contract by a contract purchaser, Listing Agency shall be entitled to receive as a liquidated and agreed upon sum, one-half of the deposit, together with one-half of any interest accrued thereon to which Owner is entitled, provided the total amount paid to Listing Agency shall not exceed the full commission which would otherwise be due under this Agreement. It is agreed that this allocation of any contract purchaser's forfeit of a deposit is a liquidated damage provision which is solely intended to compensate Listing Agency for reasonably estimated losses, costs and expenses and is neither a penalty for a purchaser's breach nor an incentive to Owner or purchaser to perform any purchase agreement.

13. Accuracy of Information Concerning the Property. Owner has furnished Listing Agency with all of the information about the Property contained in this Agreement or in any attachment or addendum hereto, including, if applicable, the Disclosure of Information and Acknowledgment of Lead-Based Paint and/or Lead-Based Paint Hazards. Owner represents to Listing Agency that, to the best of Owner's knowledge, such information is complete, correct, accurate, not misleading and does not leave out any material information about the Property. Owner agrees to indemnify and hold Listing Agency, any Broker's Agents and any MLS to which a listing of the Property is submitted harmless from any and all loss, damage, claim or liability, including attorney's fees, arising out of any inaccurate, misleading or undisclosed information or facts about the Property whether made by Owner in this Agreement or made by Owner during the course of Listing Agency's marketing efforts. The provisions of this section shall apply to and include information in any Seller's Property Information Report. Owner further warrants and represents that this Agreement contains the signatures of all Owners of the Property or their legally authorized agents and that the person(s) signing this Agreement as Owner constitute all of the persons required to enter into a Purchase and Sale Contract for the Property and to convey all interests in the Property to a purchaser.

14. Limitation of Liability. In recognition of the relative risks, rewards and benefits of this Agreement to Owner and Listing Agency, Owner agrees that Listing Agency, its agents, association or affiliates, including designated agents, together with any other brokers, salespersons or brokerage firms acting as Broker's Agents pursuant to this Agreement shall, in no event, be liable to Owner either individually or jointly and severally in an aggregate amount in excess of the compensation to be paid to Listing Agency or such broker(s) pursuant to this Agreement or Five Thousand Dollars (\$5,000), whichever is greater, by reason of error or omission, including breach of this Agreement, negligence, misrepresentation, error of judgment, breach of any undertaking or any other cause of action or legal theory unless such an act or omission amounts to willful or intentional misconduct.

15. Non-Discrimination in Marketing. Owner authorizes and instructs Listing Agency to market the Property without respect to any person's race, sex, age, marital or familial status, religious creed, color, national origin, sexual orientation, physical or mental handicap and without respect to whether a person intends to occupy the Property with one or more minor children or is a recipient of public assistance. Owner further authorizes and directs Listing Agency to market the Property in compliance with all laws and regulations relating to non-discrimination in the sale of real estate.

16. Tax and Land Use Permits. Owner is advised by Listing Agency to seek competent legal, accounting or other professional assistance to determine the tax and other legal consequences imposed by any sale of the Property including, but not limited to, federal and state income tax (including capital gains tax), Foreign Investment in Real Property Tax Act (FIRPTA), Vermont Land Gains Tax, Vermont Non-Resident Income Tax Withholding and all land use permits and disclosures including those required by Act 750. If Owner is a non-resident of Vermont or a foreign citizen, the provisions of the Vermont Non-Resident Income Tax Withholding Law and FIRPTA may require withholding of portions of the sale proceeds of any sale and payment of taxes to federal and Vermont taxing authorities. Owner is advised to seek legal or accounting advice concerning the impact of these laws prior to entering into any agreement for the sale of the Property.

Seller's Initials

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17. **Owner's Disclosure Responsibilities Concerning Lead-Based Paint.** Owner acknowledges that if the Property includes a residential dwelling built before 1978, Owner must disclose to the purchaser Owner's actual knowledge of lead-based paint or lead-based paint hazards and must provide purchaser with any records, test results or other information in Owner's possession related to lead-based paint. Owner agrees to complete appropriate portions of the Disclosure of Information and Acknowledgement form concerning lead-based paint. CWM

18. **Term of Agreement/Binding Effect/Severability.** This Agreement shall not be for a period in excess of twelve (12) months and cannot be cancelled or terminated prior to the expiration date unless Owner and Listing Agency mutually agree to such cancellation or termination in writing or Listing Agency is required to terminate this Agreement due to a conflict of interest as is explained in Section 7. If Owner desires to terminate this Agreement prior to the expiration date, Listing Agency shall agree to such termination provided Owner pays Listing Agency at the time of such termination the sum of \$7,500.00 or all costs and expenses incurred by Listing Agency in marketing the Property, including reasonable costs associated with the time spent by Listing Agency in marketing and showing the Property, whichever is greater, provided that such sum does not exceed 50% of the total compensation to be paid to Listing Agency set forth in Section 6. Notwithstanding the foregoing provisions, no such termination shall occur or be effective with respect to any offer presented or contract entered into regarding the Property prior to the date of such termination, including any modification or amendment to such offer or contract however or whenever made. Owner warrants and represents that this Agreement is executed by the record title owner(s) of the Property, or their duly authorized agent, who represents that he/she has full authority to execute this Agreement on behalf of Owner. However, if Owner directly or indirectly Listing Agency makes the Property in a manner that would, in the judgment of Listing Agency, violate applicable law or subject Listing Agency to civil or regulatory liability, Listing Agency shall have the right to terminate this Agreement by written notice to Owner whereupon all obligations of Listing Agency under this Agreement shall terminate and Listing Agency shall have no further responsibility in any manner whatsoever to Owner. This Agreement is binding upon and shall inure to the benefit of the parties hereto, its heirs, executors, personal representatives, successors and assigns. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement shall not be affected thereby. CWM

19. **Dispute Resolution System/Fees and Costs to Prevailing Party.** Listing Agency recommends the use of a dispute resolution system that utilizes mediation as an alternative to litigation in the event of any dispute or claim arising out of or relating to this Agreement. In the event of any litigation or lawsuit between Owner and Listing Agency arising out of or relating to this Agreement, or to the services provided to Owner by Listing Agency, the substantially prevailing party shall be entitled to the costs and expenses thereof, including reasonable attorney's fees.

20. **Execution of Agreement/Amendments.** This Agreement and all modifications, amendments or changes thereto, including any changes in the listed price, shall be in writing signed by Owner, or its authorized agent, and an authorized agent of Listing Agency. This Agreement may be entered into, and all modifications or changes to it, may be made by facsimile transmission (fax) of a signed document or by a scanned, signed document sent by electronic means. Other means of electronic transmission, including e-mails without scanned, signed documents are not adequate to enter into this Agreement or to modify, amend or change this Agreement.

21. **State and Local Permits.** Owner acknowledges and understands that certain State and Local may govern the use of the Property. If such permits are required for the use of the Property or the Property is not in compliance with such permits, a purchaser may be unwilling or unable to close on any Purchase and Sale Contract that may be entered into for the Property. To the best of Owner's knowledge, the Property is in compliance with any existing permits. Further, Owner has not received notice of violation(s) of any State or Local permit that has not been cured or resolved. For acquisition, Agency CWM

22. **Marketing Options.**

- Commercial base
- A. Owner ☒ does ☐ does not grant Listing Agency permission to place and maintain a "For Sale" sign upon the Property (if allowed under State or municipal law or condominium or common interest ownership association rule)
 - B. Owner ☐ does ☒ does not grant Listing Agency authority to permit cooperating agents to show the Property without Listing Agency being present.
 - C. Owner ☐ does ☒ does not grant Listing Agency permission to place and maintain a lockbox on the Property
 - D. Owner ☒ does ☐ does not grant Listing Agency permission to submit this listing to a Multiple Listing Service (MLS). If this listing is submitted to an MLS, one exterior image of the Property is required. If Owner has special instructions, requirements or directions concerning submitting this listing to an MLS, insert below under Additional Terms and Conditions.
 - E. Owner ☐ does ☒ does not authorize submission of Owner's name into the Multiple Listing Service.
 - F. Owner ☒ does ☐ does not grant Listing Agency permission to take interior photographs, digital images or provide virtual tours of the interior of the Property to be used for marketing.
 - G. Owner ☒ does ☐ does not grant Listing Agency authority to disclose to cooperating Brokers or prospective purchasers the existence (but not the terms or amounts) of other offers to purchase the Property.
 - H. Seller's Property Information Report ☐ will ☒ will not be provided to Listing Agency by Owner

Owner
Seller's initials

CWM

- I. The Property ☐ does ☒ does not include a residential dwelling built before 1978 and, therefore, ☐ is ☒ is not subject to Federal Lead-Based Paint Regulations. If "yes" Lead Based Paint Disclosure will be provided to Listing Agency by Owner.
- J. Owner acknowledges receipt of a Consumer Information Disclosure from Listing Agency prior to entering into this Agreement.
☒ yes ☐ no
- K. Owner's property description addendum prepared by the Owner ☐ is ☒ is not provided to Listing Agency as part of this Agreement.

23. Additional Terms and Conditions

24. Term of Agreement, Commencement Date: 08/07/2017 Expiration Date: 02/07/2018 (at midnight EST/EDT)

NOTE: If the Owner of the real estate is not also the Owner of the personal property/other assets being marketed, both Owners must sign this Agreement.

OWNER ACKNOWLEDGES HAVING READ ALL PROVISIONS OF THIS AGREEMENT PRIOR TO SIGNING, UNDERSTOOD AND AGREED:

Poll Spica Company Realtors, LLC
 Listing Agency

Agent (Signature)

George Nelson

VR-Commercial ERM Rev. 8-2014
 REALTOR SIGNATURE

Date

1890 Mountain Road, Stowe, VT 05672
 Street Address/P.O. Box

City/Town

State

Zip

Fax No./Email

Owner of Real Estate

Telephone/Cell Phone No.

Fax No./Email

Date

Owner of Personal Property/
 Other Assets (if applicable)

Telephone/Cell Phone No.

Fax No./Email

Date

Owner Contact Information to which all notices to Owner(s) under this Agreement shall be sent:

71 Floral St.
 Street Address/P.O. Box

South Burlington
 City/Town

Vt
 State

05403
 Zip

Res. Telephone

802.999.0822

Business Telephone/Cell Phone No.

Fax No./Email Address