



EXCLUSIVE RIGHT TO MARKET AGREEMENT Non-Designated Agency Firm

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

Owner: Robert Paul O'Toole Owner: Gail Lynn O'Toole

Owner: _____ Owner: _____

Property Address: 57 Edson Woods Road Stowe VT, 05672 Price \$1,175,000
Street City State/Zip

1. **Type of Property.** ☒ Residential ☐ Land Only ☐ Multi-Family (duplex, triplex, etc.) ☐ Commercial ☐ Condominium/Townhouse
☐ Time Share/Fractional ☒ Homestead ☐ Non-Homestead ☐ Other (describe) _____

2. Property Description.

- A. Owner's deed is recorded in Volume 233 at Page 50 of the Stowe Land Records;
B. Parcel ID # 11-030.010;
C. SPAN# 621-195-12239;
D. Approximate lot size: 10 Acres, or _____ Square Feet
Source: ☐ Survey ☐ Owner's Deed ☐ Tax Bill ☐ Lister's Card ☒ Other Source Stowe Grandlist;
E. Other Description: Residential Dwelling on 10 Acres.

3. **Grant of Exclusive Right to Market to Listing Agency.** Owner hereby agrees that Pall Spera Company Realtors LLC, 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 real estate agent for the listing, marketing, sale or exchange of the Property described in this Agreement (the "Property"). 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.

4. **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 a commission for its services in the following manner:

- A. 6% % of the amount of the sale price;
B. A fee determined as follows: _____
C. Compensation Addendum Attached: ☐ Yes ☐ No

5. **Listing Agency as a 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.

6. **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 under such agreement or any amendment or modification thereof are satisfied. The commission shall also be due whether the closing of such agreement or any amendment or modification thereof occurs during the term of this Agreement or thereafter. 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 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

Owner's Initials



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 12 month(s) after the Expiration Date or earlier termination of this Agreement, **Owner** directly or indirectly enters into a purchase and sale contract, sells, exchanges or closes on 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 any 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, closes upon or agrees to sell 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 Marketing 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.

7. 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 Listed Price nor 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.

Owner authorizes **Listing Agency**, a **Broker's Agent** or a Vermont attorney engaged by **Owner** for any sale of the Property to send or receive, on **Owner's** behalf, all notices required under any purchase and sale contract entered into between **Owner** and a purchaser. Any notice required to be in writing under any purchase and sale contract must be signed by **Owner** or **Owner's** attorney by actual or electronic signature that complies with Vermont and Federal electronic signature laws.

8. Assistance of Other Brokers/Submittal of Listing to MLS. **Owner** authorizes **Listing Agency** to enter into agreements to engage the services of other 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) of a Board of REALTORS® 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, 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, upon closing, including the selling price of the Property and any concessions set forth in the Purchase and Sale Contract or any addenda thereto, to the MLS which is, in turn, authorized to circulate and disseminate such information.

9. Authorization for Broker's Agents Cooperation Agreements. **Listing Agency** is authorized to engage the services of licensed 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 a commission equal to 0 % of the contract price.

10. 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 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 a commission equal to 3 % of the contract price.

11. Interest On Purchaser's Contract Deposit/Forfeit of Purchaser's Contract Deposit. **Owner** acknowledges that if interest on any purchase and sale contract deposit is reasonably expected to earn 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. However, even if the interest on any contract deposit is reasonably expected to accrue more than One Hundred Dollars (\$100.00), **Owner** and any contract purchaser may agree, in the purchase and sale contract,

Owner's Initials



that the contract deposit may nonetheless be placed in a pooled interest bearing trust account and the interest remitted to VHFA for the benefit of affordable housing programs in Vermont. 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.

12. 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 Agent 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.

13. 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, associates or affiliates, together with any other brokers, salespersons or brokerage firms acting as Broker's Agents pursuant to this Agreement shall in no event shall be liable to **Owner** either individually or jointly and severally in an aggregate amount in excess of the compensation to be paid to such (agent(s) or broker(s) pursuant to this Agreement or Five Thousand Dollars (\$5,000), whichever is greater, by reason of any act or omission, including breach of this Agreement, negligence, misrepresentation, error or omission, breach of any undertaking or any other cause of action or legal theory unless such act or omission amounts to willful or intentional misconduct.*

14. Non-Discrimination in Marketing. **Owner** authorizes and instructs **Listing Agency** to market the Property without respect to any person's race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy the Property with one or more minor children, or because a person 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.

15. 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 obligations 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 250. **If Owner is a non-resident of Vermont or a foreign citizen, the provisions of the Vermont Non-Resident Income Tax Withholding and/or FIRPTA may require withholding of portions of Closing proceeds 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.

16. 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 Acknowledgment form concerning lead-based paint.

17. Term of Agreement/Binding Effect/Severability. This Agreement shall not be for a period in excess of twelve (12) months. It 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 5. However, if **Owner** directs or insists that **Listing Agency** market 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, their heirs, executors, personal representatives 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.

18. 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.

19. 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** and 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.**

Owner's Initials



20. **State and Local Permits.** Owner acknowledges and understands that certain State and Local permits 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 Seller's knowledge, the Property is in compliance with any existing permits. Further, Seller has not received notice of violation(s) of any State or Local permit that has not been cured or resolved.

21. **Marketing Options**

- 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 image of the Property is required.
- 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.
- 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 Owner ☐ is ☒ is not provided to **Listing Agency** as part of this Agreement.
- L. Additional Terms and Conditions concerning Agreement or Marketing Options:

22. **Calendar Days/Counterparts.** Whenever this Agreement or an addendum or amendment thereto refers to a day or days, it shall be deemed to be calendar days. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same Agreement.

23. **Term of Agreement.** Commencement Date: 09/05/2020 Expiration Date: 03/04/2021 (at midnight EST/EDT)

OWNER ACKNOWLEDGES HAVING READ ALL PROVISIONS OF THIS AGREEMENT PRIOR TO SIGNING THIS AGREEMENT.

UNDERSTOOD AND AGREED:

Pall Spera Company Realtors LLC
Listing Agency

Pall Spera
Listing Agent

Pall Spera
(signature) Date
dotloop verified
09/02/20 12:01 PM EDT
NK05-DJES-RQEO-T1AB

PO Box 539
Street Address/P.O. Box

Stowe
City/Town

VT
State

05672
Zip

(802) 253-9771 x111
Phone

(561) 762-8188
Cell

pall.spera@pallspera.com
Fax No./Email

Owner: *[Signature]* (signature) 914-584-2436 Phone/Cell 9/2/2020 Date
Fax No./Email

Owner: *[Signature]* (signature) 914-584-4053 Phone/Cell 9/2/2020 Date
Fax No./Email

Owner: (signature) Phone/Cell Fax No./Email Date

Owner: (signature) Phone/Cell Fax No./Email Date

Owner contact information to which all notices to Owner under this Agreement shall be sent:

PO Box 1413
Street Address/P.O. Box

Stowe
City/Town

VT
State

05672
Zip

Res. Phone

Bus. Phone/Cell

Fax No./Email