



**REALTORS® ASSOCIATION OF NEW MEXICO
RIGHT OF FIRST REFUSAL TO
PURCHASE AND/OR LEASE REAL PROPERTY – 2012
PART I – BROKER DUTIES**

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Please acknowledge receipt of this information by signing or initialing at the bottom of this page. **Disclosure:** The following brokerage relationships are available in the State of New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency (see RANM Form 1401, p. 2).

Prior to the time an Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, the Associate Broker or Qualifying Broker shall disclose in writing to their prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers:

- (A) Honesty and reasonable care as set forth in the provisions of this section;
 - (B) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission Rules and other applicable local, state, and federal laws and regulations;
 - (C) Performance of any and all written agreements made with the Customer or Client;
 - (D) Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including (1) Presentation of all offers or counter-offers in a timely manner, and (2) Assistance in complying with the terms and conditions of the contract and with the closing of the Transaction;
- If the Broker in a transaction is not providing the service, advice or assistance described in paragraphs D(1) and D(2), the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose the existence of such agreement in writing to the other Brokers involved in the Transaction;
- (E) Acknowledgment by the Broker that there may be matters related to the Transaction that are outside the Associate Broker's or Qualifying Broker's knowledge or expertise and that the Associate Broker or Qualifying Broker will suggest that the Customer or Client seek expert advice on these matters;
 - (F) Prompt accounting for all monies or property received by the Broker;
 - (G) Disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to: (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; and or (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; (3) other Brokerage Relationship options available in New Mexico;
 - (H) Written disclosure of any adverse material facts actually known by the Associate Broker or Qualifying Broker about the Property or the Transaction, or about the financial ability of the parties to the Transaction to complete the Transaction;
 - (I) Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;
 - (J) Unless otherwise authorized in writing, an Associate Broker or Qualifying Broker shall not disclose to their Customer or Client during the transaction that their Seller Client or Customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their Buyer Client or Customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their Client or Customer for selling or buying property; that their Seller Client or Customer or their Buyer Client or Customer will agree to financing terms other than those offered; or any other information requested in writing by the Associate Broker's or Qualifying Broker's Customer or Client to remain confidential, unless disclosure is required by law.



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THIS RIGHT OF FIRST REFUSAL TO PURCHASE/LEASE REAL PROPERTY is made on this, the _____ day of _____, _____, by and between _____, hereinafter referred to as "SELLER/OWNER" and _____, hereinafter referred to as "BUYER/TENANT" and relating to the following Property:

_____ or see metes and bounds description attached hereto as Exhibit _____, _____ County, New Mexico (Property).

WHEREAS, Buyer/Tenant desires to obtain a right of first refusal or first opportunity to purchase and/or lease Property owned by Seller/Owner; and

WHEREAS, Seller/Owner agrees to grant Buyer/Tenant a right of first refusal or first opportunity to purchase and/or lease Property pursuant to the terms of this agreement, and

NOW FOR AND IN CONSIDERATION OF sum of \$ _____ (First Refusal Fee (THIS AMOUNT SHOULD BE THE SAME AS THE AMOUNT IN PARAGRAPH 5 BELOW)) and other good and valuable consideration, the sufficiency of which is hereby acknowledged,

THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. The Seller/Owner does hereby grant to Buyer/Tenant the exclusive and irrevocable right, during the term of this agreement of Right of First Refusal and first opportunity to purchase lease both, upon the terms and conditions hereinafter set forth, Seller/Owner's Property together with all improvements located thereon. If there is more than one Buyer/Tenant listed hereunder, unless otherwise agreed to by Seller/Owner, **ALL BUYERS/TENANTS** **ANY ONE BUYER/TENANT** must agree to purchase in order for Seller/Owner to be obligated under this Agreement.

2. **TERM.** This Referral Agreement begins upon mutual acceptance of the parties and ends _____

3. **EXERCISE OF RIGHT OF FIRST REFUSAL:** This right of first refusal or first opportunity to purchase/lease may only be exercised by Buyer/Tenant as provided below:

(check only ONE box)

RIGHT OF FIRST REFUSAL OFFERED TO BUYER/TENANT BEFORE MARKETING:

During the term of this Agreement, if Seller/Owner desires to sell and/or lease as provided in Paragraph 1 the Property to a third party, Seller/Owner is obligated to provide such notice to Buyer/Tenant prior to offering the subject property to a third party. Seller/Owner shall set forth the initial terms of the sale and/or lease of the Property. Buyer/Tenant shall have _____ days in which to decide if he/she intends to either accept the offer or negotiate an agreement with the Seller/Owner for the sale and/or lease of the Property and to deliver notice thereof to Seller/Owner. Upon Seller/Owner's receipt of such notice, the parties, if necessary, shall have _____ days to negotiate in good

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faith the sale and/or lease of the Property. If the parties do not enter into a legally binding written agreement for the sale and/or/lease of the Property within such period, Seller/Owner may market the property for sale and/or lease and enter into an agreement with a third-party on terms no more favorable (considered as a whole) to the third party than those offered to the Buyer/Tenant. If during negotiations with a third party, the terms and conditions of the offer (as a whole) change in favor of the third party, the provisions of this Section shall again be applicable.

RIGHT OF FIRST REFUSAL OFFERED TO BUYER/TENANT AFTER MARKETING, BUT BEFORE SALE TO THIRD-PARTY BUYER

During the term of this Agreement, Seller/Owner may market the property for sale and/or lease as provided in Paragraph 1 to a third-party buyer, but before Seller/Owner may sell and/or lease the Property to a third party, Seller/Owner must first offer the Property to the Buyer/Tenant on the same terms and conditions as are offered by the third-party. Buyer/Tenant shall have _____ days during which to accept such offer. If Buyer/Tenant does not accept such offer within said period, Seller/Owner is permitted to accept the third-party offer. Under this Section, Seller/Owner may only sell and/or lease the property to the third party who/which made the original offer to purchase/lease and only under the terms and conditions submitted to the Buyer/Tenant or on terms no less favorable to the Seller/Owner than the terms offered to the Buyer/Tenant. If the third party and/or the terms and conditions of the offer change in favor of the third party, the provisions of this Section shall again be applicable.

4. PURCHASE/LEASE AGREEMENT: Once a purchase/lease agreement is executed, the rights and duties of the parties shall be dictated thereby. If the Buyer/Tenant is unwilling or unable to close/execute on the purchase/lease Agreement, this Agreement automatically expires and Seller/Owner is permitted to sell/lease the property under any terms and conditions he/she so desires to any third party he/she desires. If the Seller/Owner is unable or unwilling to close/execute the Purchase/Lease Agreement, this Agreement shall remain in effect.

5. FIRST REFUSAL FEE: Upon execution of this Agreement, in consideration for Seller/Owner's granting of this Right of First Refusal, Buyer/Tenant will pay to Seller/Owner the sum of \$ _____ ("First Refusal Fee") The First Refusal Fee is nonrefundable. The First Refusal Fee will will not be applied to the purchase and/or lease price of the Property in the event the Buyer/Tenant purchases and/or leases the Property.

6. NOTICE:

A. Notice to Buyer/Tenant as required by Paragraph 3, shall be made in the following manner: personal delivery or delivery by mail postage pre-paid with proof of receipt, to the following address _____ or other delivery method (describe) _____.

B. Notice to Seller/Owner as required by Paragraph 3, shall be made in the following manner: personal delivery or delivery by mail postage pre-paid with proof of receipt, to the following address _____ or other delivery method (describe) _____.

7. RECORDATION: RELEASE. In the event this Agreement creates a Right of First Refusal to Purchase the Property, the following applies.

A. Upon execution of this Right of First Refusal, the Parties will execute RANM Form 2506 Memorandum of Right of First Refusal attached as **EXHIBIT A**. Buyer will record the Memorandum of Right of First Refusal in the land records of the county in which the Property is located as evidence of this Agreement between the Parties.

B. Buyer will execute RANM Form 2508 Release of Right of First Refusal in the form attached as **EXHIBIT B**, or a Quitclaim Deed or other document provided by Seller's attorney or Title Company necessary to evidence termination of this Right of First Refusal within _____ days following the expiration or termination of this Right of First Refusal Agreement.

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8. METHOD OF TERMINATION. Buyer/Tenant may terminate this Right of First Refusal Agreement on or before the end of the Term by delivering to Seller/Owner a written notice releasing this Right of First Refusal. Delivery of the Release shall be made in the same manner as set forth in Paragraph 6 above for delivery of Notice.

9. HEIRS AND ASSIGNMENT. This Agreement is binding on and inures to the benefit of the parties' estates, personal representatives, heirs, executors, trustees and successors. This Agreement may may not be assigned by Buyer/Tenant. Conditions on Assignment: none only with Seller/Owner's consent other (list conditions)

10. MEDIATION PARAGRAPH. If a dispute arises between the parties relating to this Agreement, the parties agree to submit the dispute to mediation. The parties will jointly appoint a mediator and will share equally the costs of the mediation. If a mediator cannot be agreed on or mediation is unsuccessful, the parties may enforce their rights and obligations under this Agreement in any manner provided by New Mexico law.

11. DEFINITIONS. The term "DAY(S)" as used herein will be determined on a calendar-day basis. If the final day for performance falls on a Saturday, Sunday or legal holiday, the time therefore will be extended to the next business day. Legal holidays are described as: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day.

12. ENTIRE AGREEMENT. This document and any addenda attached and initialed by the parties or incorporated by reference contain the entire Agreement of the parties and supersedes all prior agreements or representations. This Agreement may be amended or canceled only by a writing signed by both parties.

13. LAW AND JURISDICTION. This Agreement shall be construed in accordance with New Mexico law.

14. ATTORNEY FEES. If either party uses the services of an attorney to enforce the party's rights under this Agreement, the prevailing party shall be entitled to an award of attorneys' fees and costs.

15. FORCE MAJEURE. Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstance beyond their reasonable control, including but not limited to , acts of God, war, civil unrest or industrial action.

16. SEVERANCE. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

17. TIME IS OF THE ESSENCE. Time is of the essence with respect to the parties' performance under this Agreement.

18. OTHER.

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EXHIBITS

Form _____ **EXHIBIT A** – Memorandum of Right of First Refusal Agreement (Fully executed)

Form _____ **EXHIBIT B** – Release Form, Quitclaim Deed or other Document (To be executed by Buyer/Tenant as provided for in Paragraph 7B.)

BUYER/TENANT

_____, a _____

By: _____ Execution Date _____ Time _____

Name (Print) _____ Its _____

Address _____ City _____ State _____ Zip Code _____

Phone _____ Fax _____ Email Address _____

SELLER/OWNER

_____, a _____

By: _____ Execution Date _____ Time _____

Name (Print) _____ Its _____

Address _____ City _____ State _____ Zip Code _____

Phone _____ Fax _____ Email Address _____