

**X. BUYER’S EXCLUSIVE AGENCY CONTRACT (RES-1080)**

This form (the “**Buyer’s Agency**”) establishes an exclusive agency between a REALTOR® and buyer/tenant/client (“**Buyer**”). It allows for payment of an optional separate “Flat Fee” (which may be payable either on a contingent basis or not) and/or a percentage commission or specific dollar amount if the Buyer enters into a contract to acquire real estate of the type described. Many of its provisions are similar to the MAR form listing agreements. This Article addresses issues and pertinent observations from a Buyer’s (and Buyer’s REALTOR’s®) point of view. The particulars of RES-1080 are discussed below:

**PAGE 1**

<b>A</b>	Complete the Reference (identification) line by inserting the name(s) of all persons and/or entities which constitute the Buyer.
<b>B</b>	Identify all persons and/or entities who are to acquire an ownership interest in the subject property ( <i>i.e.</i> , the “ <b>Buyer</b> ”) at “ <b>B</b> ” (whether one or more), by using their full and complete legal names.
<b>C</b>	Identify the brokerage company (“ <b>REALTOR®</b> ”) to serve as the Buyer’s sole and exclusive agent at “ <b>C</b> ”.
<b>3-5 D</b>	Pursuant to the Buyer’s Agency, a REALTOR® is authorized to advertise for, show and procure a variety of types of property that may be chosen from. Pursuant to 20 CSR 2250-8.090(5)(A)1, a description of the type of property sought by the buyer or tenant must be included. A REALTOR® should check <u>each</u> box (commercial, residential, rental or farm) that the Buyer is interested in. If a different type of property or particular type of interest therein is specifically being sought ( <i>e.g.</i> , cell towers, easement rights or other property interests), the “other” box should be checked and appropriate explanation inserted at “ <b>D</b> ”.
<b>6-7 E</b>	Establish the day and month through which the Buyer’s Agency is to remain in effect at “ <b>E</b> ” (the “ <b>Agency Period</b> ”). Extension of the Agency Period can be accomplished via a separate written amendment or by executing a new “updated” Buyer’s Agency, but if the parties desire to change terms of an existing agreement between them, as further discussed at General Condition 5 below, it is permissible (and probably easiest) to do so via email.
<b>8-9</b>	The terms “ <i>acquire</i> ” or “ <i>acquisition,</i> ” as used in the Buyer’s Agency, specifically includes “ <i>any purchase, option, exchange or lease of property or an agreement to do so.</i> ” A REALTOR® should always make sure that any agreement it enters into is customized, as may be necessary, to accurately reflect the true intentions and agreement of the parties. If, for example, the parties do not intend for REALTOR® to seek rental properties or to be paid if in fact Buyer enters into a lease, then appropriate deletions should be made.
<b>9-11</b>	This sentence specifically recites and acknowledges that the efforts and services provided by REALTOR® constitute legal consideration sufficient to make the Buyer’s Agency a legally enforceable agreement.



## Buyer's Exclusive Agency Contract

*This document has legal consequences. If you do not understand it, consult your attorney.*

1 \_\_\_\_\_ (B) (whether one or more "Buyer"),  
 2 hereby appoints \_\_\_\_\_ (C) ("REALTOR®") to act as  
 3 the sole and exclusive agent for Buyer to advertise for, show and procure the following types of real estate (check  
 4 one [1] or more of the following):  commercial  residential  rental  farm or  other  
 5 (\_\_\_\_\_ (D)) for acquisition by Buyer, for  
 6 the period beginning with the Effective Date of this Agency Contract and ending at 11:59 p.m. on the \_\_\_\_\_ (E) day of  
 7 \_\_\_\_\_ (E), 20\_\_\_\_ (together with any written extension thereof, the "Agency Period"). As used in this  
 8 Agency Contract, the terms "acquire" or "acquisition" shall include any purchase, option, exchange or lease of  
 9 property or an agreement to do so. Buyer acknowledges that the efforts and endeavors of REALTOR® to procure  
 10 such real estate, by expenditure of time and money, through advertising, co-brokers or otherwise, shall constitute  
 11 good and sufficient consideration for this Agency Contract. Buyer will refer all inquiries and prospects Buyer may  
 12 receive during the Agency Period, from any source, to REALTOR® to avoid the possibility of confusion over  
 13 agency relationship and misunderstandings about liability for compensation.

14 **DISCLOSURE AUTHORIZATIONS.** Buyer (check one)

15 **Motivating Factors.**  DOES  DOES NOT permit REALTOR® to disclose the following motivating factors for  
 16 Buyer in purchasing or leasing property: \_\_\_\_\_ (F)

17 **CURRENT EXCLUSIVE REPRESENTATION AGREEMENT.** Buyer (check one) IS \_\_\_\_\_ (G) IS NOT  
 18 \_\_\_\_\_ (H) a party to an exclusive buyer's representation agreement. If Buyer is a party to an exclusive buyer's  
 19 representation agreement, such agreement ends (date) \_\_\_\_\_ (I).

### 20 REALTOR® COMPENSATION:

21 (1) **Flat Fee:** Buyer shall pay REALTOR® as partial compensation for services rendered hereunder an  
 22 amount equal to \$ \_\_\_\_\_ (J) (the "Flat Fee"). This Flat Fee, together with any Additional Compensation  
 23 due REALTOR® under this Agency Contract as set forth below, are collectively referred to herein as  
 24 "Compensation". The Flat Fee is non-refundable and shall be due and payable to REALTOR® on (check  
 25 whichever applies):

26  the Effective Date of this Agency Contract, regardless of whether or not a property is acquired by Buyer; or  
 27  only if and on the same date that any Additional Compensation provided for below is payable.

28 (2) **Additional Compensation:** Buyer shall pay REALTOR®, as "Additional Compensation" due  
 29 REALTOR® for services rendered hereunder, an amount equal to: (Complete one): \_\_\_\_\_ (K)  
 30 Dollars (\$ \_\_\_\_\_ (K)), or \_\_\_\_\_ (L) percent (\_\_\_\_ (L) %) of the sale price, if, during the term of this  
 31 Agency Contract, Buyer enters into a contract to acquire any type of real estate described above, whether through  
 32 the services of REALTOR® or otherwise. Buyer understands that REALTOR® will endeavor to collect part or all  
 33 of this Additional Compensation due REALTOR® from the seller or listing broker, and Buyer hereby consents  
 34 thereto. If REALTOR® is able to do so, any amount paid to REALTOR® by the seller or listing broker shall be  
 35 credited against the Additional Compensation due REALTOR® under this Agency Contract and REALTOR® will  
 36 make full disclosure to Buyer. Failure by REALTOR® to collect part or all of any Additional Compensation due  
 37 REALTOR® from a seller or listing broker shall not relieve Buyer of Buyer's obligation to pay REALTOR® any  
 38 Compensation provided for herein. This Agency Contract shall also apply to any property presented or described  
 39 to Buyer by anyone during the Agency Period if a contract is entered into by Buyer within \_\_\_\_\_ (M) days after  
 40 expiration of the Agency Period (the "Protection Period"); provided Buyer has received notice in writing,  
 41 including the name of the prospective sellers or property address, before or upon expiration of the Agency Period;  
 42 provided further however, that Buyer shall not be obligated to pay any Additional Compensation to REALTOR®  
 43 (or the Flat Fee if such amount is not payable unless a property is acquired by Buyer) if a new valid exclusive  
 44 buyer agency contract is entered into during the Protection Period with another licensed real estate broker, a  
 45 subject property is acquired during the Protection Period and the new broker representing Buyer is paid a  
 46 commission on the closing of that acquisition. It is understood and agreed that REALTOR®'s presentation of a  
 47 listing during the Agency Period shall constitute notice hereunder with respect to the property identified thereon.  
 48 Any obligation to pay REALTOR® Compensation under this Agency Contract shall survive the termination hereof.  
 49 Buyer authorizes REALTOR® or its representatives to cooperate with and offer compensation to other brokers

11-13	The Buyer’s Agency constitutes an <u>exclusive</u> representation agreement. It specifically sets forth the obligation of a Buyer to refer all inquiries and prospects that Buyer may receive during the Agency Period from any source.
14-16	As discussed in connection with lines 51-52 of the Listing Contract, the “ <b>Motivating Factors</b> ” section is designed to comply with applicable NAR Standards of Practice and §339.750 RSMo. It allows for disclosure of certain “motivating factors” of a client in buying or leasing property, <u>provided</u> the client consents to such disclosures. If such disclosure is authorized, check the “ <b>DOES</b> ” box at line 15 and set forth the applicable details at “ <b>F</b> ”. Additional pages can be added if necessary. If such disclosure is not authorized, check the “ <b>DOES NOT</b> ” box and leave “ <b>F</b> ” blank.
17-19 G-I	Consistent with the MAR form listing agreements and Authorization to Show, and MREC regulations cited above and discussed elsewhere in this Manual, this section is designed to implement the same and NAR Standard of Practice 16-13. If a client entering into a Buyer’s Agency is currently a party to another exclusive buyer representation or agency agreement regarding the same type of property interest to be acquired thereby, then mark the “ <b>IS</b> ” box at “ <b>G</b> ” and fill in the date the existing agreement will expire at “ <b>I</b> ”. If the Buyer is not subject to such an existing exclusive agreement, then mark the “ <b>IS NOT</b> ” box at “ <b>H</b> ” and insert “ <i>N/A</i> ” or “ <i>Not Applicable</i> ” at “ <b>I</b> ”.
21-26 J	<p>This section provides separate option for a REALTOR® to be paid a specific dollar amount (the “<b>Flat Fee</b>,” to be specified at “<b>J</b>” if applicable), independent of any other “Additional Compensation” that may (or may not) be earned under the Buyer’s Agency. This separate “Flat Fee” (which is collectively referred to in the Buyer’s Agency along with the “Additional Compensation further discussed below as “<b>Compensation</b>”) may (by checking the applicable box at line 26 or 27) be due and payable either as of the “Effective Date,” or at the same time any Additional Compensation is payable. If no Flat Fee is or will be required, then fill in “0”, “zero,” “<i>N/A</i>” or “<i>Not Applicable</i>” at “<b>J</b>”. See also discussion of lines 52-56 below.</p> <p><b>Note:</b> Although it may be permissible for a REALTOR® to collect additional separate fees (<i>e.g.</i>, if both parties agree that REALTOR® is to be separately compensated or reimbursed for providing specific services, or for out-of-pocket costs, such as expenses incurred or associated with advertising or marketing efforts), the Buyer’s Agency form must be customized for such purposes. A REALTOR® should be extremely careful in doing so. In <i>Busby vs. JRHBW Realty, Inc. d/b/a Realty South</i>, N.D. Alabama, Southern Division, Case No. 2:04-CV-2799-VEH), a federal district court recently ruled (4/20/09) that an administrative brokerage fee (“Fee”) paid by a buyer to the brokerage firm that represented her was not sufficiently related to any specific settlement service performed for her benefit, resulting in a violation of Section 8(b) of the Real Estate Settlement Procedures Act (“<b>RESPA</b>”). Section 8(b) prohibits charging for “real estate settlement services” unless the fee charged is for “services actually performed.”</p> <p>The court found that the Fee represented an additional charge to the buyer to defray the overall costs of the brokerage services she received, including the broker’s overhead and administrative costs. However, because the Fee was separately itemized on the settlement statement from the percentage brokerage commission, and not specifically justified as compensation for other discrete “real estate settlement services” provided, the court viewed it as a duplication of the percentage commission</p>



## Buyer's Exclusive Agency Contract

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1 \_\_\_\_\_ (B) (whether one or more "Buyer"),  
 2 hereby appoints \_\_\_\_\_ (C) ("REALTOR®") to act as  
 3 the sole and exclusive agent for Buyer to advertise for, show and procure the following types of real estate (check  
 4 one [1] or more of the following):  commercial  residential  rental  farm or  other  
 5 (D) for acquisition by Buyer, for  
 6 the period beginning with the Effective Date of this Agency Contract and ending at 11:59 p.m. on the (E) day of  
 7 \_\_\_\_\_, 20\_\_\_\_ (together with any written extension thereof, the "Agency Period"). As used in this  
 8 Agency Contract, the terms "acquire" or "acquisition" shall include any purchase, option, exchange or lease of  
 9 property or an agreement to do so. Buyer acknowledges that the efforts and endeavors of REALTOR® to procure  
 10 such real estate, by expenditure of time and money, through advertising, co-brokers or otherwise, shall constitute  
 11 good and sufficient consideration for this Agency Contract. Buyer will refer all inquiries and prospects Buyer may  
 12 receive during the Agency Period, from any source, to REALTOR® to avoid the possibility of confusion over  
 13 agency relationship and misunderstandings about liability for compensation.

14 **DISCLOSURE AUTHORIZATIONS.** Buyer (check one)

15 **Motivating Factors.**  DOES  DOES NOT permit REALTOR® to disclose the following motivating factors for  
 16 Buyer in purchasing or leasing property: \_\_\_\_\_ (F)

17 **CURRENT EXCLUSIVE REPRESENTATION AGREEMENT.** Buyer (check one) IS (G) IS NOT  
 18 (H) a party to an exclusive buyer's representation agreement. If Buyer is a party to an exclusive buyer's  
 19 representation agreement, such agreement ends (date) \_\_\_\_\_ (I).

### 20 REALTOR® COMPENSATION:

21 (1) **Flat Fee:** Buyer shall pay REALTOR® as partial compensation for services rendered hereunder an  
 22 amount equal to \$ \_\_\_\_\_ (J) (the "Flat Fee"). This Flat Fee, together with any Additional Compensation  
 23 due REALTOR® under this Agency Contract as set forth below, are collectively referred to herein as  
 24 "Compensation". The Flat Fee is non-refundable and shall be due and payable to REALTOR® on (check  
 25 whichever applies):

26  the Effective Date of this Agency Contract, regardless of whether or not a property is acquired by Buyer; or  
 27  only if and on the same date that any Additional Compensation provided for below is payable.

28 (2) **Additional Compensation:** Buyer shall pay REALTOR®, as "Additional Compensation" due  
 29 REALTOR® for services rendered hereunder, an amount equal to: (Complete one): \_\_\_\_\_ (K)  
 30 Dollars (\$ \_\_\_\_\_ (L)), or \_\_\_\_\_ (L) percent (L %) of the sale price, if, during the term of this  
 31 Agency Contract, Buyer enters into a contract to acquire any type of real estate described above, whether through  
 32 the services of REALTOR® or otherwise. Buyer understands that REALTOR® will endeavor to collect part or all  
 33 of this Additional Compensation due REALTOR® from the seller or listing broker, and Buyer hereby consents  
 34 thereto. If REALTOR® is able to do so, any amount paid to REALTOR® by the seller or listing broker shall be  
 35 credited against the Additional Compensation due REALTOR® under this Agency Contract and REALTOR® will  
 36 make full disclosure to Buyer. Failure by REALTOR® to collect part or all of any Additional Compensation due  
 37 REALTOR® from a seller or listing broker shall not relieve Buyer of Buyer's obligation to pay REALTOR® any  
 38 Compensation provided for herein. This Agency Contract shall also apply to any property presented or described  
 39 to Buyer by anyone during the Agency Period if a contract is entered into by Buyer within \_\_\_\_\_ (M) days after  
 40 expiration of the Agency Period (the "Protection Period"); provided Buyer has received notice in writing,  
 41 including the name of the prospective sellers or property address, before or upon expiration of the Agency Period;  
 42 provided further however, that Buyer shall not be obligated to pay any Additional Compensation to REALTOR®  
 43 (or the Flat Fee if such amount is not payable unless a property is acquired by Buyer) if a new valid exclusive  
 44 buyer agency contract is entered into during the Protection Period with another licensed real estate broker, a  
 45 subject property is acquired during the Protection Period and the new broker representing Buyer is paid a  
 46 commission on the closing of that acquisition. It is understood and agreed that REALTOR®'s presentation of a  
 47 listing during the Agency Period shall constitute notice hereunder with respect to the property identified thereon.  
 48 Any obligation to pay REALTOR® Compensation under this Agency Contract shall survive the termination hereof.  
 49 Buyer authorizes REALTOR® or its representatives to cooperate with and offer compensation to other brokers

	<p>charges, thereby rendering it an unearned fee in violation of RESPA.</p> <p>While this case may be appealed and there is no principled basis to construe RESPA to prohibit charging a percentage plus a flat rate, REALTOR®s are strongly encouraged to consult with legal counsel before seeking to customize the terms of the Buyer Agency in this regard. The “Other Provisions” section of the Buyer’s Agency (or a separate addendum thereto) may be appropriate to use for this purpose. Likewise, if a Buyer does <u>not</u> consent to any advertising or other specific activities to be conducted on its behalf (regardless of whether or not there is a separate fee to do so), then those portions of the Buyer’s Agency authorizing such activities should be deleted. (<i>See, e.g., line 10</i>).</p>
<p><b>28-38</b></p>	<p>Establish the amount of “<b>Additional Compensation</b>” which <u>Buyer</u> agrees to pay REALTOR® upon consummation of the purpose of the Buyer’s Agency. The “trigger event” in this regard is if the “<i>Buyer enters into a contract to acquire any type of real estate described above...</i>” As an exclusive agreement, the right to payment is not limited to prospects procured by REALTOR®. Insert a specific dollar amount (at “<b>K</b>”) or a percentage of the sale price (at “<b>L</b>”) to establish the amount of Additional Compensation due.</p> <p><b>Note:</b> If payment of Additional Compensation is to be based on a percentage of lease rental payments, or on any other terms, then appropriate revision and explanation should be made and set forth here and/or at the “Other Provisions” section, as necessary and appropriate to customize the Buyer’s Agency as intended by the parties.</p> <p>Consistent with tradition and practice, REALTOR® agrees to endeavor to collect part or all of any Additional Compensation due under the Buyer’s Agency from the seller or listing broker (<i>i.e., at the closing</i>). This will likely be available in most circumstances (but not always) as a majority of properties are listed on a local MLS or otherwise offered on a cooperative and commission sharing basis. In such cases, any amount so paid is to be credited against the amount of Additional Compensation otherwise due REALTOR® from Buyer.</p> <p>Pursuant to MREC regulations, REALTOR® is obligated to make full disclosure to Buyer of any amount so received. <i>See, e.g., 20 CSR 2250-8.150(2)</i> which requires, among other things, that “<i>all monies received by the broker</i>” be set forth on a closing statement signed by the parties, a copy of which must also be retained by REALTOR®. Failure to collect a portion of a listing commission does <u>not</u> relieve Buyer of its obligation to pay any Compensation provided for in the Buyer’s Agency. If a REALTOR® is willing to be paid <u>only</u> if the source thereof is the property owner or listing agent, then as discussed above, appropriate revision and explanation will be required.</p>
<p><b>38-48</b></p>	<p>The Buyer’s Agency contemplates that REALTOR® shall be entitled to payment of Compensation as agreed upon therein if a contract is entered into by Buyer during the Agency Period (or within a specified time thereafter) regarding any property presented or described to Buyer by <u>anyone</u> during the Agency Period. Establish the length of any such “<b>Protection Period</b>” at “<b>M</b>”. In order to protect such Protection Period rights, REALTOR® must provide Buyer written notice including the names of the prospective sellers or property address, before or upon expiration of the Agency Period. Similar to the Listing Contract, presenting a listing to a Buyer during the Agency Period qualifies as such a notice under the Buyer’s Agency.</p>



## Buyer's Exclusive Agency Contract

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1 \_\_\_\_\_ (B) (whether one or more "Buyer"),  
 2 hereby appoints \_\_\_\_\_ (C) ("REALTOR®") to act as  
 3 the sole and exclusive agent for Buyer to advertise for, show and procure the following types of real estate (check  
 4 one [1] or more of the following):  commercial  residential  rental  farm or  other  
 5 (\_\_\_\_\_ (D)) for acquisition by Buyer, for  
 6 the period beginning with the Effective Date of this Agency Contract and ending at 11:59 p.m. on the \_\_\_\_\_ (E) day of  
 7 \_\_\_\_\_ (E), 20\_\_\_\_ (together with any written extension thereof, the "Agency Period"). As used in this  
 8 Agency Contract, the terms "acquire" or "acquisition" shall include any purchase, option, exchange or lease of  
 9 property or an agreement to do so. Buyer acknowledges that the efforts and endeavors of REALTOR® to procure  
 10 such real estate, by expenditure of time and money, through advertising, co-brokers or otherwise, shall constitute  
 11 good and sufficient consideration for this Agency Contract. Buyer will refer all inquiries and prospects Buyer may  
 12 receive during the Agency Period, from any source, to REALTOR® to avoid the possibility of confusion over  
 13 agency relationship and misunderstandings about liability for compensation.

14 **DISCLOSURE AUTHORIZATIONS.** Buyer (check one)

15 **Motivating Factors.**  DOES  DOES NOT permit REALTOR® to disclose the following motivating factors for  
 16 Buyer in purchasing or leasing property: \_\_\_\_\_ (F)

17 **CURRENT EXCLUSIVE REPRESENTATION AGREEMENT.** Buyer (check one) IS \_\_\_\_\_ (G) IS NOT  
 18 \_\_\_\_\_ (H) a party to an exclusive buyer's representation agreement. If Buyer is a party to an exclusive buyer's  
 19 representation agreement, such agreement ends (date) \_\_\_\_\_ (I).

### 20 REALTOR® COMPENSATION:

21 **(1) Flat Fee:** Buyer shall pay REALTOR® as partial compensation for services rendered hereunder an  
 22 amount equal to \$ \_\_\_\_\_ (J) (the "Flat Fee"). This Flat Fee, together with any Additional Compensation  
 23 due REALTOR® under this Agency Contract as set forth below, are collectively referred to herein as  
 24 "**Compensation**". The Flat Fee is non-refundable and shall be due and payable to REALTOR® on (check  
 25 whichever applies):

26  the Effective Date of this Agency Contract, regardless of whether or not a property is acquired by Buyer; or  
 27  only if and on the same date that any Additional Compensation provided for below is payable.

28 **(2) Additional Compensation:** Buyer shall pay REALTOR®, as "**Additional Compensation**" due  
 29 REALTOR® for services rendered hereunder, an amount equal to: (Complete one): \_\_\_\_\_ (K)  
 30 Dollars (\$ \_\_\_\_\_ (K)), or \_\_\_\_\_ (L) percent (\_\_\_\_ (L) %) of the sale price, if, during the term of this  
 31 Agency Contract, Buyer enters into a contract to acquire any type of real estate described above, whether through  
 32 the services of REALTOR® or otherwise. Buyer understands that REALTOR® will endeavor to collect part or all  
 33 of this Additional Compensation due REALTOR® from the seller or listing broker, and Buyer hereby consents  
 34 thereto. If REALTOR® is able to do so, any amount paid to REALTOR® by the seller or listing broker shall be  
 35 credited against the Additional Compensation due REALTOR® under this Agency Contract and REALTOR® will  
 36 make full disclosure to Buyer. Failure by REALTOR® to collect part or all of any Additional Compensation due  
 37 REALTOR® from a seller or listing broker shall not relieve Buyer of Buyer's obligation to pay REALTOR® any  
 38 Compensation provided for herein. This Agency Contract shall also apply to any property presented or described  
 39 to Buyer by anyone during the Agency Period if a contract is entered into by Buyer within \_\_\_\_\_ (M) days after  
 40 expiration of the Agency Period (the "**Protection Period**"); provided Buyer has received notice in writing,  
 41 including the name of the prospective sellers or property address, before or upon expiration of the Agency Period;  
 42 provided further however, that Buyer shall not be obligated to pay any Additional Compensation to REALTOR®  
 43 (or the Flat Fee if such amount is not payable unless a property is acquired by Buyer) if a new valid exclusive  
 44 buyer agency contract is entered into during the Protection Period with another licensed real estate broker, a  
 45 subject property is acquired during the Protection Period and the new broker representing Buyer is paid a  
 46 commission on the closing of that acquisition. It is understood and agreed that REALTOR®'s presentation of a  
 47 listing during the Agency Period shall constitute notice hereunder with respect to the property identified thereon.  
 48 Any obligation to pay REALTOR® Compensation under this Agency Contract shall survive the termination hereof.  
 49 Buyer authorizes REALTOR® or its representatives to cooperate with and offer compensation to other brokers

	<b>Note:</b> The Buyer’s Agency states that any obligation to pay REALTOR® Compensation thereunder will survive the termination thereof. Similar to the MAR form RES, LND and FRM listing agreements and Authorization to Show (but unlike the COM forms), it contains an exception to the “Protection Period” obligation to pay Additional Compensation (or the Flat Fee if such amount is not payable unless a property is acquired by Buyer) if the Buyer enters into a new exclusive buyer or tenant agency or transaction brokerage agreement, <u>provided</u> the new broker is paid a commission on closing of the subject transaction.
<b>49-51</b>	The last sentence is designed to satisfy MREC regulations which require all agency and transaction brokerage agreements to specify whether or not REALTOR® is authorized to cooperate with and compensate other brokers acting pursuant to any recognized brokerage relationship.

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<b>52-56</b>	If a contract fails to close due to the fault of the seller or failure of a contract contingency, REALTOR® is entitled to keep the Initial Retainer Fee (if any), but nothing more. Buyer’s failure to close for other reasons does not waive any right of REALTOR® to compensation under the Buyer’s Agency.
<b>57-109</b>	This portion of the Buyer’s Agency form is effectively the same as General Condition 12 of the Listing Contract regarding “Owner Consent to Brokerage Relationships”. In order to avoid unnecessary duplicative explanation, please refer to the discussion of lines 152-199 of RES-1010 at Article VIII of this Manual.

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<b>110-121</b>	This section of the Buyer’s Agency sets forth specific obligations agreed to by the Buyer. They include the duty to exclusively work and communicate with REALTOR regarding any sellers introduced by REALTOR for the acquisition of property by Buyer; to supply financial or other personal data regarding Buyer as may be reasonably necessary and requested; to be generally available during working hours to view properties; and to consult with REALTOR® before visiting homes for sale or contacting listing brokers.
<b>124-126</b>	<b>General Condition (1)</b> sets forth language, similar to General Condition 11 of the Listing Contract, acknowledging that properties are to be shown to Buyer on a nondiscriminatory basis and in compliance with applicable fair housing laws.
<b>127-132</b>	As further discussed in Article I of this Manual regarding the explanatory “Note” found at lines 144-154 of RES-2000, <b>General Condition (2)</b> is designed to make clear that, while it is certainly appropriate for a REALTOR® to <u>assist</u> in arranging for inspections or other professional advice that may be necessary or appropriate in any given situation, REALTORS® are not expert on such matters and that ultimately, it is the responsibility of the Buyer to “ <i>select and engage</i> ” any such experts and consultants.
<b>133-135 N</b>	As noted above, <b>General Condition (3)</b> (“Other Provisions”) is designed to provide limited space for the parties to negotiate and set forth (at “N”) any special or unique terms, or changes to the pre-printed language of the form Buyer’s Agency, which they have agreed upon. As discussed elsewhere in this Manual,

50 acting pursuant to any brokerage relationship defined by Sections 339.710 to 339.860, R.S.Mo., including but not  
51 limited to seller's agents and transaction brokers.

52 **(3) Nonperformance or Termination:** If a contract is not closed by reason of nonperformance by the seller  
53 or is terminated because of failure of a contingency or defect in an owner's title, REALTOR® shall retain the  
54 amount of any Flat Fee that is due and payable as of the Effective Date, but shall not receive any contingent Flat  
55 Fee or Additional Compensation agreed upon. Buyer agrees that Buyer's failure to close the contract for reasons  
56 other than set forth in this paragraph will not impair REALTOR®'s right to any Compensation.

57 **CONSENT TO BROKERAGE RELATIONSHIPS:**

58 **A. Buyer's Limited Agency as Starting Point; Effect of In-House Sales.** Pursuant to this Agency  
59 Contract, REALTOR® will initially be acting in the capacity of Buyer's limited agent, with the duties and obligations  
60 of a buyer's limited agent under Missouri law as set forth following the parties' signatures below. However, Buyer  
61 acknowledges that from time to time, a prospective seller may engage REALTOR® to act in one of several  
62 possible capacities with respect to that seller, depending on what brokerage relationships are permitted by  
63 REALTOR®'s company policy. The following subsections describe circumstances where Missouri law may permit  
64 or require a conversion of REALTOR®'s brokerage relationship with Buyer to a different brokerage relationship.  
65 Complete each subsection. Disclosure of any conversion to a different brokerage relationship shall be made  
66 upon its occurrence as may be required by rule or regulation.

67 **B. Conversion to Dual Agency Where REALTOR® Is Engaged by Seller to Act as Seller's Agent.** If  
68 a prospective seller has engaged REALTOR® to act in the capacity of seller's agent, Missouri law permits  
69 REALTOR® to show the Property and otherwise represent the seller, as a dual agent representing both Buyer  
70 and the seller, with the written consent of all parties. In such case, REALTOR® may act as a dual agent with the  
71 duties and obligations of a dual agent under Missouri law as set forth following the parties' signatures below.

72 Does Buyer consent to REALTOR® representing both a seller and Buyer as a dual agent? (*Check one of*  
73 *the following*):  Yes  No  Not applicable because dual agency is not offered by REALTOR®'s company  
74 policy.

75 **C. Designated Agents for Seller and Buyer; Possible Conversion to Dual Agency or Transaction**  
76 **Brokerage.** Missouri law permits REALTOR® to appoint one or more licensees affiliated with REALTOR® as  
77 designated agent(s), to represent Buyer as limited agent(s), to the exclusion of all other affiliated licensees.

78 Does Buyer consent to REALTOR®'s appointment of designated agent(s)? (*Check one of the following*):  
79  Yes  No  Not applicable because designated agency is not offered by REALTOR®'s company policy.  
80 An individual broker, designated broker or office manager/supervising broker affiliated with REALTOR® shall not  
81 be considered to be a dual agent or transaction broker solely because such broker has appointed one or more  
82 affiliated licensee(s) to represent Buyer to the exclusion of all other affiliated licensees of REALTOR®; however,  
83 any licensee who personally represents both Buyer and the seller in the same transaction shall be a dual agent or  
84 a transaction broker. Further, if such broker supervises the licensees for both sides of a transaction, that broker  
85 will be a dual agent or a transaction broker upon learning confidential information about either party to a  
86 transaction or upon being consulted by any licensee involved in the transaction. Also, when the broker  
87 supervises the licensee representing or assisting one (1) side of the transaction and personally represents or  
88 assists the other side, that broker will be a dual agent or a transaction broker. Any such broker or licensee shall  
89 be required to comply with the provisions regarding dual agent or transaction brokers under Missouri law as set  
90 forth following the parties' signatures below.

91 **D. Conversion to Transaction Brokerage Where REALTOR® Is Engaged by Seller to Act as**  
92 **Seller's Agent or Transaction Broker.** If a prospective seller has engaged REALTOR® to act in the capacity of  
93 seller's agent or transaction broker, Missouri law permits REALTOR® to show the Property and otherwise assist  
94 the seller, as a transaction broker assisting both Buyer and the seller without an agency relationship to either of  
95 them, with the written consent of all parties. In such case, REALTOR® may act as a transaction broker with the  
96 duties and obligations of a transaction broker under Missouri law as set forth following the parties' signatures  
97 below. **Note:** If REALTOR® wishes to convert to transaction brokerage but Buyer does not consent to such  
98 conversion, then REALTOR® may without liability withdraw from representing Buyer. Such withdrawal shall not  
99 prejudice the ability of REALTOR® to continue to represent the other client in the transaction or limit REALTOR®  
100 from representing Buyer in another transaction not involving transaction brokerage.

101 Does Buyer consent to REALTOR® assisting both Buyer and a seller as a transaction broker? (*Check one*  
102 *of the following*):  Yes  No  Not applicable because transaction brokerage is not offered by REALTOR®'s  
103 company policy.

104 **E. Designated Transaction Broker for Seller and Buyer.** Missouri law permits REALTOR® to appoint  
105 one or more licensees affiliated with REALTOR® as designated transaction broker(s), to assist Buyer without an  
106 agency relationship, to the exclusion of all other affiliated licensees.

	excessive use of this tool should be avoided.
<b>136</b>	The Buyer's Agency form is stated to be binding upon the parties thereto and their heirs and personal representatives.
<b>137-146</b>	As further discussed regarding General Condition 13 of the Listing Contract in Article VIII of this Manual, <b>General Condition (4)</b> is designed to comply with the required "Minimum Brokerage Services" provisions of Missouri law, set forth at § 339.780.7 RSMo. and applicable to all exclusive brokerage agreements.
<b>147-153</b>	<p><b>General Condition (5)</b> specifically allows for execution of the Buyer's Agency in multiple counterparts (<i>i.e.</i>, allows Buyer to sign one counterpart and REALTOR® to separately execute another counterpart). Both counterparts must, of course, be otherwise identical in content. This language is designed to accommodate situations where, for whatever reason, both parties are unavailable to execute the same original. Facsimiles and scanned images, such as a pdf, are specifically permitted in this regard, and (like General Condition 14 of RES-1010 discussed in Article VIII) the last sentence now sets forth the parties agreement that changes to the Buyer's Agency may be made via email.</p> <p><b>Note:</b> If changes via email are not approved, insert "N/A" or "Not Authorized" at the email address lines in the signature blocks (lines 163, 178 and 182).</p> <p>REALTORS® are reminded of their obligation to provide "a legible copy of every written agreement or other authorization to the buyer or tenant at the time the signatures are obtained", and to keep a copy in its offices. 20 CSR 2250-8.090(5)(D).</p>
<b>154-156</b>	<b>General Condition (6)</b> is based on the same language contained in the MAR form sale contracts and listing agreements. A "check the box" provision is included to indicate if such " <b>Franchise Disclosure</b> " (that the Franchisor is not legally liable for the actions of REALTOR®) is applicable. Although not technically required by the specific language of 20 CSR 2250-8.080(2) (which by its terms is limited to " <i>listing agreements, contracts for sale and closing statements</i> "), application to an exclusive Buyer's Agency agreement falls at least within the "spirit" of the regulation and is deemed appropriate to include.
<b>157-158</b>	<p>This section establishes the date on which the Buyer's Agency is to become effective (<i>i.e.</i>, the date adjacent to the signature of the last party to sign, unless specified otherwise). The "<b>Effective Date</b>" is also the date on which REALTOR® becomes authorized to act as the sole and exclusive agent for Buyer with respect to the type of property described therein. See also lines 17-19 above.</p> <p><b>Note:</b> A licensee may not enter into a brokerage service agreement with a buyer or tenant if (s)he knows, or has reason to know, that such "Buyer" has a written unexpired exclusive agreement with another broker, unless the Buyer initiates the discussion and provided the licensee has not, directly or indirectly solicited the discussion. 20 CSR 2250 8.090(5)(E). In such a case, REALTOR® may negotiate and enter into a Buyer's Agency which will take effect after expiration of the current pending exclusive agreement.</p>



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<b>159-166</b> <b>O</b>	Above the first blank line, print the name of the actual brokerage company (REALTOR®) serving as the Buyer’s exclusive agent, followed by (at “O”) the signature, printed name, email address (if authorized by lines 151-153), mailing address and title of the individual broker/agent authorized to enter into the Buyer’s Agency on its behalf, and the date on which it is signed.
<b>167-170</b>	As noted in the discussion regarding lines 154-156 above, this language acknowledges the Buyer’s receipt of a copy of the completed Buyer’s Agency.
<b>171-175</b>	REALTORS® are reminded (and this language is designed to acknowledge satisfaction) of their obligation to provide, at the earliest opportunity during or following the first substantial contact with a buyer or tenant who has not entered into a written brokerage relationship agreement for services in a residential real estate transaction, a written copy of the current broker disclosure form prescribed by the MREC. <i>See</i> , § 339.770 RSMo.
<b>176-183</b> <b>P</b>	Obtain the signature of all persons and/or entities comprising the “Buyer” in the first line of each of the signature blocks at “P”, followed by the printed name, email address (if authorized by lines 151-153) and date of signature of each such Buyer. Additional signature blocks may be added if necessary.
<b>184-186</b> <b>Q</b>	Insert a mailing address for all such Buyers identified (for mailing purposes) at “Q”.  <b>Note:</b> This presumes that only one mailing address is needed for all Buyers. If there are multiple Buyers with different addresses and they do not agree that only one of them needs to receive any notice mailed to them pursuant to the Buyer’s Agency, then additional mailing addresses should be included.
<b>187-194</b>	This section should be completed if REALTOR® intends to designate, at the time the Buyer’s Agency is first signed, one or more of its affiliated licensees to serve as designated agent(s) for the client/Buyer. If so, any such designated agent is to be identified (at “R”), and the form signed and dated (at “S”) by REALTOR®’s designated broker or office manager or supervising broker authorized for such purposes. Otherwise, the blanks should be completed by indicating “ <i>To be determined</i> ” or “ <i>Not Applicable</i> ” (as the case may be). Future identification of a designated agent may also be accomplished by using <b>MAR form DSC-7000</b> .

**PAGES 5 AND 6**

Pages 5 and 6 of RES-1080 set forth the applicable statutory duties and obligations of limited agents, dual agents and transaction brokers as established by the referenced Missouri laws.

159 \_\_\_\_\_ (O)  
 160 REALTOR®'s Firm Name

161 By \_\_\_\_\_ (O)  
 162 Print Name: \_\_\_\_\_ (O)  
 163 Email: \_\_\_\_\_ (O)  
 164 Address: \_\_\_\_\_ (O)  
 165 Title: \_\_\_\_\_ (O)  
 166 Date: \_\_\_\_\_ (O)

167 EXCLUSIVE BUYER'S AGENCY ACCEPTED  
 168 *By signing below, Buyer indicates that Buyer has*  
 169 *ACCEPTED this Agency Contract and*  
 170 *acknowledges receipt of one (1) copy hereof.*

171 *Buyer also confirms receipt of a Missouri Real*  
 172 *Estate Commission Broker Disclosure Form on or*  
 173 *before signing this Agency Contract, or upon*  
 174 *REALTOR®'s obtaining any personal or financial*  
 175 *information from Buyer, whichever occurred first.*

176 Buyer: \_\_\_\_\_ (P)  
 177 Print Name: \_\_\_\_\_ (P)  
 178 Email: \_\_\_\_\_ (P)  
 179 Date: \_\_\_\_\_ (P)

180 Buyer: \_\_\_\_\_ (P)  
 181 Print Name: \_\_\_\_\_ (P)  
 182 Email: \_\_\_\_\_ (P)  
 183 Date: \_\_\_\_\_ (P)

184 Buyer's Address: \_\_\_\_\_ (Q)  
 185 \_\_\_\_\_ (Q)  
 186 \_\_\_\_\_ (Q)

187 **The following is to be completed only if designated agency is permitted and authorized as set forth**  
 188 **above.**

189 REALTOR® hereby appoints the following affiliated licensee(s) as designated agent(s) to represent Buyer to the  
 190 exclusion of all other affiliated licensees.

191 \_\_\_\_\_ (R) \_\_\_\_\_ (R)  
 192 \_\_\_\_\_ (R) \_\_\_\_\_ (R)

193 By: \_\_\_\_\_ (S) Date: \_\_\_\_\_ (S)  
 194 Designated Broker (or office manager/supervising broker)

Approved by legal counsel for use exclusively by members of the Missouri Association of Realtors, P. O. Box 1327, Columbia, Missouri 65205. No warranty is made or implied as to the legal validity or adequacy of this Agency Contract, or that it complies in every respect with the law or that its use is appropriate for all situations. Local law, customs and practice, and differing circumstances in each transaction, may each dictate that amendments to this Agency Contract be made. Last Revised 10/31/09. ©1986 Missouri Association of Realtors

**BUYER'S (OR TENANT'S) AGENT'S DUTIES AND OBLIGATIONS (§ 339.740, R.S.Mo.)**

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(A) To perform the terms of any written agreement made with the client;

(B) To exercise reasonable skill and care for the client;

(C) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(ii) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(iii) Disclosing to the client adverse material facts actually known or that should have been known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(D) To account in a timely manner for all money and property received;

(E) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(F) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

2. A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

3. A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known or that should have been known by the licensee. A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

4. A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

5. A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents. Any designated broker acting on the buyer's or tenant's behalf as a subagent shall be a limited agent with the obligations and responsibilities set forth in subsections 1 to 4 of this section.

**DUAL AGENT'S DUTIES AND OBLIGATIONS (§ 339.750, R.S.Mo.)**

A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the following duties and obligations:

1. Except as provided below, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is material to the transaction unless it is confidential information as defined in section 339.710(8), R.S.Mo.

2. The following information shall not be disclosed by a dual agent without the consent of the client to whom the information pertains:

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) What the motivating factors are for any client buying, selling, or leasing the property;

(D) That a client will agree to financing terms other than those offered; and

(E) The terms of any prior offers or counter offers made by any party.

3. A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule or regulation or failure to disclose the information would constitute a misrepresentation or unless disclosure is necessary to defend the affiliated licensee against an action of wrongful conduct in an administrative or judicial proceeding or before a professional committee. No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure. A dual agent does not terminate the dual agency relationship by making any required or permitted disclosure.

4. In a dual agency relationship there shall be no imputation of knowledge or information between the client and the dual agent or among persons within an entity engaged as a dual agent.

#### **TRANSACTION BROKER'S DUTIES AND OBLIGATIONS (§ 339.755, R.S.Mo.)**

1. A real estate licensee may provide real estate service to any party in a prospective transaction without an agency or fiduciary relationship to one or more parties to the transaction. Such licensee shall be called a transaction broker.

2. A transaction broker shall have the following duties and obligations:

(A) To perform the terms of any written or oral agreement made with any party to the transaction;

(B) To exercise reasonable skill, care and diligence as a transaction broker, including but not limited to:

(i) Presenting all written offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent unless otherwise provided in the agreement entered with the party;

(ii) Informing the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction broker knows but the specifics of which are beyond the expertise of such broker;

(iii) Accounting in a timely manner for all money and property received;

(iv) To disclose to each party to the transaction any adverse material facts of which the licensee has actual notice or knowledge;

(v) Assisting the parties in complying with the terms and conditions of any contract;

(vi) The parties to a transaction brokerage transaction shall not be liable for any acts of the transaction broker.

3. The following information shall not be disclosed by a transaction broker without the informed consent of the party or parties disclosing such information to the broker;

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) What the motivating factors are for any party buying, selling or leasing the property;

(D) That a seller or buyer will agree to financing terms other than those offered;

(E) Any confidential information about the other party, unless disclosure of such information is required by law, statute, rules or regulations or failure to disclose such information would constitute fraud or dishonest dealing.

4. A transaction broker has no duty to conduct an independent inspection or investigation for adverse material facts for the parties.

5. A transaction broker has no duty to conduct an independent investigation of the buyer's financial condition.

6. A transaction broker may do the following without breaching any obligation or responsibility:

(A) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;

(B) List competing properties for sale or lease;

(C) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants;

(D) Serve as a single agent, subagent or designated agent or broker, limited agent, disclosed dual agent for the same or for different parties in other real estate transactions.

7. In a transaction broker relationship each party and the transaction broker, including all persons within an entity engaged as the transaction broker if the transaction broker is an entity, are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law between any party and the transaction broker or between any party and any person within an entity engaged as the transaction broker if the transaction broker is an entity.

8. A transaction broker may cooperate with other brokers and such cooperation does not establish an agency or subagency relationship.

9. Nothing in this section prohibits a transaction broker from acting as a single limited agent, dual agent or subagent whether on behalf of a buyer or seller, as long as the requirements governing disclosure of such fact are met.

10. Nothing in this section alters or eliminates the responsibility of a broker as set forth in this section for the conduct and actions of a licensee operating under the broker's license.

11. A transaction broker shall:

(A) Comply with all applicable requirements of sections 339.710 to 339.860, subsection 2 of section 339.010 and all rules and regulations promulgated pursuant to such sections; and

(B) Comply with any applicable federal, state and local laws, rules, regulations and ordinances, including fair housing and civil rights statutes and regulations.