



# PIONEER FLEX PROGRAM

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT - READ IT CAREFULLY

1. Owner hereby employs and grants Western Pioneer Pioneer Properties, any names to which said corporation may subsequently be changed, any and all Fictitious Business Names (DBNs) under which it may now or subsequently engage in business, and upon assignment, any properly licensed Corporation or Broker to which this contract may subsequently be assigned by Western Pioneer Pioneer Properties, all hereinafter called "Broker", the exclusive and irrevocable right commencing on \_\_\_\_\_ and expiring at midnight on \_\_\_\_\_ (the "Listing Period"), to sell, lease or exchange the real property situated in the City \_\_\_\_\_, County of \_\_\_\_\_, California described as follows:

Address: \_\_\_\_\_

Together with the following personal property: \_\_\_\_\_, all hereinafter the "Property".

2. **TERMS OF SALE:** The "Listing Price" shall be \_\_\_\_\_ (\$ \_\_\_\_\_), to be paid as follows: \_\_\_\_\_

3. **LISTING TYPE:** Owner acknowledges that Broker is a member of and participant in one or more Associations of REALTORS® and one or more Multiple Listing Services (MLS). This listing shall be submitted to one or more MLS of Broker's choice only as set forth in the applicable paragraph (A-B) initialed below. Paragraphs (A-B) not initialed shall not be applicable except that if none is initialed then the terms of paragraph A shall be operative. Broker is authorized to report the sale, its price, terms and financing for the publication, dissemination, information and use by authorized Association/Board members, MLS Participants and Subscribers.

   **A. MULTIPLE LISTING SERVICE (MLS):** This listing information may, at Broker's election, be provided to any MLS of Broker's choice to be published and disseminated to its Participants in accordance with its Rules and Regulations. Broker is authorized to cooperate with other real estate brokers, to appoint subagents and to report the sale, its price, terms and financing for the publication, dissemination, information and use by authorized Association/Board members, MLS Participants and Subscribers.

   **B. DELAYED MULTIPLE LISTING SERVICE (MLS):** This listing information may, after \_\_\_\_\_ days from the date hereof be provided to any MLS of Broker's choice to be published and disseminated to its Participants in accordance with its Rules and Regulations. Broker is authorized to cooperate with other real estate Brokers, and to report the sale, price, terms and financing for the publication, dissemination, information and use by authorized Association/Board members, MLS Participants and Subscribers.

4. **TITLE INSURANCE:** Owner shall provide, at Owners expense, evidence of title in the form of a California Land Title Association CLTA/ALTA policy of title insurance in the amount of the selling price.

5. **COMPENSATION TO BROKER:** Owner hereby acknowledges that Broker has numerous listing and marketing programs available. The services provided by Broker and the cost to Owner vary with each program (costs may vary from less than two percent of the Property sale price to eight percent). Owner has selected this program and commission rate with full knowledge that other options and rates are available.

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**NOTICE: THE AMOUNT OR RATE OF REAL ESTATE COMMISSIONS IS NOT FIXED BY LAW. THEY ARE SET BY EACH BROKER INDIVIDUALLY AND MAY BE NEGOTIABLE BETWEEN OWNER AND BROKER (REAL ESTATE COMMISSIONS INCLUDE ALL COMPENSATION AND FEES TO BROKER).**

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Seller's Initials: \_\_\_\_\_/\_\_\_\_\_

- A. The undersigned, as Owner, hereby irrevocably agrees to compensate Broker, irrespective of agency relationship(s), In an amount equivalent to:
- i) \_\_\_\_\_ percent of the Listing Price set forth in paragraph 2 above plus a fixed amount of \$79.95 if the Buyer is procured by Owner within 30 days after commencement date above AND Owner has registered the name and identity of said Buyer with Broker prior to said Buyers executing any purchase contract with \_\_\_\_\_ "Listing Sales Associate", Broker herein, or any other Real Estate licensee, affiliated or not with Broker.
  - ii) \_\_\_\_\_ percent, of the Listing Price set forth in paragraph 2 above plus a fixed amount of \$79.95 if the Buyer is procured exclusively by the "listing sales associate" personally within 30 days after the commencement date above.
  - iii) \_\_\_\_\_ percent, of the Listing Price set forth in paragraph 2 above plus a fixed amount of \$79.95 if the Buyer is procured or represented by, or has their offer written by, any Real Estate Broker, associate, or licensee (including but not limited to those associated with Broker herein) or if said Property is withdrawn from sale without consent of Broker is In any other way made unmarketable by Owner during the term hereof; or Owner breaches or otherwise fails to perform all the terms and conditions set forth in any accepted offer or contract for the sale of said Property which has been entered into by Owner.
- b. THE APPLICABLE AMOUNT ABOVE: If during the Listing Period, or any extension, Broker or any other broker or agent procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Owner, provided the Buyer completes the transaction or is prevented from doing so by Owner. (Broker is entitled to the compensation above whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension thereof.)
- C. The compensation as set forth in 5Aiii above if within 360 calendar days (a) after the end of the Listing Period or any extension, or (b) after any cancellation of the Agreement, unless otherwise agreed, Owner enters into a contract to sell, convey, lease or otherwise transfer the Property to any ("Prospective Buyer") or any person, corporation, or entity related to such Prospective Buyer: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker. (i) for whom Broker or any cooperating broker submitted to Owner a signed, written offer to acquire, lease, exchange or obtain an option on the Property; or (iii) with whom Broker has had discussions or negotiations, or to whom Broker has otherwise introduced this Property. Broker may, but shall not be obligated to, provide Owner a list of such parties. In the event Broker does provide Owner a written list of such parties, then such written list shall be conclusive evidence of such Introduction/discussions and/or negotiations. (iv) if, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Owner during the Listing Period, or any extension.

IN ORDER TO PREVENT OBLIGATING THEMSELVES TO PAY TWO SEPARATE REAL ESTATE COMMISSIONS, SELLER IS HEREBY ADVISED TO EXCLUDE ALL PARTIES IDENTIFIED ABOVE FROM ANY LISTING ENTERED INTO WITH ANY OTHER BROKER SUBSEQUENT TO THE EXPIRATION OR TERMINATION HEREOF.

- d. If completion of the sale is prevented by a party to the transaction other than Owner, then compensation due herein shall be payable only if and when Owner collects damages by suit, arbitration, settlement, or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
- B. Owner has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.
- (1) Except as otherwise set forth herein above, I authorize Broker to cooperate with other Brokers, to appoint subagents, and to divide with other broker such compensation in any manner acceptable to Broker. It is Broker's policy and intent to compensate such other Broker's as follows:
- Where such Broker is an active member of any MLS in which Broker herein is also an active member, then an amount not less than 1 1/236 or more (at Broker's sole discretion) of the purchase price.
  - Where such Broker is not an active member of any MLS in which Broker herein is also an active member, then as per Broker's sole discretion.

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- C. Owner hereby irrevocably assigns to Broker the above compensation from Owner's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker, as set forth herein, to any escrow regarding the Property involving Owner and a buyer, Prospective Buyer or other transferee.
- D. DEPOSIT AND PROTECTION PLAN: Broker may provide that any subsequent deposits by Potential Buyers shall be delivered by such Buyer directly to any Title Company. Owner is informed that home protection plans are available. Such plans may pay for certain property repairs and provide additional protection and benefit to a Owner and Buyer. Cost and coverage may vary and Owner is encouraged to investigate procuring such coverage.
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7. AGENCY RELATIONSHIPS:
- A. Disclosure: If the Property Includes residential property with one-to-four dwelling units, Owner hereby acknowledges receipt of a "Disclosure Regarding Agency Relationships" form prior to entering into this Agreement.
- B. Owner Representation: Except as may subsequently be modified, Broker hereby elects to represent Owner exclusively in any resulting transaction. By execution hereof, Owner hereby confirms Broker's election of agency and acknowledges that Broker may at any time, upon notice to Owner, unilaterally elect to change Broker's agency election to represent both Buyer and Owner as a dual agent.
- C. Other Owners: Owner understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Owner's Property. Owner consents to Broker's representation of Owners and buyers of other properties before, during and after the end of this Agreement.
- D. Confirmation: If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Owner's execution of a purchase agreement.
8. KEYBOX: A keybox designed as a repository of a key to the above premises will permit access to the interior of the premises by Participants of any Multiple Listing Service (MLS), their authorized licensees and prospective buyers. Broker is hereby authorized to place such keybox on the Property. If Property is not Owner occupied, Owner shall be responsible for obtaining occupants' written permission for use of the keybox. Neither Broker, MLS or Association of REALTORS is an insurer against any loss, theft, vandalism or damage attributed to the use of keybox. Owner is advised to verify the existence of or obtain appropriate insurance through their own insurance carrier, Broker herein is released from any and all liability or responsibility associated with the above.
9. SIGN: Broker is hereby authorized to install a FOR SALE sign and, when applicable, a SOLD sign on the Property, which shall remain until close of escrow or removed by Broker.
10. INDEMNITY: Unless exempt, Owner shall provide a fully completed Real Estate Transfer Disclosure Statement (TDS) concerning the condition of the Property. Said TDS should disclose every known defect in or associated with the Property. Owner warrants the accuracy of the information furnished verbally to Broker as set forth in any subsequent contract, disclosure, or Owner Transfer Disclosure Statement (TDS) provided by Owner with respect to the above described Property and hereby agrees to save, defend, indemnify and hold harmless Broker (including Broker's officers, shareholders, directors, employees and agents) from any and all liabilities, claims, disputes, litigations, damages, awards, or costs of any kind, including but not limited to Broker's actual attorney fees arising out of 1) any misrepresentation or incorrect information supplied by Owner, 2) any material fact or disclosure which Owner fails to make or has failed to disclose to Broker, 3) Owner's non-disclosure of any environmental issue including but not limited to the existence of mold, radon, asbestos, or any other hazardous substance or material, 4) claims or disputes of any kind arising from any previous or existing leases, options, purchase contracts, or claims by any third parties to any interest in the Property. The undersigned Owner warrants that the Property and/or Owner are not subject to any prior listing agreement, Authorization to Sell, or other financial obligation associated with the Property or to any other Broker.

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11. SECURITY AND INSURANCE: Broker is not responsible for loss or damage to personal or real property, or person, whether attributable to use of a keybox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Owner agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Owner.
12. PHOTOGRAPHS, ADVERTISING, AND EXPOSURE:
  - A. In order to effectively market the Property for sale it is often necessary to provide photographs, virtual tours and other media to buyers. Owner hereby expressly grants Broker permission to photograph or otherwise electronically capture images of the Property ("Images") for static and/or virtual tours of the Property and to provide, place, and distribute to the public, buyers, and others on Broker's website, the MLS, advertisements, mailers, newspapers, magazines, flyers, other electronic sites, or any other method of advertisement Broker may deem appropriate. Owner acknowledges that once Images are placed on the Internet, neither Broker nor Owner has control over who can view such Images and what use viewers may make of the Images, or how long such Images may remain available on the Internet, Owner further agrees that such Images are the property of the Broker and that Broker may use such Images for advertisement of Broker's business in the future. Owner hereby acknowledges that exposure of the Property to the public could subject the Owner to greater risk of fraud, theft, or other criminal activity. Broker is hereby released from any and all damages, liability, or responsibility associated with any of the above or any loss, damage, fraud, or other criminal activity Owner may incur that is associated therewith.
  - B. Owner acknowledges that prospective buyers and/or other persons coming onto the Property may take photographs, videos or other images of the Property. Owner understands that Broker does not have the ability to control or block the taking and use of Images by any such persons. Owner acknowledges that unauthorized persons may take Images.
13. TAX WITHHOLDING: Owner agrees to perform any act reasonably necessary to carry out the provision of FIRPTA (Internal Revenue Code Sections 1446) and California Revenue and Taxation Code Sections 18805 and 26131, and regulations promulgated thereunder. Under the Foreign Investment in Real Property Tax Act (FIRPTA), IRC 1445, every Buyer of U.S. real property must, unless an exemption applies, deduct and withhold from Owner's proceeds 10% of the gross sales price. Under California Revenue and Taxation Code Section 18805 and 26181, the Buyer must, unless an exemption applies, deduct and withhold an additional one-third of the amount required to be withheld under federal law. This Property is offered in compliance with all federal, state, and local anti-discrimination laws.
14. LEGAL: In any action, proceeding or arbitration arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. Broker shall not be obligated to arbitrate any dispute arising from this agreement or Broker's agency associated with Owner. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and any lawsuit based upon any cause of action arising between the parties whether under this Agreement, or otherwise, shall be brought in a court of record in Fresno County, California, or a court of the United States of America located in Fresno County, California, and the parties consent to the jurisdiction of these courts in any legal proceeding, and waive any objection which they may have to venue in any legal proceeding in these courts, including any claim that the legal proceeding has been brought in an inconvenient forum.
15. BROKER ADDENDA: Owner hereby agrees and warrants that Owner shall not accept any offer or enter into any agreement to sell, lease, exchange or otherwise transfer this Property (or any part thereof) to any third party without as a condition to such sale, lease, exchange or transfer requiring all parties to execute a Disclosure Responsibility Addendum a copy of which Owner hereby acknowledges having received. In the event Owner does enter into any such agreement or accepts any such offer without the execution or inclusion of said Disclosure Responsibility Addendum, Owner hereby agrees to save, defend, indemnify and hold harmless Broker, its officers, directors, shareholders, agents and employees from and against any and all liability, costs, loss, expense, dispute, claims, litigation, damage or administration/disciplinary proceedings (including reasonable attorney's fees) arising out of or relating to such sales, lease, exchange or transfer. This Indemnity shall be in addition to any other set forth herein. Owner hereby acknowledges receipt of a "Property Transaction Booklet" published by the California Association of Realtors®.

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16. SMOKE DETECTOR: Owner represents that the Property is or will, prior to transfer, be in compliance with all applicable Health and Safety Codes including, but not limited to, having operable smoke detector(s) approved and listed by the State Fire Marshal and installed in accordance with State Fire Marshal's regulations, and with applicable local ordinance(s).
17. SEISMIC, GEOLOGIC, FLOOD HAZARD: Owner (at Owner's sole cost and expense) shall provide to Buyer and Broker an expert written report by a qualified independent third party disclosing: whether or not the Property is located within a Mello Roos District, Flood Hazard Area, Flood Inundation Areas, Fire Hazard Severity Zones, Wildland Areas (Section 4125 of State Public Resource Code), State Responsibility Fire Areas, Earthquake Fault Zones, Seismic Hazard Zones, Flood Way or other Flood Zones. Broker is hereby authorized, as Owners agent, to purchase such reports from California Property Data, a Broker-affiliated company. The cost of such reports shall be between \$80 and \$100 and shall be paid by Owner. If not paid in advance, Broker and escrow holder are hereby irrevocably authorized to pay (deduct in escrow) the cost thereof from Owners sales proceeds.
18. ADDITIONAL TERMS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
19. ENTIRE AGREEMENT: All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.
20. OWNERSHIP TITLE AND AUTHORITY: Owner warrants that: (i) Owner is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Owner has the authority to both execute this Agreement and sell the Property, Exceptions to ownership, title and authority are as follows: \_\_\_\_\_  
\_\_\_\_\_
21. Owner REPRESENTATIONS: Owner represents that, unless otherwise specified in writing, Owner is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Owners ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Owner shall promptly notify Broker in writing if Owner becomes aware of any of these items during the Listing Period or any extension thereof.
22. BROKERS AND Owner'S DUTIES: (a) Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Owner gives Broker written instructions to the contrary, Broker is authorized to (i) order, at Owner's expense, reports and disclosures Broker deems necessary, (ii) advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium; and (iii) disclose to any real estate licensee making an inquiry the receipt of any offers on the Property and the offering price of such offers. (b) Owner agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by among other things, making the Property available for showing at reasonable times and referring to Broker all inquiries of any party Interested in the Property. Owner is responsible for determining at what price to list and sell the Property.
23. SELECTION OF SERVICE PROVIDERS: Where work is to be performed on any property prior to or subsequent to any listing, sale, escrow, or closing, and where Broker as an agent of Buyer or Owner directly engages or employs on their behalf any contractor, inspector, report provider, title company, lender, home warranty company, vendor, insurance agent, pest control company, or supplier of any goods or services of any kind, hereinafter "Provider", or where Buyer or Owner directly engages or employs any Provider subsequent to procuring the name, recommendation, or referral of such Provider from Broker, then in either event it is hereby agreed as follows:

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23. **SELECTION OF SERVICE PROVIDERS:** Where work is to be performed on any property prior to or subsequent to any listing, sale, escrow, or closing, and where Broker as an agent of Buyer or Owner directly engages or employs on their behalf any contractor, inspector, report provider, title company, lender, home warranty company, vendor, insurance agent, pest control company, or supplier of any goods or services of any kind, hereinafter "Provider", or where Buyer or Owner directly engages or employs any Provider subsequent to procuring the name, recommendation, or referral of such Provider from Broker, then in either event it is hereby agreed as follows:
- A. Broker has made no representation, warranty, promise, or guarantee regarding the qualifications, license status, insurance coverage, financial solvency, reliability of the provider nor of the quality of the Provider's work, performance, goods or services.
  - B. Broker hereby advises Owner to employ, engage, or allow to be employed or engaged, only such Provider that Owner has independently verified to be qualified, licensed, Insured, and, when appropriate, bonded to perform the work in question.
  - C. Buyer and Owner are free to select any Provider other than those engaged, recommended, provided, employed, or referred by Broker.
  - D. Owner hereby releases and agrees to hold harmless Broker from any and all cost, damage, liability, loss, expense, claim, charge, or action of any kind resulting from the engagement or employment of any Provider, their work, inspections, reports, goods or services, including any damage they may do, liabilities they may incur, or any error or omission that they may make and also including any costs or amounts they may bill or charge for their work, goods, or services.
24. **ASSIGNMENT:** Broker hereby reserves the right to assign all of its duties and obligations in this transaction. All parties to this contract hereby acknowledge, consent and agree that all rights and interests herein together with any rights, obligations, interests or duties in any contract, transaction, sale and/or escrow referenced in or associated with this contract (including but not limited to commissions resulting therefrom), may be unilaterally assigned and delegated by Broker to any other licensed California Real Estate Broker, all without further consent or approval of the undersigned or any other party.
25. **MANAGEMENT APPROVAL:** If an associate-licensee in Broker's office (salesperson of broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager at anytime shall have the unilateral right to cancel this Agreement.
26. As to indemnity provisions, legal provisions, disclosures, Broker Addenda, and other terms and conditions set forth in this agreement the term Broker as used herein shall include Broker's employees, agents, and officers.
27. **SUCCESSORS AND ASSIGNS:** This agreement shall be binding upon Owner and Owner successors and assigns. The term "Owner" as used herein shall be considered synonymous with Owner.

I acknowledge that I have read and understand this agreement and have received a copy. This agreement may not be cancelled prior to its expiration date without Broker's written consent.

Owner/Owner \_\_\_\_\_

Owner/Owner \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

In consideration of the above Broker agrees to use diligence in procuring a purchaser.

Listing Sales Associate, Western Pioneer Properties. By \_\_\_\_\_ CalDRE# \_\_\_\_\_ Date \_\_\_\_\_

Seller acknowledge receipt of this page.

Seller's Initials: \_\_\_\_\_/\_\_\_\_\_