



Mount Rushmore Area Association of REALTORS  
dba Mount Rushmore Area MLS, Inc.



LISTING AGREEMENT

Agency Agreement – Owner – South Dakota (Listing Agreement)

(This is a legally binding contract. If you do not understand it, seek legal advice.)

Property Address 28,055 Sq Ft Convention Center attached to The Lodge at Deadwood Resort Tax ID:

30230-00000-010-10. City of Deadwood. 1.88 acres. Zoned Commercial Highway

Client: City of Deadwood

Responsible Broker and Brokerage Firm: Greg Klein Century 21 Associated Realty, Inc.  
(hereinafter referred to as Broker)

Start Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_ at midnight. If Client enters into a purchase agreement during the term of this agreement, the termination of this agreement shall be the date of closing under said purchase agreement, or if the transaction does not close, the date which the parties agree to discontinue negotiating. This agreement can be terminated with mutual written consent of the parties.

1) **Creation of Agency.** The Broker, as agent for the Client, negotiates and advocates on behalf of the Client, performs the terms of any written agreement made with the Client, and promotes the interest of the Client with the utmost good faith, loyalty, and fidelity. The Client should carefully read all documents to assure that they adequately express Client's understanding of the transaction and protection of your own interests. The Client represents no other Broker has been employed as an exclusive agent for real estate defined in section 2 and agrees to protect, defend, indemnify and hold Broker harmless from the claims, liability, and expenses, including reasonable attorney's fees, arising by reason of the claim of any other Broker in compensation as the result of a transaction that is within the scope of this agreement. Not all agency options may be offered by Broker. The Client authorizes the Broker, as Client's  exclusive/  non-exclusive agent, to identify and communicate to Client Purchasers appearing to have interest in purchasing the real estate described in Section 2.

A. **Single Agency:** When a firm and all of its agents represent only you and advocate for only your interests during a transaction.

*The Client further authorizes:*

B. **Appointed Agency:** The Broker appoints \_\_\_\_\_ as your agent, to represent only you and advocate for only your interests. Upon signing this agreement, agents within the firm who have not been specifically named do not represent you and cannot advocate for your interests. Confidential information can only be shared with the responsible Broker Greg Klein and the designated Broker \_\_\_\_\_, unless you provide written permission. The responsible Broker may appoint other affiliated licensees to be your agent during the term of this agreement should the appointed agent not be able to fulfill the terms of this agreement or by written agreement between you and the responsible Broker. An appointment of another or additional affiliated licensee does not relieve the first appointed agent of any duties owed to you.

Limited agency rules apply to the responsible Broker when you, as a purchaser, inquire about a property under contract for sale/lease with this firm. The responsible Broker can legally be the limited agent of both parties of a transaction with your knowledge and written consent of you and the other party.

Your appointed agent(s) can legally be a limited agent for an in-company transaction with your knowledge and written consent of you and the other party.



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(If this Broker/firm does not offer appointed agency representation initial N/A below)

**C. Limited Agency:** All licensees of the brokerage firm owe you the duties as described in single agency until a purchaser client of this firm inquires about your property under contract for sale/lease with this firm. At this time, a limited agency relationship exists; however, limited agency **may only occur** with prior written permission of the parties of the potential in-company transaction. In a limited agency relationship, the Broker, directly or through one or more agent, may not be able to continue to provide services previously provided to you, such as:

- No longer providing advice or advocating for your interests, or the purchaser's interests, to the detriment of either party.

Unless you give written consent, a limited agent cannot:

- Disclose personal confidences of one party or the other party, unless required by law;
- Disclose a Purchaser is willing to pay more, or a Seller is willing to accept less, than the asking price or lease rate offered for the property;
- Disclose the motivating factors for any client, buying, selling, or leasing the property;
- Disclose a client will agree to financing terms other than those offered.

The client acknowledges and consents as *initialed*:

I agree to appointed agency and the appointed agent(s) named in 1B: Yes \_\_\_ / \_\_\_ No \_\_\_ / \_\_\_ N/A \_\_\_ / \_\_\_

I agree to limited agency representation, as described in 1C: Yes \_\_\_ / \_\_\_ No \_\_\_ / \_\_\_ N/A \_\_\_ / \_\_\_

**2) Legal Description:** The undersigned Seller warrants that he/she is the owner of record of the property; or has the written authority, attached, to execute this agreement on behalf of the owner of record and hereby grants the undersigned Broker, for the above term, the exclusive irrevocable right to sell or lease the following property legally described as:

Deadwood Resort Lot 1A being a portion of the re-plat of Deadwood Resort Lots 1 and 2, City of Deadwood, Lawrence County, South Dakota. All located in the Northeast 1/4 and the Southeast 1/4 of Section 14, Township 5 North, Range 3 East of the Black Hills Meridian, City of Deadwood, Lawrence County, South Dakota.

County: \_\_\_\_\_, State: \_\_\_\_\_

Also known as: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Property listed is for (mark one or both):  Sale  Lease

A. Terms: For the sum of \$ \_\_\_\_\_, on the following terms: \_\_\_\_\_

or, with Seller's consent, for any sum or on other terms which price includes all encumbrances, taxes, assessments and discount points charged at time of closing by mortgage, as agreed upon by Buyer and Seller.

B. Lease Terms: (if applicable) N/A



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94 Seller represents the title of the property to be good and merchantable and hereby represents that all known  
 95 encumbrances, liens or clouds on title are disclosed. In the event of a sale, exchange or trade, Seller at Seller's expense  
 96 will convey good and merchantable title to said property by Warranty Deed or sufficient conveyance instrument to  
 97 Purchaser, thereof. In the event of an undisclosed encumbrance that results in cancellation by Purchaser, discharge of  
 98 Purchaser from purchase price and/or assumption by Purchaser who is credited on the purchase price for the undisclosed  
 99 encumbrances, liens, or cloud on title, Seller shall be liable to Broker for fee outlined in Section 3 as though contract of  
 100 sale was not canceled. Seller acknowledges that there may be tax consequences arising out of the sale of this property  
 101 and is advised to seek competent tax advice.

**BROKER COMMISSIONS ARE NOT SET BY LAW AND ARE FULLY NEGOTIABLE**

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 103  
 104 3) **Broker Services and Compensation:** *See attached Fee Schedule included with RFD*

105 A. Client authorizes Broker to cooperate with Brokers who represent Buyers as initialed: Yes \_\_\_/\_\_\_/\_\_\_ No \_\_\_/\_\_\_/\_\_\_

106 B. The total fee for services provided by Listing Broker will be \$\_\_\_\_\_, or % 3 of the selling price, plus applicable  
 107 sales tax. Yes \_\_\_/\_\_\_/\_\_\_ No \_\_\_/\_\_\_/\_\_\_

108 C. Client authorizes the Listing Broker to compensate cooperating Brokers who represent Buyers, including the Listing  
 109 Broker, if in a Limited Agency relationship, as \$\_\_\_\_\_ or %\_\_\_ of the selling price, plus applicable sales tax,  
 110 from the total fee for services agreed upon in section 3) B.

111 D. Client authorizes Broker to disclose compensation amount offered to cooperating Brokers. Yes \_\_\_/\_\_\_/\_\_\_ No \_\_\_/\_\_\_/\_\_\_

112  
 113 A. If Broker is an exclusive agent, and during the period of this agreement the property is sold by Client, Broker, a  
 114 cooperating Broker, or anyone else; or if Broker is a non-exclusive agent and the property is sold to a Purchaser  
 115 identified by Broker and submitted to Client in writing; or should any of the aforementioned produce a Purchaser ready,  
 116 willing, and able to purchase the property; Client agrees to pay compensation as stated above.

117  
 118 B. If within 90 calendar days after the expiration or mutual written termination of this contract, a sale is  
 119 made to any person to whom the property has been shown during the listing period, Client agrees to pay the Broker as  
 120 stated above. If this property is listed with another real estate licensee after expiration or mutual termination, this contract  
 121 shall be null and void in its entirety.

122  
 123 C. The term "sale" shall be deemed to include any exchange or trade to which Seller consents. In the event of an  
 124 exchange or trade, Broker is permitted to represent and receive compensation from both parties. No compensation is  
 125 owed if Client is in an exclusive agreement with another Broker.

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 127 D. Broker may act as escrow agent for all money, papers, and documents associated with this transaction.

128  
 129 4) **Earnest Money:** The Listing Office or their designee shall deposit and hold all deposits, including earnest money until  
 130 the sale is closed. If earnest money deposited by the Buyer is forfeited, the earnest money, less expenses, shall be  
 131 divided 100% to Seller and 0 % to Listing Office. However, in no case may the Listing Office's  
 132 share exceed the compensation stated herein. Seller understands that per SDCL 36-21A-81, both Buyer and Seller must  
 133 agree in writing to release of earnest money.

134 5) **Proceeds Disbursement:** It is agreed that the Listing Office and/or Closing agent shall hold the balance of the sales price  
 135 for account of Seller until all expenses incurred on the Seller's behalf, relating to the sale of this property, have been paid.



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136 6) **Transfer of Title.** Seller represents the title of the property to be good and merchantable and hereby warrants that all known  
 137 encumbrances, liens or clouds on title are disclosed. In the event of a sale, exchange, trade, Seller, at their expense, will  
 138 convey to the Buyer good and merchantable title to said property by Warranty Deed or such other conveyance instrument,  
 139 sufficient to convey good and merchantable title, properly signed and with the necessary State Transfer Fee for recording  
 140 paid by Seller. Further, Seller, at their expense, shall promptly furnish to the Buyer an Owner's Policy of Title Insurance  
 141 in the amount of the purchase price.

142 7) **Authorizations.** Seller authorizes Broker as initialed:

143  
 144 A. Advertise by Multiple Listing Service. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

145  
 146 B. Advertise by computerized or other media. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

147  
 148 C. Place a firm marketing sign on property. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

149 When sign is placed in yard, listing must be placed in MLS within 1 business day

150 D. Install a lockbox on the property. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

151  
 152 E. Request mortgagee to release information to Broker. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

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 154 F. Request utility companies to release information to Broker. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

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 156 G. Disclose to Purchasers or Agents that Seller has received other offers. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

157  
 158 H. Permission to change status on MLS. Yes \_\_\_\_\_ / \_\_\_\_\_ No \_\_\_\_\_ / \_\_\_\_\_

159  
 160 8) **Personal Property.** The following personal property is included in the stated price and shall be conveyed by Seller to  
 161 Purchaser, free of liens and without warranty of condition, by a bill of sale at closing and in accordance with its terms:

162 \_\_\_\_\_  
 163 \_\_\_\_\_  
 164 \_\_\_\_\_  
 165 \_\_\_\_\_

166  
 167 9) **Disclosures.** Seller(s) shall complete and submit a property condition disclosure statement as required by SDCL 43-4-38,  
 168 unless exempt pursuant to SDCL 43-4-43, with this listing agreement. Seller(s) shall complete and submit a lead-based  
 169 paint disclosure if property is residential and was built prior to 1978 as required by federal regulation.

170  
 171 10) **Nondiscrimination.** Client and Broker will not participate in any act that unlawfully discriminates on the basis of race,  
 172 color, creed, religion, sex, disability, familial status, country of national origin or any other category protected under  
 173 federal, state or local law.

174  
 175 11) **Modification.** No modification of any of the terms of this agreement shall be valid or binding upon the parties, unless  
 176 such modifications have first been reduced to writing and signed by both parties.

177  
 178 12) **Indemnification.** Seller agrees to indemnify and hold harmless Broker and Broker's agents from any claim(s) arising out  
 179 of misrepresented or incomplete disclosure statements made by Seller.

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181 **13) Other Professional Services.** Unless otherwise agreed in writing, Seller acknowledges that Broker and Broker's agents  
 182 owe no duty to conduct an independent inspection of the property or to conduct an independent investigation of Seller's  
 183 financial condition, and owe no duty to independently verify the accuracy or completeness of any statement made by either  
 184 party or by any source reasonably believed by Broker and Broker's agents to be reliable.

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**14) Other Instructions.** \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

198 **THIS IS A LEGALLY BINDING CONTRACT.** If you have questions regarding the duties and responsibilities of the  
 199 Broker, you should resolve those questions before proceeding further or **SEEK LEGAL ADVICE.**

200  
201 Client: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_  
 202 Signature

203  
204 Client: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_  
 205 Signature

206 Address: \_\_\_\_\_ 102 Sherman Street

207  
208 City: \_\_\_\_\_ Deadwood State: SD Zip: 57732

209  
210 E-mail address: \_\_\_\_\_

211  
212 E-mail address: \_\_\_\_\_

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214  
215

216 **AGENT OBLIGATIONS:** Regardless of representation, the Broker shall: Disclose all known material facts about the  
 217 property which could affect the Client's use or enjoyment of the property, disclose information which could have a material  
 218 impact on either party's ability to fulfill their obligations under the purchase/lease agreement, respond honestly and accurately  
 219 to questions concerning the property, and deal honestly and fairly with all parties.

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221  
222 Broker/Firm: Century 21 Associated Realty, Inc. Broker: Greg Klein

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224  
225 By Agent: Kathleen Scott Matt Klein Date: \_\_\_\_\_  
 226 Greg Klein

# REAL ESTATE RELATIONSHIPS DISCLOSURE

(This document is NOT a contract between you and this firm. This document is being provided to you as a consumer as you have not indicated to this agent you are a client with a written contract to another real estate firm).

As required by South Dakota Law, each firm has a responsible broker who must provide a written disclosure of the specific agency/brokerage relationships their firm may establish **PRIOR** to their agent discussing your confidential buying, selling, or leasing objectives of real estate or business opportunity. The following agency relationships are permissible under South Dakota law.

The office policy of Century 21 Associated Realty, Inc. (firm) is to provide the relationships marked. This disclosure was provided by Greg Klein, Kathleen Scott & Matt Klein (agent) on behalf of Greg Klein (responsible broker).

*When all agents of this firm represent only you:*

**Single Agency** is when a firm and all of its agents represent **only** you and advocate for **only** your interests during a transaction. If at any time during the transaction any agent of the same firm represents both you and the other party, limited agency applies.

*When only individually named agent(s) of this firm represents you:*

**Appointed Agency** is when a responsible broker names a specific agent(s) of the firm to represent **only** you and advocate for **only** your interests during a transaction. Agents within the firm who have not been specifically appointed do not represent you and cannot advocate for your interests. If at any time during the transaction the responsible broker or a non-appointed agent within the firm represents the other party, limited agency applies to the responsible broker. If at any time during the transaction your appointed agent(s) represents both you and the other party, limited agency applies.

*When all agents of this firm represents both purchasers and owners:*

**Limited Agency** is when a firm represents both sides to a transaction and no agent within the firm solely represents you or solely advocates for your interests. Limited agency **may only occur** with prior written permission from both sides to a transaction. Within limited agency, the limited agent is required to represent the interests of you and the other party equally, and the agent cannot disclose your confidential information to the other party unless legally required to by law.

*When a broker does not represent either party to a contract:*

**Transaction Brokerage** is when a broker or agent assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to the transaction.

**Acknowledgment:** I have been provided a copy of this disclosure indicating the brokerage and agency relationships offered by this firm. If this is a residential transaction, I also acknowledge the agent has given me a copy of the Consumer Real Estate Information Guide in booklet/printed format, or, if not provided, I authorize the agent to provide the guide electronically, as an attachment or link, to access the electronic version of the guide, at \_\_\_\_\_ (e-mails).

Signature(s) \_\_\_\_\_ Date \_\_\_\_\_

*When you choose not to have an agency relationship with a firm:*

I acknowledge the firm/agent named above does not represent me as a client. If I am a customer to a real estate transaction I understand the firm/agent may be acting as an agent for the other party of the transaction.

Signature(s) \_\_\_\_\_

Date \_\_\_\_\_

# CENTURY 21.

Associated Realty, Inc.

605.578.1417 www.c21deadwood.com

50 Cliff Street

Deadwood, SD 57732

## **FEE SCHEDULE:**

*Broker Commissions Are Not Set By Law And Are Fully Negotiable*

### **Broker Services and Compensation:**

**If our company had both sides of the transaction (Listing Agent & Selling Agent):**

Total Commission: 3% of the sales price, plus 6.2% sales tax

**If an agent from a different company brought the Buyer (Selling Agent) and we represented the Seller (Listing Agent)**

We would be willing to accept 2.5% of the total sales price, plus 6.2% sales tax

It would not be uncommon for the Buyer and Selling Agent to ask the Seller to pay a percentage for the Buyer Broker Compensation plus the 6.2% sales tax. That would become a matter of negotiation between the Buyer and the Seller.

If within 90 calendar days after the expiration or mutual written termination of the listing agreement, a sale is made to any person to whom the property has been shown during the listing period, Client agrees to pay the Broker as stated above. If this property is listed with another real estate licensee after expiration or mutual termination, this contract shall be null and void in its entirety.

### **Projected Sellers Closing Statement**

We have attached a copy of a Projected Seller's Closing Statement which lists various costs and charges normally attributed to the Seller at closing. We would be able to complete this document once we know the actual listing price.

