

Exclusive Right of Sale Listing Agreement For Commercial Property

FLORIDA ASSOCIATION OF REALTORS



This is a legal and binding contract on all parties hereto, including their heirs, legal representatives, successors and assigns and if it is not fully understood, OWNER should seek competent legal advice.

1. This contract made and entered into by and between:

("OWNER" which term shall include singular and plural)
and _____ ("BROKER")

OWNER hereby gives BROKER for a period of time commencing the ____ day of _____, and terminating the ____ day of _____, or any renewal hereof ("Termination Date") THE EXCLUSIVE RIGHT AND AUTHORITY to find a purchaser of the real property and/or inventory or assets, arrange a merger, lease, lease with option to purchase, rent or exchange for the herein described property and personally described in Paragraph 1(A). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of the Agreement will automatically extend through the date of the actual closing of the sales contract.

A. Description of real property:

Street address: _____

Legal Description: _____

B. Description of personal property (including machinery, inventory, supplies and equipment): Upon the following price and terms: _____

Price: \$ _____

Terms: (include special financing terms here) _____

C. Mortgage Information: existing mortgage with \$ _____ Balance; _____%, Payable \$ _____, Per Month P.I. \$ _____ Approximately _____ years to run.

D. Interest on encumbrances, taxes, insurance premiums and rents shall be adjusted pro rata at the date of closing. Improvement liens, if any, will be discharged by the OWNER. The usual and customary time to be allowed for examination of title and closing of the transaction. Personal property to be included in the purchase price shall include all fixed equipment, and plants and shrubbery now installed on said property. It is understood that the sale is to include: the good-will and name as a going concern; furniture, fixtures and equipment as per attached inventory; advertising; contract rights; leases; licenses; rights under any agreement for interests except as stated herein. Seller shall convey title to personal property assets by Bill of Sale Absolute giving good marketable title unless the sale is a secured transaction, in which case a Security agreement will be required by the purchaser. The OWNER agrees at its expense to provide (a) preparation of and delivery to the Purchaser of a warranty deed or other _____ conveying a marketable title free and clear of all liens except encumbrances of record assumed by the Purchaser as part of the purchase price (**public utility easements**); (b) abstract of title or binder for marketable title insurance policy; (c) documentary stamps for the deed; (d) Seller's attorney fees; (e) recording fee for satisfaction of existing mortgage is paid off.

2. BROKER agrees:

- A. To process Property through Multiple Listing Services.
- B. To inspect and become familiar with the Property and promote its sale;
- C. To present all offers and counter-offers in a timely manner regardless of whether the Property is subject to a contract for sale;
- D. To advertise Property as BROKER deems advisable in newspapers, publications or other media;
- E. To the extent not in conflict with BROKER'S duties under paragraph 6 below, to furnish information requested by another agent or licensed real estate broker and to assist cooperating broker in closing transaction on the Property when requested.

Seller (____) (____) and Broker/Sales Associate (____) (____) acknowledge receipt of a copy of this page, which is Page 1 of 3 Pages.

50 F. To take all reasonable precautions to prevent damage in the process of showing Property or permitting others to
51 show Property, but BROKER accepts no responsibility for loss or damage; and
52* G. To utilize not utilize the name of the OWNER in connection with marketing or advertising of the Property
53 either before or after sale;
54 H. To represent the OWNER, and thereby is authorized to accept, receipt for and hold all monies paid or deposited as a
55 binder or deposit on the purchase of the Property, and the duties of the BROKER relative thereto shall be in accordance
56 with the laws of the State of Florida and regulations of the Florida Real Estate Commission; and

57 **3. OWNER agrees:**

58 A. To pay the BROKER compensation in accordance with the terms of this Agreement set forth in paragraph 4 below;
59* B. To give BROKER permission to pay cooperating brokers, except when not in OWNER'S best interest: and to offer
60* compensation in the amount of _____% of the purchase price or \$_____ to buyer's agents, who represent
61* the interest of the buyers, and not the interest of OWNER in a transaction; and to offer compensation in the amount of
62* _____% of the purchase price or \$_____ to a broker who has no brokerage relationship with the buyer or
63* OWNER; and to offer compensation in the amount of _____% of the purchase price or \$_____ to trans-
64* action brokers for the buyer; None of the above (if this is checked, the Property cannot be placed in the MLS.)
65 C. In the event of an exchange, to permit BROKER to represent all parties and collect compensation or commissions from
66 them. BROKER is authorized to pay other brokers such compensation or commissions in any manner acceptable to brokers.
67 D. To pay compensation due BROKER if Property, or any interests therein is sold, leased or contracted to be sold or
68* leased or otherwise transferred within _____ days after Termination Date to anyone to whom the Property was submit-
69* ted by or through the efforts of any BROKER or the OWNER before the Termination Date. However, the obligation to
70 pay such compensation to BROKER shall cease if a bona fide Exclusive Right of Sale Contract is entered into after
71 Termination Date with another licensed BROKER and a sale, lease, exchange or contract therefor, of the Property is
72 made during the term thereof;
73 E. To notify the BROKER in writing before leasing, mortgaging or otherwise encumbering the Property and to provide
74 details of any such encumbrances;
75 F. To refer immediately to BROKER all inquiries relative to the purchase or leasing of the Property.
76 G. To warrant accuracy of information set forth herein and on the data sheets, exhibits and addenda attached hereto and
77 to indemnify and save harmless BROKER and those relying thereon for damages resulting from errors contained therein;
78 H. To furnish BROKER with keys to the Property and make the Property available for BROKER to show during reasonable hours;
79 I. To pay any applicable sales tax when due;
80 J. To obtain any information relating to the present mortgage or mortgages on the Property including existing balance,
81 interest rate, monthly payment, balance in escrow and payoff amount;
82 K. To authorize BROKER to place "For Sale", "Under Contract" OR "Sale Pending" signs upon the Property and to
83 remove the signs upon termination of this Agreement or sale of the Property; and
84 L. To otherwise cooperate with the BROKER in carrying out the purpose of this Contract.
85 M. Provide all reasonable financial information, including but not limited to balance sheet, etc.

86 **4. Compensation:** OWNER agrees to pay BROKER as follows, including paying all taxes, if any, on BROKER'S services, if
87 BROKER, any agent of BROKER or a Buyer's Broker procures a buyer who is ready, willing, and able to purchase, lease, or
88 exchange the property, and/or inventory of the OWNER, and/or assets of the business whichever is applicable, on the terms
89 of this Contract or any other terms acceptable to OWNER. The stated compensation shall be paid to the BROKER in the
90 event of a sale, exchange, or transfer of any interest including stocks or shares in the Property during the term of this con-
91 tract, whether such transaction, sale or exchange be accomplished by the BROKER or any other person or entity including
92 OWNER: (complete whichever fee arrangements apply):

93* A. (CHECK ONE): _____% of gross sales price, or \$_____ including fees BROKER may pay to cooperating
94 brokers. OWNER shall pay this fee at the time, and from the proceeds, of closing. If OWNER transfers the Property for
95* nominal consideration, OWNER shall pay \$_____ on the date OWNER transfers title.

96 B. In the event the Property is leased during the term of this Agreement, OWNER shall pay to BROKER a leasing fee of
97* \$_____ or _____% of gross sales price. The fee shall be paid to BROKER when BROKER, OWNER or anyone
98 working by or through BROKER produces a tenant acceptable to OWNER. If the tenant purchases the Property at any
99 time, even if such a purchase is subsequent to the expiration date of this Agreement, BROKER shall be paid the stated
101 compensation set forth in Paragraph 4A at the time of closing.

101* C. In the event that deposit(s) be retained, _____ % thereof, but not exceeding the compensation provided above, shall
102 be paid to the BROKER as full consideration for BROKER(s) services, including costs expended by BROKER, and the
103 balance shall be paid to OWNER. If the transaction shall not be closed because of refusal or failure of OWNER to per-
104 form, the OWNER shall pay the said compensation in full to BROKER upon demand.

105 **5. OWNER understands** that this Contract does not guarantee the sale of the Property but that it does assure OWNER
106 that BROKER will make earnest and continued effort to sell the Property until this Contract is terminated.

107* **Seller** (____) (____) and **Broker/Sales Associate** (____) (____) acknowledge receipt of a copy of this page, which is Page 2 of 3 Pages.

108* **6. (CHECK ONE) OWNER DESIRES DOES NOT DESIRE UTILIZATION OF A LOCKBOX SYSTEM. IN THIS**
109 **REGARD, OWNER HAS BEEN INFORMED THAT THROUGH THE USE OF A LOCKBOX SYSTEM, THE PROPERTY**
110 **MAY BE MORE READILY SHOWN TO PROSPECTIVE BUYERS, BUT THAT PERSONAL PROPERTY OF OWNER,**
111 **MAY, THEREFORE, BE MORE SUSCEPTIBLE TO THEFT OR DAMAGE. OWNER AGREES THAT THE LOCKBOX, IF**
112 **UTILIZED, WILL BE FOR THE BENEFIT OF OWNER AND RELEASES BROKER AND THOSE WORKING BY OR**
113 **THROUGH BROKER, AND THE BROKER(S) LOCAL BOARD(S) AND/OR ASSOCIATIONS OF REALTORS FROM ANY**
114 **LIABILITY AND RESPONSIBILITY IN CONNECTION WITH ANY LOSS THAT MAY OCCUR. THE BROKER ADVISES**
115 **AND REQUESTS THE OWNER TO SAFEGUARD OR REMOVE ANY VALUABLES NOW LOCATED ON THE PROPER-**
116 **TY AND TO VERIFY THE EXISTENCE OF OR OBTAIN PROPER PROPERTY INSURANCE. SHOULD A TENANT BE IN**
117 **THE PROPERTY, THE SELLER SHOULD NOTIFY THE TENANT IN WRITING OF THE USE OF A LOCKBOX.**

118 **7. OWNER authorizes BROKER,** upon execution of a contract for sale and purchase, to notify the Multiple Listing Service
119 of the pending sale and after closing of the sale to disclose sale information including the sales price to the Multiple Listing
120 Service, other REALTORS and appraisers.

121 **8.** In the event any litigation arises out of this Contract, the prevailing party shall be entitled to recover reasonable attorney
122 fees and costs.

123 **9. TERMINATION:** This Contract shall terminate as of the Termination date unless sooner terminated as provided below:
124 **A.** If OWNER decides, because of a bona fide change in circumstances, not to sell the Property, this Contract shall be
125 conditionally terminated as of the date OWNER executes a Withdrawal Agreement and pays BROKER a cancellation fee
126* of \$_____. If OWNER contracts for sale to anyone after the agreed early termination date but on or before the original
127 Termination Date, then the early termination provided by this paragraph shall be voidable by BROKER and OWNER shall
128 pay BROKER the compensation stated in paragraph 4, less the cancellation fee paid pursuant to this paragraph.

129 **B.** If at any time during the term of this Contract, BROKER determines that the proceeds from the sale of the Property
130 which OWNER would reasonably expect to receive will not be sufficient to pay the compensation due BROKER, then
131 this Contract may be terminated by BROKER upon three days written notice to OWNER.

132 **10. MANDATORY ARBITRATION: ATTORNEYS' FEES:** All claims, disputes, and other matters in question between the parties
133 arising out of or relating to this Contract, or any addendum or addition, SHALL BE DECIDED BY MANDATORY BINDING ARBITRA-
134 TION in accordance with the Florida Arbitration Code, Chapter 682, Florida Statutes. Each party shall select any arbitrator and the
135 two arbitrators so chosen shall choose a third arbitrator. The three arbitrators so chosen shall hear and determine the matter. THIS
136 AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE UNDER THE FLORIDA ARBITRATION CODE, and judg-
137 ment upon the award rendered by the ARBITRATORS may be entered by the Court having jurisdiction thereof. In connection with
138 any such arbitration or litigation, the prevailing party shall be entitled to recover all fees and costs incurred including reasonable attor-
139 neys' fees. OWNER has been advised and consents to permit BROKER to file a lien against the Property, if applicable, for unpaid
140 real estate commissions, pursuant to Section 475.42(i)(j), Florida Statutes, which lien shall be released only at such time as the full
141 commission and all other sums due under this Agreement, including interest, attorneys fees and costs, have been paid in full.

142 **11. COMMERCIAL LIEN ACT DISCLOSURE:** The Florida Commercial Real Estate Sales Commission Lien Act provides that
143 when a BROKER has earned a commission by performing licensed services under a brokerage agreement with you, the BROKER
144 may claim a lien against your net sales proceeds for the BROKER'S commission. The BROKER'S lien rights under the act cannot be
145 waived before the commission is earned.

146* Date: _____ Seller: _____ (print name) Tax ID No: _____ - _____ - _____
147* Telephone #'s: Home _____ Work _____ Cell _____ Fax: _____
148* Address: _____ E-mail: _____

149* Date: _____ Seller: _____ (print name) Tax ID No: _____ - _____ - _____
150* Telephone #'s: Home _____ Work _____ Cell _____ Fax: _____
151* Address: _____ E-mail: _____

152* Date: _____ Authorized Listing Associate or Broker: _____ (print name)
153* Brokerage Firm Name: _____ Telephone: _____
154* Address: _____

155* _____ Signature of Seller _____ Signature of Seller

157* _____ Signature of Associate or Broker

159* Copy returned to Seller on the _____ day of _____, _____ by: personal delivery mail e-mail fax.

160* Seller (____) (____) and Broker/Sales Associate (____) (____) acknowledge receipt of a copy of this page, which is Page 3 of 3 Pages.