

COMMERCIAL LISTING CONTRACT

COMMERCIAL/INDUSTRIAL/RESIDENTIAL INCOME/UNIMPROVED LAND
BUSINESS OPPORTUNITY/HOTEL - MOTEL/RESTAURANT - BAR/FARM & LAND INCOME
EXCLUSIVE RIGHT OF SALE

MLS NUMBER: _____

OWNER'S NAME: _____ ("Owner")

LISTING OFFICE: _____ ("Listing Broker")

1. **AGREEMENT TO LIST.** In consideration of Listing Broker's agreement to list and use Listing Broker's effort to secure a purchaser for the following Property:

PROPERTY DESCRIPTION: _____

_____ ("Property") and Listing Broker's further agreement to cooperate with other REALTORS® or real estate brokers (collectively "Other Brokers") and in further consideration of Listing Broker paying the fee for the distribution of information about the Property to participants of the REALTOR® Association of Greater Fort Lauderdale, Inc. ("Association") and its Multiple Listing Service ("MLS"), Owner hereby gives Listing Broker the exclusive right and authority to offer the Property for sale at the following price and terms, or at any other price and terms acceptable to Owner and this exclusive right and authority shall expire at midnight on the expiration date listed below:

EXPIRATION DATE: _____ PRICE: \$ _____

TERMS: _____

2. **PERSONAL PROPERTY.**

2.1 PERSONAL PROPERTY INCLUDED IN THE SALE: _____

2.2 PERSONAL PROPERTY EXCLUDED FROM THE SALE: _____

3. **TITLE.** Owner warrants having legal authority and capacity to convey the Property with all improvements. If a purchaser for the Property is secured, the usual and customary practice for the title examination, curing the title, and for closing the transaction shall apply. Owner agrees to deliver a marketable title at closing.

4. **PROFESSIONAL FEE.** For securing a purchaser for the Property, Owner agrees:

4.1 **SALE.** To pay Listing Broker, at the time of the closing of the Sale of the Property and from the disbursement of the proceeds of the Sale, a professional fee ("Fee") in the amount of **(COMPLETE ONE):** \$ _____ OR _____% of the gross purchase price for Listing Broker's services in effecting the Sale by finding a purchaser ready, willing and able to purchase pursuant to this Contract. If the purchaser is provided by some Other Broker, Owner shall have no obligation to pay any compensation to such Other Broker. Listing Broker agrees to pay such Other Broker the following portion of the Fee \$ _____ OR _____% of the gross purchase price.

4.2 **EXCLUSIVE RIGHT TO SELL.** To pay the Fee whether the purchaser is secured by Listing Broker or Other Broker or Owner or by any other person at any price and terms acceptable to Owner.

Property Address: _____

4.3 DEFINITION OF SALE/SOLD. To pay the Fee if the Property is Sold. For the purpose of this Contract "Sale" and/or "Sold" shall be deemed to include: if the Property or any interest in the Property is contracted to be sold, joint ventured, transferred pursuant to a deed in lieu of foreclosure, transferred pursuant to court order or intra party transfer, or is otherwise transferred, whether such transaction, sale, joint venture or transfer is accomplished by Listing Broker or Other Broker or any other person or entity including Owner. In any Sale where the purchase price is not the result of bargaining between Owner and a regular purchaser (such as a deed in lieu of foreclosure), if the Fee in this Contract is a percentage of the purchase price, the purchase price shall be deemed to be the Listing Price written in section #1 of this Contract.

4.4 REPRESENTATION. Listing Broker may represent the purchaser, and Listing Broker may change Listing Broker's status to act as a Transaction Broker without affecting Owner's obligation to pay the Fee, provided Listing Broker complies with the law. Listing Broker may also receive compensation from other parties without affecting Owner's obligation to pay the Fee.

4.5 EXCHANGE. In any exchange of the Property, if the Fee in this Contract is a percentage of the purchase price, the purchase price for the purpose of calculating the FEE shall be deemed to be the higher of the actual purchase price or eighty percent (80%) of the Listing Price written in section #1 of this Contract. In an exchange, Listing Broker may represent other (or all) parties and may receive compensation from other (or all) parties without affecting Owner's obligation to pay the Fee.

4.6 LEASE. **(This section shall not apply unless one of the blanks is filled in.)**

4.6.1 To pay Listing Broker, at the time of closing of any lease and from the proceeds of such lease, a professional fee ("Rental Service Fee") in the amount of: **(COMPLETE ONE)** \$_____ OR _____% of the total rental consideration agreed for Listing Broker's services in effecting a lease by finding a lessee ready, willing and able to lease according to terms acceptable to Owner.

4.6.2 To pay Listing Broker, at the time of any exercise of option, renewal or extension of such lease, the Rental Service Fee, prorated for any difference in the total rental consideration agreed.

4.6.3 If the Property is Sold to a lessee it shall be deemed to be a Sale subject to the terms of this Contract, even if such Sale occurs after the Expiration Date of this Contract.

4.7 PROTECTION PERIOD. To pay the Fee if the Property is Sold (and/or to pay the Rental Service Fee, if applicable, if the Property is leased) within _____ days (180 days if this is left blank) after the Expiration Date or any extension thereof to anyone to whom Listing Broker (or Other Brokers working through Listing Broker) has introduced the Property prior to the Expiration Date, provided Owner has received notice in writing, including the names of the prospective purchasers or lessees, before or upon termination of this Contract or any extension thereof (written offers shall constitute notice).

4.8 CONDITIONAL WITHDRAWAL. To pay a Conditional Withdrawal Fee of \$_____ if Owner notifies Listing Broker in writing during this Contract to take the Property off the market. This notice must be on the form required by the Association for Conditional Withdrawals. Upon receiving this written notice, all of Listing Broker's obligations to market the Property shall be suspended from the date of the notice until Owner notifies Listing Broker in writing on the same form to place the Property back on the market. A Conditional Withdrawal does not affect Owner's obligation to pay the Fee in case of a Sale or Lease if 4.6.1 is filled in, during the Conditional Withdrawal period.

4.9 FAILURE TO PERFORM. To pay the Fee in full upon demand if a Sale (or lease, if applicable) fails to close because of the refusal or failure of Owner to perform, or if Owner refuses to sign a contract for sale and purchase at the price and terms stated herein.

4.10 RETAINED DEPOSITS. If deposits are retained on behalf of Owner, to pay Listing Broker fifty percent (50%) thereof, but not exceeding the Fee, as full consideration for Listing Broker's services, including Listing Broker's costs, and the balance shall be paid to Owner.

5. LISTING BROKER'S OBLIGATIONS. In consideration of this exclusive listing, Listing Broker agrees:

5.1 MLS. To advertise the Property through the MLS.

5.2 ADVERTISING. To advertise the Property as Listing Broker deems advisable in local publications or other media.

5.3 OTHER BROKERS. To furnish appropriate information requested by Other Brokers, and to assist Other Brokers in preparing a sales contract and closing the transaction.

5.4 MLS CHANGES. To timely furnish to the MLS notice of any changes of information, provided sales contract prices shall not be disclosed until the Sale has closed.

5.5 LISTING BROKER'S ORGANIZATION. To direct the concentrated efforts of Listing Broker's organization in bringing about a Sale. Owner acknowledges this Contract does not guarantee the Sale or Lease of the Property, but it does guarantee Listing Broker will make an earnest and continued effort to Sell or Lease the Property until this Contract is terminated.

6. ADDITIONAL OFFERS. (CHECK ONE) Owner _____DOES _____DOES NOT agree that a fully executed contract for sale or lease releases Listing Broker from the responsibility to present subsequent offers.

Property Address: _____

7. MORTGAGE INFORMATION. Within ten (10) days after the effective date of this Contract, if applicable, Owner agrees to provide to Listing Broker information relating to any mortgage, lien, judgment or other item recorded on the Property including: existing balance, interest rate, payment and other terms and conditions. If Owner fails to provide any of these within the above time period, Listing Broker is authorized to obtain same, and Owner agrees to reimburse Listing Broker's reasonable out-of-pocket costs.

Name of Mortgage Lender: _____ Loan # _____

Lender's Address: _____

8. EXPENSE/INCOME/SERVICE CONTRACTS. Owner will provide Listing Broker with a current rent roll, income and expense breakdown, and any service contracts that will survive closing within ten (10) days of this contract date.

9. KEYS/LOCKBOX. Owner agrees to make the Property available to Listing Broker to show during reasonable hours. Owner has been informed that the release of keys and access devices to a Lockbox or to representatives of Listing Broker and Other Brokers will allow the Property to be more readily shown to prospective purchasers, but Owner's personal property may be more susceptible to theft or damage. Owner agrees that such release will be for Owner's benefit. Owner releases Listing Broker, Other Brokers, the Association and those working for or through them from all liability and responsibility in connection with any loss that may occur. To facilitate showing the Property, Owner authorizes Listing Broker to:

(CHECK IF APPLICABLE)

9.1 _____ Release keys and access devices to representatives of Listing Broker and Other Brokers for the purpose of showing the Property.

9.2 _____ Release keys and access devices to be installed in a Lockbox for showing the Property.

10. CONDOMINIUM. (CHECK IF APPLICABLE)

10.1 _____ YES _____ NO; the Property is a Condominium.

10.2 If the Property is a Condominium, Owner agrees to provide to Listing Broker the Declaration of Condominium, Articles of Incorporation, By-Laws, Rules of the Association and all amendments thereto, and any other required papers or items. If Owner fails to provide any of these within the above time period, Listing Broker is authorized to obtain same, and Owner agrees to reimburse Listing Broker's reasonable out-of-pocket costs.

11. INQUIRIES. Owner agrees to refer to Listing Broker all inquiries of Other Brokers or others interested in the Property.

12. SIGN. Listing Broker may place Listing Broker's appropriate transaction sign on the Property, if permitted, including a "sold" sign upon signing an acceptable sales contract.

13. DEPOSITS. Listing Broker is authorized to accept, receipt for and hold all money paid or deposited as a binder or deposit on the purchase of the Property, and the duties of Listing Broker and Other Brokers relative thereto shall be in accordance with the laws of the State of Florida and the regulations of the Florida Real Estate Commission.

14. CARE/CUSTODY OF THE PROPERTY. Listing Broker shall not have the responsibility for the care and custody of the Property and shall not be liable to Owner for any damages which occur to the Property unless caused by Listing Broker or by Listing Broker's employees or agents.

15. OTHER LISTINGS. Listing Broker may choose not to process this Contract through the MLS if the Property is currently listed with some Other Broker. Owner understands and agrees that if other valid listings exist, the existence of these other listings shall not reduce Owner's obligation to pay a Fee under this Contract, and Owner may become liable for additional professional fees as a result of those listings.

16. LAWS AFFECTING THE PROPERTY & THE TRANSACTION.

16.1 FIRPTA. Section 1445 of the Internal Revenue Code requires the withholding of ten percent (10%) of the sales price of real property for tax on sales or the withholding of appropriate amount for rentals collected on properties owned by certain foreigners. This tax will be withheld unless Affidavits of Compliance with the Internal Revenue Code or I.R.S. Qualifying Statements are provided to the purchaser prior to closing or to the renter prior to leasing.

Property Address: _____

16.2 **FAIR HOUSING.** Owner and Listing Broker shall comply with the 1968 Fair Housing Act as amended, which prohibits Owner and Listing Broker from discriminating on the basis of race, color, creed, national origin, familial status, handicap, or sex.

16.3 **OTHER LAWS.** Owner and Listing Broker shall comply with all applicable laws and regulations regarding the Property and any transaction.

17. **HEIRS.** This Contract shall be binding upon and apply to the heirs and personal and legal representatives of the parties.

18. **ATTORNEY FEES.** In connection with any arbitration or litigation arising out of this Contract, the prevailing party, whether Owner or Listing Broker, shall be entitled to recover all costs, including reasonable attorney's fees and legal assistant's fees, incurred in connection with such arbitration or litigation, including appellate and post judgement proceedings.

19. **ANTICIPATORY BREACH.** In the event of an anticipatory breach of this Contract by Owner, Listing Broker shall be entitled to a lien upon the real property which is the subject matter hereof for all sums due and owing to Listing Broker hereunder, and Listing Broker shall be entitled to file a Lis Pendens in the public records of the county in which the Property is located in connection with any litigation filed by Listing Broker to enforce Listing Broker's rights hereunder.

20. **FINAL AGREEMENT.** This Contract is the final agreement of the parties, and no agreements or representations, unless incorporated in writing into this Contract, shall be binding on any of the parties. Typewritten provisions shall supersede printed provisions, and handwritten provisions shall supersede typewritten provisions. Handwritten and/or typewritten provisions may be inserted on this form or attached as addendum(s) or amendments. The effective date of this Contract shall be the day it becomes fully executed by all parties.

21. **EASEMENTS.** Seller covenants and warrants that there is ingress and egress to subject property over public or private roads or easements.

22. **DISCLOSURE OF KNOWN DEFECTS.** If Owner knows of facts materially affecting the value of the Property, whether or not such facts are readily observable, Owner is under a duty to disclose these facts to the purchaser and to Listing Broker. If Owner knows of any such facts, Owner has disclosed them below or by written document referenced in this Contract.

23. **LAND USE/ZONING.** The property () does () does not conform to Land Use Plan and () does () does not conform to zoning. The Property () is () is not platted; if platted an () approved plat or () recorded plat; impact fees () paid, () bonded, () developers agreement, () other.

24. **ENVIRONMENTAL CONDITION.** Seller () is () is not aware of any prior or existing environmental condition, situation or incident on, at, or concerning the subject property or any adjacent property that may give rise as against Seller or the subject property to an action or to liability under any law, rule, ordinance or common law theory. If Seller is aware of any condition described above, Seller will provide information concerning the condition.

25. **WARRANTY.** Owner has fully reviewed this Contract and warrants to the best of Owner's knowledge the accuracy of the information provided by Owner, especially Owner's disclosure of known defects. Owner recognizes the Property will be offered to the public for sale, and the public will rely on the information contained in or referenced in this Contract.

26. **INDEMNITY.** Owner agrees to indemnify and hold harmless Listing Broker and those relying on Listing Broker from damages resulting from the inaccuracy of the information provided by Owner and from Owner's failure to disclose any facts materially affecting the value of the Property.

27. **SPECIAL CLAUSES.**

