

# North Texas Commercial Association of Realtors®

## EXCLUSIVE LISTING AGREEMENT

### FOR SALE OR LEASE

This Agreement is entered into by the undersigned owner(s) (the "Owner") and broker (the "Broker") regarding the real property described as \_\_\_\_\_

with a street address of \_\_\_\_\_ in \_\_\_\_\_ County, Texas, or as may be more particularly described on any attached **Exhibit "A", SURVEY AND/OR LEGAL DESCRIPTION**, together with all of the improvements and fixtures located upon such real property and owned by Owner (collectively, the "Property"). In consideration of the agreements contained herein, Owner and Broker agree as follows:

**1. Appointment.** Owner desires to retain the services of Broker to help Owner sell and/or lease the Property. Owner appoints Broker as Owner's agent for the Term (defined below), upon the terms and conditions contained in this Agreement, with the exclusive right to list and *[check all applicable boxes]* sell the Property, and/or lease the Property. Broker will assist Owner in the marketing of the Property and in the negotiating of a sale or lease agreement with any prospective purchaser or tenant (the "Prospect"). Broker may carry out Broker's duties under this Agreement through Broker's sales associates and other brokers ("Cooperating Brokers"). The terms "sell" or "sale" as used in this Agreement include an exchange.

**2. Listing Term.** The term of this Agreement (the "Term") commences on its execution and will expire on \_\_\_\_\_ (the "Expiration Date").

**3. Listing Price for Sale.** The listing sales price of the Property is \$\_\_\_\_\_.

**4. Listing Rent and Terms for Lease.** The listing rental and terms of the Property for lease are: \_\_\_\_\_.

Unless Owner agrees otherwise in a written lease, Owner will pay the following expenses *[check all applicable boxes]*: full services provided to tenant; real estate taxes; property insurance premiums; common area maintenance; maintenance of roof, foundation and structural soundness; utilities; or none (absolute net lease).

**5. Professional Service Fee.**

a. Owner agrees to pay Broker a professional service fee (the "Fee") as set forth below *[check all applicable boxes]*:

(i) **Sale.** (A) \_\_\_\_\_ percent (\_\_\_\_\_% ) of the Sales Price of the Property; or (B) \$\_\_\_\_\_. The term "Sales Price" means the gross sales price of the Property, including the value of any other property given in exchange. Owner shall cause the Fee to be paid to Broker at the closing of the sale.

(ii) **Lease.** (A) \_\_\_\_\_ percent (\_\_\_\_\_% ) of the aggregate rental provided in the lease (the "Rental"); or (B) \$\_\_\_\_\_. Owner shall cause the Fee to be paid to Broker: one-half upon execution of a lease agreement and one-half upon possession of the Property by the Prospect; or \_\_\_\_\_ . If the Property is leased to a Prospect procured by a Cooperating Broker, then the Fee specified above will be increased to 150% of the amount specified.

b. The Fee is payable in the county in which the Property is located. Execution by the Owner of a contract or lease on any price, rental or terms other than as listed in this Agreement will not preclude Broker from collecting the Fee based upon the actual price or rental. Owner will pay the Fee upon the sale, exchange, lease or transfer of a legal or equitable interest in the Property (including a contract for deed) to a Prospect during the Term or during the Protection Period. In the event of an exchange of the Property, Broker may receive a professional service fee from each of the parties to the transaction, and the amount of the Fee paid by Owner pursuant to any exchange will be determined by the greater of the listing sales price or the agreed value of the

Property as set forth in the exchange agreement. Owner hereby authorizes and instructs any title company escrow officer, or any other person handling the closing of any transaction, to pay and disburse the Fee directly to Broker out of the proceeds at the closing.

**6. Protection Period.** As to transactions that close after the Expiration Date, Owner will pay the Fee to Broker upon the closing of a transaction with a Listed Prospect (defined below) if, within one hundred eighty (180) days after the Expiration Date (the **“Protection Period”**), Owner: (i) executes a contract of sale or exchange; (ii) executes a lease agreement; or (iii) otherwise agrees to transfer any legal or equitable interest in the Property to a Listed Prospect. The term **“Listed Prospect”** means a Prospect named on a written list of the names of Prospects with whom Broker has had contact, not to exceed twenty (20) names, delivered to Owner within ten (10) days after the Expiration Date, provided Broker (or a Cooperating Broker) during the Term: (i) procured the Prospect; (ii) engaged in negotiations with the Prospect; or (iii) showed the Property to the Prospect. If there is a pending agreement to sell or lease the Property (a **“Pending Transaction”**) between Owner and a Prospect, including a contingency contract or an option agreement, and the Pending Transaction has not been closed and funded before the Expiration Date, then this Agreement will remain in effect as to the Pending Transaction until the earlier of: (i) the Pending Transaction closes, is funded, and the Fee is paid to Broker; or (ii) the Pending Transaction expires or is terminated, and is not renewed or reinstated. The prospective purchaser or tenant in any Pending Transaction will automatically be deemed to be a Listed Prospect, in addition to any that might be set forth on any list of Prospects Broker may deliver to Owner. If Owner enters into a listing agreement with another real estate broker with respect to the Property after the expiration of the Term, then Owner shall exclude the Listed Prospects from the other broker’s listing agreement during the Protection Period.

**7. Lease Renewal, Expansion or Sale.**

- a. **Renewal or Expansion.** Owner shall pay to Broker an additional professional service Fee covering the full period of any renewal, extension, expansion, lease or other agreement if, pursuant to the terms of any lease executed by Owner and a Prospect for all or part of the Property (the **“Lease”**), the Prospect, or the Prospect’s successors or assigns under the Lease: (i) exercises any right to renew or extend the term of the Lease (whether contained in the Lease or in any amendment, supplement, or other agreement); (ii) enters into a new lease or rental agreement with Owner for all or part of the Property; or (iii) enters into any lease, extension, expansion, renewal or other rental agreement with Owner demising to the Prospect, or the Prospect’s successors or assigns, any premises or property located on or constituting any part of any tract or parcel of real property owned by Owner adjacent to the Property or in the same building or project as the premises covered by the Lease. The additional Fee will be payable to Broker on the date of possession of the premises or property (and/or the additional premises or property) by the Prospect, or the Prospect’s successors or assigns. The additional Fee will be computed on the same basis as provided in Section 5 above as if a new lease had been made for the additional period of time and/or premises.
- b. **Sale to Tenant.** If a tenant who was a Prospect under this Agreement, or the tenant’s successors or assigns, purchases the Property at any time, whether pursuant to a purchase option contained in the Lease or otherwise, then Owner shall pay to Broker, at the closing of the sale, a professional service fee in cash equal to \_\_\_\_\_ percent (\_\_\_\_\_%) of the Sales Price.

**8. Owner’s Representations.** Owner represents to Broker and agrees as follows:

- a. **Title.** Owner: (i) is the sole fee simple owner of the Property; (ii) is authorized and has the capacity to execute and deliver this Agreement; (iii) has the right and authority to convey good and indefeasible title to the Property; and (iv) has the right and authority to sell and/or lease the Property.
- b. **Legal Action.** Owner shall notify Broker in writing if any actions are brought, or Owner receives any written notices pertaining to, any foreclosures, lien claims, litigation, or condemnation proceedings with respect to the Property or any part of the Property.
- c. **Disclosures.** To Owner’s knowledge, other than as disclosed to Broker in writing, the Property: (i) does not have any material latent, structural or construction defects; and (ii) is not contaminated with any toxic or hazardous substance in violation of applicable laws and regulations.
- d. **Cooperation.** Owner shall refer all inquiries about the Property to Broker, and Owner shall conduct negotiations with Prospects through Broker.

- e. **Indemnity.** Owner shall indemnify, hold harmless, and defend Broker, Broker's sales associates and subagents against any liability and expense (including, but not limited to, reasonable attorney's fees) due to: (i) acts of third parties; (ii) death of, or personal injury to, any person on the Property; (iii) loss or damage to any personal or real property; (iv) vandalism, theft, accident, or casualty; (v) any incomplete, incorrect, misleading or inaccurate information furnished by Owner about the Property; (vi) concealment by Owner of any material information about the Property; and (vii) any other cause of damage or loss arising out of the marketing, showing, sale or lease of the Property, except for Broker's gross negligence or willful misconduct.
- f. **Expenses.** Owner will promptly pay, or reimburse Broker for, those expenses incurred by Broker on behalf of Owner in advertising and marketing the Property, that are specifically authorized by Owner, after receipt by Owner of a written statement of the authorized expenses.

**9. Cooperating Brokers.** Owner authorizes Broker to cooperate with and use the services of Cooperating Brokers and their sales associates from time to time in performing the duties of Broker. Broker may share a portion of the Fee with any Cooperating Brokers, including Cooperating Brokers who may be acting as agents for Prospects. Owner shall pay the full amount of the Fee to Broker, and Broker may divide the Fee with Cooperating Brokers in proportions determined by Broker.

#### **10. Broker's Authority.**

- a. Broker shall use such marketing techniques and shall devote such time and effort on Owner's behalf as Broker reasonably deems appropriate and necessary to attempt to achieve the timely sale or lease of the Property. Owner gives Broker the exclusive right to place advertising signs on the Property and to remove all other real estate signs. Owner authorizes Broker to list the Property in a computer network.
- b. Broker is authorized to enter upon the Property at reasonable times to show the Property to Prospects, Cooperating Brokers, inspectors, agents and contractors.
- c. Broker may use the listing information, Sales Price, Rental and terms information for Broker's market evaluation, networking and appraisal purposes, and for disclosing to other persons as Broker may deem desirable, including disclosing the information in a computer network.

**11. Intermediary Relationship.** If Exhibit "B", Intermediary Relationship, is attached to this Agreement, then Owner authorizes Broker to act as an intermediary as set forth in that exhibit.

#### **12. Miscellaneous.**

- a. **Notices.** Any notice under this Agreement must be in writing and will be deemed delivered on the earlier of: (i) actual receipt, if delivered in person or by messenger with evidence of delivery; (ii) receipt of an electronic facsimile transmission ("**Fax**") with confirmation of delivery; or (iii) upon deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid, and properly addressed to the intended recipient at the address set forth below. Either party may change its address for notice purposes by delivering written notice of its new address to the other party in the manner set forth above.
- b. **Right to Claim a Lien.** Pursuant to Chapter 62 of the Texas Property Code, Broker hereby discloses Broker's right to claim a lien based on this Agreement. Owner shall include a provision in any Lease as to which Broker is entitled to a Fee pursuant to this Agreement that confirms the agreement to pay the Fee to Broker.
- c. **Limitation of Liability.** Broker's liability for Broker's breach of this Agreement, negligence, or otherwise, is limited to the return of the Fee, if any, paid to Broker pursuant to this Agreement.
- d. **Options.** If Owner enters into an option agreement to sell or lease all or part of the Property to a Prospect during the Term or during the Protection Period, and Owner collects payments as consideration for the option, then Owner shall pay to Broker, as option payments are received, a commission (**the "Option Commission"**) in the amount of one-third (1/3) of each option payment as compensation earned by Broker for services rendered under this Agreement. The Option Commission will be non-refundable if the Prospect does not exercise the option, but if the Prospect exercises the option then the sum of the Option Commission paid to Broker will be credited toward Owner's obligation to pay the Fee to Broker upon the sale or lease of the Property during the Term or during the Protection Period.

- e. **Transfer of Interest in Owner.** If Owner is a corporation, limited liability company, partnership or other entity, and the Property constitutes substantially all of the assets of Owner, then a transfer of a majority of the stock or other ownership interest in the entity will constitute a sale for purposes of this Agreement, and Owner shall pay the Fee to Broker based upon the value of the consideration given for the ownership interest transferred. This Agreement will continue in force after any such transfer, but the amount of any Fee paid to Broker as a result of any such transfer will be credited to the Fee payable to Broker upon any subsequent sale of the Property during the Term or during the Protection Period.
- f. **Related Persons.** For purposes of this Agreement, any person or entity related to a Prospect or a Listed Prospect by family or business relationship will also be deemed to be a Prospect or Listed Prospect.
- g. **Legal Expenses.** The prevailing party in any legal proceeding brought in relation to this Agreement is entitled to recover from the other party reasonable attorneys' fees, pre-judgment interest as allowed by law, and all other costs of collection, in addition to the Fee and any other recovery the prevailing party may be entitled to receive.
- h. **Severability.** If any provision of this Agreement is found by a court to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed to be deleted from this Agreement, and the remainder of this Agreement will continue to be valid and enforceable.
- i. **Binding Effect.** This Agreement is binding upon and will inure to the benefit of the parties to this Agreement and their successors, heirs and permitted assigns. This Agreement may not be assigned by either party without the written consent of the other party. This Agreement cannot be modified or terminated except by a written agreement executed by both parties. Each party acknowledges that they have read this Agreement and have had an opportunity to review it with an attorney of their choice.
- j. **Governing Law.** This Agreement will be governed by the laws of the State of Texas.
- k. **Description of Property.** If a more accurate description of the Property is set forth in any contract or Lease executed by Owner and any Prospect, or in any survey prepared pursuant to any contract or Lease, then the more accurate description will be deemed to be incorporated in this Agreement as the description of the Property.
- l. **Information About Brokerage Services.** Owner acknowledges receipt of the Information About Brokerage Services form attached to this Agreement as Exhibit "C".
- m. **Disclosure Notice.** If a completed Disclosure Notice is attached to this Agreement as Exhibit "D", then Owner has made a statement of the condition of the Property, to the best of Owner's knowledge, as set forth on the attached Exhibit "D".
- n. **Exhibits.** Any exhibits and addenda attached to this Agreement are incorporated as a part of this Agreement:

Exhibit "A" - Survey and/or Legal Description  
 Exhibit "B" - Intermediary Relationship Authorized  
 Exhibit "C" - Information About Brokerage Services  
 Exhibit "D" - Disclosure Notice  
 Exhibit "E" - \_\_\_\_\_

**This Agreement** is effective on the last date beneath the signatures below.

**OWNER**

**BROKER**

\_\_\_\_\_

\_\_\_\_\_

By [Signature]: \_\_\_\_\_

By [Signature]: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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