



TEXAS ASSOCIATION OF REALTORS®

COMMERCIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO LEASE

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1. PARTIES: The parties to this agreement (this Listing) are:

Landlord: SAMPLE

Address:
City, State, Zip:
Phone: Fax:
E-Mail:

Broker: SAMPLE

Address:
City, State, Zip:
Phone: Fax:
E-Mail:

Landlord appoints Broker as Landlord's sole and exclusive real estate agent and grants to Broker the exclusive right to lease the Property.

2. PROPERTY: "Property" means the following real property in Texas along with all its improvements:

Building or Complex:
Address: SAMPLE
City: County: SAMPLE Zip:
Legal Description of land on which Property lies (Identify exhibit if described on attachment):

The Property contains approximately square feet of rentable area. The rentable area of the Property may not equal the actual useable area within the Property and may include an allocation of common areas in the building or complex.
(If the Property is a condominium, attach Condominium Addendum.)

3. LISTING PRICE:

A. Landlord instructs Broker to market the Property at the following base rental rate: \$

B. At the rental rate stated in Paragraph 3A, Broker is to market the Property under the following terms:

(1) Landlord will lease the Property for a term of not fewer than months and not more than months.

Commercial Listing concerning _____

- (2) Expense Reimbursements calculated under the following method: *(Check only one box)*:
 - (a) Base-year expenses: A tenant is to pay the tenant's pro rata share of the following expenses for the Property that exceed the amount of base-year expenses for: taxes, insurance, CAM, and _____ .
 - (b) Expense-stops: A tenant is to pay the tenant's pro rata share of the following expenses for the Property that exceed \$ _____ per square foot per year for: taxes, insurance, CAM, and _____ .
 - (c) Net: A tenant is to pay the tenant's pro rata share of expenses for the following expenses: taxes, insurance, CAM, and _____ .

Unless Landlord provides Broker with written definitions otherwise, the phrases "base-year expenses", "expense stops," "CAM," "insurance", and "taxes" have the meanings assigned to those terms in the Expense Reimbursement Addendum published by the Texas Association of REALTORS®.

- (3) Percentage Rate equal to _____ % multiplied by tenant's gross sales that exceed _____ .
- (4) Parking Rental calculated as follows: _____ .
- (5) Rent Increases in the base rent calculated as follows: _____ .
- (6) Tenant Improvement Allowance that Landlord will provide as follows: _____ .
- (7) _____ .

4. **TERM:** This Listing begins on _____ and ends at 11:59 p.m. on _____ .

5. **BROKER'S FEE:**

A. Fee: When earned and payable, Landlord will pay Broker a fee of:

- (1) _____ % of all base rents to be paid over the term of the lease and the same percentage of the following items to be paid over the term of the lease: expense reimbursements, and _____ .
- (2) _____ .

- B. Earned: Broker's fee is earned when any one of the following occurs during this Listing:
- (1) Landlord leases or agrees to lease all or part of the Property to anyone on any terms;
 - (2) Broker, individually or in cooperation with another broker, procures a tenant ready, willing, and able to lease all or part of the Property on the terms stated in Paragraph 3 or on any other terms acceptable to Landlord;
 - (3) Landlord grants or agrees to grant to another person an option to lease all or part of the Property on any terms; or
 - (4) Landlord breaches this Listing.

C. Payable:

(1) Once earned, Broker's fee is payable according to the following schedule: *(Check one box only.)*

- (a) in one payment upon _____ .
- (b) one-half of Broker's fee at the time Landlord and a tenant execute a lease and the remainder on the date the lease commences.
- (c) _____

_____ .

(2) If Landlord breaches this Listing or refuses to lease the Property to a prospective tenant after Broker's fees have been earned, Broker's fees are immediately payable in full.

D. Other Fees:

(1) Renewal Fees:

(a) Tenants Procured by Broker: If, during this Listing or after it ends, Landlord extends, renews, or expands a lease with a tenant procured by Broker, either individually or in cooperation with another broker, Landlord will pay Broker an additional fee of:

- (1) _____ % of all base rents to be paid over the term of the lease and the same percentage of the following items to be paid over the term of the lease: expense reimbursements, and _____ .
- (2) _____ .

(b) Existing Tenants: If, during this Listing, Landlord extends, renews, or expands a lease with a tenant who is occupying all or part of the Property on the date this Listing begins, Landlord will pay Broker an additional fee of:

- (1) _____ % of all base rents to be paid over the term of the lease and the same percentage of the following items to be paid over the term of the lease: expense reimbursements, and _____ .
- (2) _____ .

In addition to their ordinary meanings, "extensions," "renewals," and "expansions" include new leases for more, less, or different space in the building or complex in which the Property is located. The fees under Paragraph 5D(1)(a) and (b) are earned and payable in full at the time the extension, renewal, or expansion commences.

(2) Fees in Event of a Sale:

- (a) If, during this Listing, Landlord sells the Property, Landlord will pay Broker an additional fee equal to _____ % of the sales price for the Property.
- (b) If Landlord sells the Property to a tenant procured by Broker not later than the time the tenant vacates the Property, Landlord will pay Broker an additional fee equal to _____ % of the sales price for the Property.

"Sell" means to sell, agree to sell, convey, agree to convey, exchange, agree to exchange, transfer, or agree to transfer a legal or equitable interest (excluding a lease or rental) either by written or oral agreement or by option. The fee for a sale under this Paragraph 5D(2) is earned at the time Landlord agrees to sell the Property and is payable at the closing of the sale regardless of whether closing occurs during the term of this Listing or after its termination.

- (3) Service Providers: If Broker refers Landlord or a prospective tenant to a service provider (e.g., mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(3) is in addition to any other compensation Broker may receive under this Listing.

- (4) Transaction Fees and/or Reimbursable Expenses: _____

E. Protection Period:

- (1) "Protection period" means that time starting the day after this Listing ends and continuing for _____ days.
- (2) Not later than 10 days after this Listing ends Broker may send Landlord written notice specifying not more than _____ names of persons whose attention Broker has called to the Property during this Listing. If Landlord agrees to lease or sell all or part of the Property during the protection period to a person named in the notice or to a relative or business associate of a person named in the notice, Landlord will pay Broker, upon the execution of the lease or upon closing of the sale (whichever applies), the amount Broker would have been entitled to receive if this Listing were still in effect.
- (3) "Person" means any person in any capacity whether an individual or entity.
- (4) This Paragraph 5E survives termination of this Listing.

- F. County: All amounts payable to Broker are to be paid in cash in _____ County, Texas.

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

6. **EXCLUSIONS:**

- A. Under a prior listing agreement Landlord is obligated to pay another Texas licensed broker a fee if Landlord leases or sells all or part of the Property before _____ to any of the following persons: _____

 _____ (named exclusions).

B. If Landlord enters into a contract to lease or sell all or part of the Property to a named exclusion before the date specified in Paragraph 6A, Landlord will not be obligated to pay Broker the fees under Paragraph 5 of this Listing, but Landlord will pay Broker, upon the closing of the sale or upon execution of the lease, a fee equal to:

- (1) _____ % of the sales price if Landlord sells the Property;
- (2) _____ % of the total base rents to be paid over the term of the lease if Landlord leases the Property and the same percentage of the following items to be paid over the term of the lease:
 expense reimbursements, _____ ; and
- (3) _____

C. If Landlord agrees to lease or sell all or part of the Property to a named exclusion, Broker will will not assist Landlord in negotiating and closing the transaction to the named exclusion.

7. **ACCESS TO THE PROPERTY:** Authorizing access to the Property means giving permission to another person to enter the Property, disclosing any security codes necessary to enter the Property to such person and lending a key to the Property to such person. To facilitate the efficient showing and lease of the Property, Landlord instructs Broker and Broker's associates to: (i) access the Property at reasonable times; (ii) authorize other brokers, inspectors, appraisers, lenders, surveyors, engineers, and repair persons to enter the Property at reasonable times; and (iii) duplicate keys to facilitate convenient and efficient showings.

8. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective tenants. If the other broker procures a tenant who leases the Property, Broker will offer to pay the other broker from Broker's fee under Paragraph 5:

- A. if the other broker represents the tenant: _____ % of Broker's fee that is paid under Paragraph 5A; and
- B. if the other broker is a subagent: _____ % of Broker's fee that is paid under Paragraph 5A.

9. **INTERMEDIARY:** (Check A or B only.)

A. **Intermediary Status:** Broker may show the Property to interested prospective tenants or buyers who Broker represents. If a prospect who Broker represents offers to lease or buy the Property, Landlord authorizes Broker to act as an intermediary and Broker will notify Landlord that Broker will service the parties in accordance with one of the following alternatives.

- (1) If a prospect who Broker represents is serviced by an associate other than the associate servicing Landlord under this Listing, Broker may notify Landlord that Broker will: (a) appoint the associate then servicing Landlord to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Landlord; and (b) appoint the associate then servicing the prospect to the prospect for the same purpose.
- (2) If a prospect who Broker represents is serviced by the same associate who is servicing Landlord, Broker may notify Landlord that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospect; and (b) appoint the associate servicing the Landlord under this Listing to the Landlord for the same purpose.
- (3) Broker may notify Landlord that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

B. **No Intermediary Status:** Landlord agrees that Broker will not show the Property to prospects who Broker represents.

- Notice:** If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:
- ◆ may not disclose to the prospect that Landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by Landlord;
 - ◆ may not disclose to Landlord that the prospect will pay a price greater than the price submitted in a written offer to Landlord unless otherwise instructed in a separate writing by the prospect;
 - ◆ may not disclose any confidential information or any information Landlord or the prospect specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
 - ◆ may not treat a party to the transaction dishonestly; and
 - ◆ may not violate the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Landlord except as authorized by Landlord or required by law. Broker may not disclose to Landlord any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for lease, procure a tenant, and negotiate the lease of the Property.
- B. In addition to other authority granted by this Listing, Broker may:
- (1) advertise the Property by means and methods as Broker determines is appropriate in any media, including but not limited to:
 - (a) placing a "For Lease" sign or similar marketing sign on the Property; and
 - (b) creating and placing information about the Property (including interior and exterior photographs or videos):
 - (i) on the Internet on Broker's website and on other websites as Broker determines;
 - (ii) in any advertisements whether in print or electronic media; and
 - (iii) into listing services that may publicize the information on the Internet or by other means;
 - (2) reproduce, display, and distribute information about the Property, including the information described under Paragraph 11B(1), for the purposes of marketing the Property;
 - (3) furnish comparative marketing and lease information about other properties to prospects;
 - (4) disseminate information about the Property to other Brokers and prospects, including applicable disclosures, notices, or other information that Landlord is required to make under law or a contract;
 - (5) accept security deposits and other funds in trust in accordance with the terms of a lease or sale for all or part of the Property;
 - (6) disclose the terms of the lease or sale to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property is placed;
 - (7) place information about this Listing and a transaction for the Property on an electronic platform (an electronic platform is typically an Internet-based system where professionals related to the transaction, such as title companies and lenders, may receive, view, and input information); and
 - (8) advertise that Broker "leased" or "sold" the Property after the execution of a lease or closing of a sale of the Property in which Broker was involved.

NOTICE: Any submission of information to a listing service must be made in accordance with the listing service's rules.

- C. Broker is not authorized to execute any document in the name of or on behalf of Landlord concerning the Property.
- D. Photographs, videos, and compilations of information submitted to a listing service are the property of the listing service for all purposes.

12. REPRESENTATIONS:

- A. Except as provided otherwise in this Listing, Landlord represents that:
 - (1) Landlord has fee simple title to and peaceable possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to lease the Property;
 - (2) Landlord is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
 - (3) no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
 - (4) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;
 - (5) the Property is not subject to the jurisdiction of any court;
 - (6) Landlord owns sufficient intellectual property rights in any materials which Landlord provides to Broker related to the Property (for example, brochures, photographs, drawings, or articles) to permit Broker to reproduce and distribute such materials for the purposes of marketing the Property or for other purposes related to this agreement; and
 - (7) all information relating to the Property Landlord provides to Broker is true and correct to the best of Landlord's knowledge.
- B. Landlord and Broker must disclose any known condition on the Property that would materially affect the health or safety of an ordinary tenant. *(Check (1) or (2) only.)*
 - (1) Landlord is not aware of any condition on the Property that would materially affect the health or safety of an ordinary tenant, except as stated in the attached Property Condition Statement. Landlord authorizes Broker to furnish prospective tenants and other brokers with a copy of the Property Condition Statement.
 - (2) Except as otherwise provided in this Listing, Landlord is not aware of:
 - (a) any subsurface: structures, pits, wastes, springs, or improvements;
 - (b) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (c) any environmental hazards or conditions that materially affect the Property;
 - (d) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (e) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
 - (f) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (g) any threatened or endangered species or their habitat on the Property;
 - (h) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (i) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (j) any condition on the Property that violates any law or ordinance; and
 - (k) any condition on the Property that would affect the health or safety of an ordinary tenant.

(List any exceptions to (a)-(k) in Special Provisions or an addendum.)

13. LANDLORD'S ADDITIONAL PROMISES: Landlord agrees to:

- A. cooperate with Broker to facilitate the showing and marketing of the Property;
- B. not negotiate with any prospective tenant who may contact Landlord directly, but refer all prospective tenants to Broker;
- C. not enter into a listing agreement with another broker for the lease of the Property to become effective during this Listing;
- D. not enter into a listing agreement for the sale of all or part of the Property with another broker to become effective during this listing without Broker's written permission;
- E. provide Broker with copies of the following, if any, relating to the Property: a current rent roll, all leases including any amendments, architectural plans and drawings, renderings, survey, a current operating statement, environmental inspection reports, engineering reports, and other relevant information that Broker may request during this Listing;
- F. advise Broker of any tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to lease the Property;
- H. amend any applicable notices and disclosures if any material change occurs during this Listing; and
- I. at Landlord's expense, remove from the Property all:
 - (1) "For Lease" (or similarly worded) signs other than Broker's signs; and
 - (2) "For Sale" signs from the Property unless the Property is listed for sale with another broker.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Landlord must notify Landlord's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker, including but not limited to injuries or losses caused by:
 - (1) other brokers, inspectors, appraisers, lenders, contractors, surveyors, engineers, and other persons who are authorized to access the Property;
 - (2) acts of third parties (for example, vandalism and theft);
 - (3) freezing water pipes;
 - (4) a dangerous condition on the Property; and
 - (5) the Property's non-compliance with any law or ordinance.
- C. Landlord agrees to indemnify and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, and expenses:
 - (1) that arise from Landlord's failure to disclose any material information about the Property;
 - (2) that are caused by Landlord giving incorrect information to Broker, other brokers, or prospects;
 - (3) that arise from any claim for misuse of intellectual property in any materials or information that Landlord provided to Broker related to the Property or this agreement; or
 - (4) that are otherwise caused by Landlord or Landlord's negligence.

15. SPECIAL PROVISIONS:

16. DEFAULT: If Landlord breaches this Listing, Landlord is in default and will be liable to Broker for the amount of the Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing. If a rental rate is not determinable in the event of a breach, the Listing Price will be the rental rate for the purpose of calculating Broker's fee. If Broker breaches this Listing, Broker is in default and Landlord may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the costs of mediation equally.

18. ATTORNEY'S FEES: If Landlord or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party may recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA: Addenda or information that are part of this Listing are:

- A. Information About Brokerage Services
- B. Property Description Exhibit identified in Paragraph 2
- C. Condominium Addendum
- D. Commercial Property Condition Statement
- E. Information About On-Site Sewer Facility
- F. Information About Special Flood Hazard Areas
- G. _____

20. AGREEMENT OF THE PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Landlord's obligations to pay Broker an earned fee is binding upon Landlord and Landlord's heirs, administrators, executors, successors, and permitted assigns.
- D. Joint and Several: All Landlords executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. Severability: If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. Partial Leases or Sales: If Landlord leases or sells part of the Property before the date this Listing ends, this Listing will continue for the remaining part of the Property through the term of this Listing.
- H. Notices: Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS® or any listing service. Broker's fees are negotiable.**

Commercial Listing concerning _____

- B. The Property must be made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**
- C. Broker cannot give legal advice. This is a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

Landlord: SAMPLE
By: _____
Printed Name: _____
Title: _____ Date: _____

Landlord: _____
By: _____
Printed Name: _____
Title: _____ Date: _____

Broker: SAMPLE
By: _____
Printed Name: _____
Date: _____