Exclusive Right of Sale Listing Agreement

FLORIDA ASSOCIATION OF REALTORS®

This Exclusive Right of Sale Listing Agreement ("Agreement") is between

_____ ("**Seller**") and

_____ ("**Broker**").

1. AUTHORITY TO SELL PROPERTY: Seller gives **Broker** the EXCLUSIVE RIGHT TO SELL the real and personal property (collectively "Property") described below, at the price and terms described below, beginning the _____ day of _____, _____, and terminating at 11:59 p.m. the _____ day of _____, _____ ("Termination Date"). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. **Seller** and **Broker** acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin or any other factor protected by federal, state or local law. **Seller** certifies and represents that he/she/it is legally entitled to convey the Property and all improvements.

2. DESCRIPTION OF PROPERTY:

(a) Real Property Street Address: _____

_____

Legal Description: _____

_____ ❑ See Attachment _____

(b) Personal Property, including appliances: _____

_____

_____ ❑ See Attachment _____

(c) Occupancy: Property ❑ is ❑ is not currently occupied by a tenant. If occupied, the lease term expires _____.

3. PRICE AND TERMS: The property is offered for sale on the following terms, or on other terms acceptable to **Seller**:

(a) Price: _____

(b) Financing Terms: ❑ Cash ❑ Conventional ❑ VA ❑ FHA ❑ Other _____

❑ **Seller** Financing: **Seller** will hold a purchase money mortgage in the amount of $_____ with the following terms: _____

❑ Assumption of Existing Mortgage: Buyer may assume existing mortgage for $_____ plus an assumption fee of $_____. The mortgage is for a term of _____ years beginning in _____, at an interest rate of _____% ❑ fixed ❑ variable (describe) _____.

Lender approval of assumption ❑ is required ❑ is not required ❑ unknown. Notice to **Seller**: You may remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your lender to determine the extent of your liability. **Seller** will ensure that all mortgage payments and required escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing.

(c) Seller Expenses: Seller will pay mortgage discount or other closing costs not to exceed _____% of the purchase price; and any other expenses **Seller** agrees to pay in connection with a transaction.

4. BROKER OBLIGATIONS AND AUTHORITY: Broker agrees to make diligent and continued efforts to sell the Property until a sales contract is pending on the Property. **Seller** authorizes **Broker** to:

(a) Advertise the Property as **Broker** deems advisable in newspapers, publications, computer networks, including the Internet and other media; place appropriate transaction signs on the Property, including "For Sale" signs and "Sold" signs (once **Seller** signs a sales contract); and use **Seller's** name in connection with marketing or advertising the Property;

(b) Obtain information relating to the present mortgage(s) on the Property.

(c) Place the property in a multiple listing service(s) (MLS). **Seller** authorizes **Broker** to report to the MLS/Association of Realtors® this listing information and price, terms and financing information on any resulting sale. **Seller** authorizes **Broker**, the MLS and/or Association of Realtors® to use, license or sell the active listing and sold data.

(d) Provide objective comparative market analysis information to potential buyers; and

(e) (Check if applicable) ❑ Use a lock box system to show and access the Property. A lock box does not ensure the Property's security; **Seller** is advised to secure or remove valuables. **Seller** agrees that the lock box is for **Seller's** benefit and releases **Broker**, persons working through **Broker** and **Broker's** local Realtor Board/Association from all liability and responsibility in connection with any loss that occurs. ❑ Withhold verbal offers. ❑ Withhold all offers once **Seller** accepts a sales contract for the Property.

(f) Act as a transaction broker.

5. SELLER OBLIGATIONS: In consideration of **Broker's** obligations, **Seller** agrees to:

(a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.

(b) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.

 © 2003 Florida Association of REALTORS® All Rights Reserved

(c) Inform **Broker** prior to leasing, mortgaging or otherwise encumbering the Property.
(d) To indemnify **Broker** and hold **Broker** harmless from losses, damages, costs and expenses of any nature, including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's** negligence, representations, misrepresentations, actions or inactions, (2) the use of a lock box, (3) the existence of undisclosed material facts about the Property, or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation from **Broker**. This clause will survive **Broker's** performance and the transfer of title.
(e) To perform any act reasonably necessary to comply with FIRPTA (Internal Revenue Code Section 1445).
(f) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. **Seller** represents there are no material facts (building code violations, pending code citations, unobservable defects, etc.) other than the following: _____

_____

Seller will immediately inform **Broker** of any material facts that arise after signing this Agreement.
(g) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements and other specialized advice.

6. COMPENSATION: Seller will compensate **Broker** as specified below for procuring a buyer who is ready, willing and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to **Seller**. **Seller** will pay **Broker** as follows (plus applicable sales tax):

(a) _____% of the total purchase price OR $_____, no later than the date of closing specified in the sales contract. However, closing is not a prerequisite for **Broker's** fee being earned.
(b) _____ ($ or %) of the consideration paid for an option, at the time an option is created. If the option is exercised, **Seller** will pay **Broker** the paragraph 6(a) fee, less the amount **Broker** received under this subparagraph.
(c) _____ ($ or %) of gross lease value as a leasing fee, on the date **Seller** enters into a lease or agreement to lease, whichever is soonest. This fee is not due if the Property is or becomes the subject of a contract granting an exclusive right to lease the Property.
(d) **Broker's** fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by sale, lease, exchange, governmental action, bankruptcy or any other means of transfer, regardless of whether the buyer is secured by **Broker**, **Seller** or any other person. (2) If **Seller** refuses or fails to sign an offer at the price and terms stated in this Agreement, defaults on an executed sales contract or agrees with a buyer to cancel an executed sales contract. (3) If, within _____ days after Termination Date ("Protection Period"), **Seller** transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom **Seller**, **Broker** or any real estate licensee communicated regarding the Property prior to Termination Date. However, no fee will be due **Broker** if the Property is relisted after Termination Date and sold through another broker.
(e) Retained Deposits: As consideration for **Broker's** services, **Broker** is entitled to receive _____% of all deposits that **Seller** retains as liquidated damages for a buyer's default in a transaction, not to exceed the paragraph 6(a) fee.

7. COOPERATION AND COMPENSATION WITH OTHER BROKERS: Broker's office policy is to cooperate with all other brokers except when not in **Seller's** best interest: ❑ and to offer compensation in the amount of _____% of the purchase price or $_____ to **Buyer's** agents, who represent the interest of the buyers, and not the interest of **Seller** in a transaction; ❑ and to offer compensation in the amount of _____% of the purchase price or $_____ to a broker who has no brokerage relationship with the **Buyer** or **Seller**; ❑ and to offer compensation in the amount of _____% of the purchase price or $_____ to Transaction brokers for the **Buyer**; ❑ None of the above (if this is checked, the Property cannot be placed in the MLS.)

8. BROKERAGE RELATIONSHIP:

IMPORTANT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.

You should not assume that any real estate broker or sales associate represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.

TRANSACTION BROKER NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.

As a transaction broker, _____ and its associates, provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

 © 2003 Florida Association of REALTORS® All Rights Reserved

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

_____	_____	_____
Date	**Signature**	**Signature**

9. CONDITIONAL TERMINATION: At **Seller's** request, **Broker** may agree to conditionally terminate this Agreement. If **Broker** agrees to conditional termination, **Seller** must sign a withdrawal agreement, reimburse **Broker** for all direct expenses incurred in marketing the Property and pay a cancellation fee of $_____ plus applicable sales tax. **Broker** may void the conditional termination and **Seller** will pay the fee stated in paragraph 6(a) less the cancellation fee if **Seller** transfers or contracts to transfer the Property or any interest in the Property during the time period from the date of conditional termination to Termination Date and Protection Period, if applicable.

10. DISPUTE RESOLUTION: This Agreement will be construed under Florida law. All controversies, claims and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first attempting mediation under the rules of the American Arbitration Association or other mediator agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows: **Arbitration:** By initialing in the space provided, **Seller** (_____) (_____), Listing Associate (_____) and Listing Broker (_____) agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration or litigation (including appeals and interpleaders) will pay its own fees, costs and expenses, including attorney's fees, and will equally split the arbitrators' fees and administrative fees of arbitration.

11. MISCELLANEOUS: This Agreement is binding on **Broker's** and **Seller's** heirs, personal representatives, administrators, successors and assigns. **Broker** may assign this Agreement to another listing office. Signatures, initials and modifications communicated by facsimile will be considered as originals. The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees and other categories of potential or actual transferees.

12. ADDITIONAL TERMS: _____

Date: _____ **Seller:** _____ Tax ID No: _____

Telephone #'s: Home_____ Work_____ Cell_____ Fax:_____

Address:_____E-mail: _____

Date: _____ **Seller:** _____ Tax ID No: _____

Telephone #'s: Home_____ Work_____ Cell_____ Fax:_____

Address:_____E-mail: _____

Date: _____ **Authorized Listing Associate or Broker:** _____

Brokerage Firm Name: _____ Telephone: _____

Address: _____

Copy returned to **Seller** on the _____ day of _____, _____ by: ❑ personal delivery ❑ mail ❑ facsimile.

The copyright laws of the United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or computerized forms.