

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

Seller _____
gives County South Business Brokers, **Winkie & Associates Realty (Firm)**, the exclusive right to sell the

- _____ **Business**
- _____ **Business with Property**
- _____ **Property**

known as _____

located at _____,

at a price and terms acceptable to Seller. Seller represents that as of the date of this agreement there is no other listing contract with any other firm and that there is no other purchase contract pending and there are no leases or rights pertaining to the property and/or business other than what is disclosed on this agreement.

A. Property Legal Description

_____ See attached Exhibit _____ for Legal description.

B. The term "Business" as used herein includes all assets and Goodwill owned by Seller that are related to and/or connected with such business unless excluded and listed here:

1) TERMS

For a period beginning on the date signed by parties and extending until midnight on ___/___/_____
(Listing Period), Firm shall have the exclusive right to sell the above mentioned Business and/or Property. In the event that Seller or any owner, affiliate company or party related to Seller enters into an agreement for a sales transaction prior to the expiration of the listing period and the agreement results in the consummation of a transaction to sell, lease, or otherwise convey the Business and/or Property after the expiration, Seller agrees to pay the full commission to County South at closing. **County South** does not have to be the "procuring cause" of any such sale to entitle it to a commission.

- A. If within 365 days after the expiration of this agreement or any time prior to the expiration of any option granted Seller to such Buyer or prospect (Protection Period), Seller directly or indirectly sells or agrees to sell to a party to whom Firm (or any agent acting for or through Firm) has communicated concerning the property or business during the term of this agreement (Registered Prospect), Seller shall pay firm the same commissions to which Firm would have been entitled had the sale been made during the term of this Agreement; Provided that the names of prospects are delivered or postmarked to Seller within 30 days after the expiration of the Listing Period. This provision shall not be affected by any agreement Seller signs with another agency.
- B. In the event Seller sells or otherwise disposes of its partial interest in the Property, Seller shall remain liable for payment of the commissions provided for in this Agreement unless the purchaser or transferee assumes all of such obligations in writing and Firm agrees in writing to such assumption.
- C. Seller's ownership in the Business and/or property is one hundred percent (100%) unless otherwise noted herein. In the event the Business or Property is exclusively listed for sale with another agency after the

expiration of this Agreement and Seller directly or indirectly leases or agrees to lease or sells or agrees to sell the Property to a County South registered prospective Buyer during the Protection Period, then the Seller shall pay to the Firm the same commission to which Firm would have been entitled according to this agreement.

D. Additional Terms:

2) PRICE AND COMMISSION

PLEASE NOTE: IN REGARD TO REAL ESTATE, COMMISSION AMOUNT, FORMAT, OR RATES ARE NOT FIXED BY LAW AND ARE DETERMINED BY EACH BROKER AND BROKER FIRM INDIVIDUALLY AND CAN BE NEGOTIATED BETWEEN THE FIRM & THE CLIENT.

- A. **County South** shall be entitled to a commission of _____ of the **Purchase Price** but not less than _____ and shall include interest of the going rate if not paid at time of closing.
- B. **County South** will have earned its commission if either; (1) The Business and/or property or any part thereof is conveyed, leased, or transferred to another party during the term of this agreement, Protection Period, RE Protection Period or lease period; (2) A ready willing and able buyer is procured by a County South agent or anyone else; (3) The Client refuses an all cash offer at the Listing Terms. (4) The Client enters into an agreement to sell the business and /or property prior to the expiration of the Listing Period and the agreement results in a transaction after the expiration of the Listing Period. (5) Seller enters into an agreement for a partnership in which case the commission due County South would be either the minimum commission or the commission percentage entered in "2) A." above whichever is greater.
- C. **Commission to be paid in full at earlier of:** (1) In cash by Seller at closing; (2) Seller's failure to sell the Business and/or property or any part thereof including but not limited to refusal to sign an Offer to Purchase Agreement at the price and terms stated herein; (3) The Seller's default on an executed sales contract for the Business and/or property or any part thereof; or (4) Seller's breach of this agreement.
- D. **Listing Terms**

Price: \$ _____

Other Terms:

3) LEASE PROTECTION PROVISION

If the intention of the Seller is to sell the business including the Real Estate, and the Property is leased during the Listing Period hereof, it is acknowledged that the Firm shall nonetheless earn a commission upon the execution of such lease agreement. The commission will be 10% of the sales transaction and 6% of the lease value for the first 5 years of the lease agreement.

4) REAL ESTATE SALE PROTECTION PERIOD (RE protection period)

If the Seller or any owner or affiliate company or party related to Seller owns the Real Estate but the intention of the Seller is to sell the Business only and does not include the Real Estate in the initial offering, then if during the Listing Period or RE protection period hereof, the Real Estate is sold to a buyer produced by the Firm, it is acknowledged that the Firm shall earn a commission upon the execution of a sale transaction that includes the Real Estate. The commission will be 10% of the sales transaction if not previously stated here _____. The RE protection period for selling to the business buyer will be 5 years.

5) **BANKRUPTCY**

In the event that the Property or Business comes under the jurisdiction of a bankruptcy court, Seller shall notify Firm immediately. The Seller shall take the necessary steps to gain court approval of the sale unless Firm elects to terminate this agreement.

6) **ADVERTISING AND DATABASE LISTINGS**

- A. In connection with the marketing and lease/sale of the Business and/or Property, Seller authorizes and directs Firm: (CHECK ALL APPLICABLE SECTIONS)
- _____ To place a sign on the Property. All other signs marketing the Property for lease or for sale shall be removed.
 - _____ To submit pertinent information concerning the Business and/or Property to any listing service or information exchange of which Firm is a member.
 - _____ Seller authorizes Firm to advertise the Business and/or Property in non-Internet media, and to permit other firms to advertise the Business and/or Property in non-Internet media to the extent and in such manner as Firm may decide.
- B. Seller authorizes Firm to display information about the Business and/or Property on the Internet either directly or through a program of any listing service or information exchange of which the Firm is a member and to display information about the Property on the Internet in accordance with the listing service or information exchange rules and regulations. Seller authorizes the display of (Check ALL applicable sections):
- ___ Address of the Property and/or Business
 - ___ Details of the Business and/or Property
 - ___ Photos of the Property and/or Business
- C. Seller acknowledges and understands that there are risks associated with allowing access to and disseminating information about the Property and/or Business that are not within the reasonable control of the Firm, including but not limited to: Control of visitors during or after a showing or after information is given, inappropriate use of information about the Property placed on the Internet.

7) **INDEMNIFICATION**

Seller represents and warrants that the information set forth herein and any other information as may be furnished to Firm by Seller, including but not limited to information relating to financial and environmental matters, is correct to the best of Sellers knowledge. Firm shall have no obligation or responsibility for checking or verifying any such information, except as may be required by law. Seller agrees to indemnify and hold harmless Firm from any damages, costs, attorneys' fees and other expenses as a result of any personal injury or property loss or damage to Seller or any other person not caused by Firm's willful misconduct or gross negligence arising directly or indirectly out of any Marketing services. Seller shall indemnify Firm for any and all loss or damage sustained by Firm as a result of (i) Firm's or Sellers furnishing such information to a Buyer or Tenant or anyone else; and (ii) withholding information from Broker and/or Buyer concerning the presence of storage tanks on, or the presence or release of hazardous substances, materials and wastes on or from, the Property or neighboring Property when it has affected this Property.

8) **PARTIES AND BENEFITS**

This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Seller agrees that at any time during the term of this Agreement, Firm may either assign Firm's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Firm's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State. In the event of any such

assignment or transfer, Seller may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Seller's intent to terminate this Agreement.

9) INTELLECTUAL PROPERTY RIGHTS

Seller grants to Firm and any listing or commercial database service in which Firm or its agents participate a non-exclusive, perpetual license to use any information, photographs, drawings or other intellectual property that Seller provides to Firm, including the rights to display, reproduce or make derivative works from the intellectual property.

10) BROKER COOPERATION/AGENCY RELATIONSHIP

- A. Brokerage Relation: Broker may serve as a dual agent, representing both Seller and the Buyer. For any Buyer which is brought to Firm from outside the office of the Listing Broker, Listing Broker will serve as Seller's Agent. In either case, all commissions earned by Listing Broker/Firm shall be paid by the Seller

- B. Firm has advised Seller of Firm's general company policy regarding cooperating with Subagents, buyer/tenant agents or dual agents. Seller has received and read the state specific required real estate publication and authorizes the Firm to compensate and cooperate with the following (Firm agrees to inquire of all agents at the time of initial contact as to their agency status): (CHECK ALL APPLICABLE AGENCIES)
 - _____ subagents of Seller
 - _____ buyer/tenant agents
 - _____ dual agents representing both Seller and the Buyer/Tenant in the same transaction

- C. _____ (Initial) Seller acknowledges having received an explanation of the types of agency relationships and Agency Disclosure Form that are offered by Brokerage Firm as specified by the prevailing State regulations.

11) DUAL AGENCY

- A. **Authorization** (Initial only ONE).
 - _____ Seller authorizes the Firm to act as a dual agent, representing both the Seller and the buyer/tenant, subject to the terms and conditions set forth in this paragraph below.
 - _____ Seller desires exclusive representation at all times during this agreement and does NOT authorize Firm to act in the capacity of dual agent. If Seller does not authorize Firm to act as a dual agent, the remainder of this section shall not apply.

- B. **Disclosure of Information.** In the event Firm serves as a dual agent, Seller agrees that without permission from the party about whom the information pertains, Firm shall not disclose to the other party the following information:
 - (1) That a party may agree to a price, terms, or any conditions of sale or lease other than those offered;
 - (2) The motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and

- (3) Any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

C. **Firm's Role as Dual Agent.** If Firm serves as agent for both Seller and a Buyer/tenant in a transaction involving the Property, Firm shall make every reasonable effort to represent Seller and buyer/tenant in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and buyer/tenant. Seller understands and acknowledges that:

- (1) Prior to the time dual agency occurs, Firm will act as Seller's exclusive agent;
- (2) In its separate representation of Seller and buyer/tenant, Firm may obtain information which, if disclosed, could harm the bargaining position of the party providing such information to Firm;
- (3) Firm is required by law to disclose to Seller and buyer/tenant any known or reasonably ascertainable material facts. Seller agrees Firm shall not be liable to Seller for:
 - i. Disclosing material facts required by law to be disclosed, and
 - ii. Refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but may benefit the other party.

D. **Seller's Role** While Firm acts as a dual agent, Seller understands and acknowledges that:

- (1) Seller has the responsibility of making Seller's own decisions as to what terms are to be included in any lease or purchase and sale agreement with a buyer/tenant client of Firm;
- (2) Seller is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Seller and Buyer/tenant and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;
- (3) Seller has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;
- (4) Seller may seek independent legal counsel to assist Seller with the negotiation and preparation of a lease or purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a lease or purchase and sale agreement.

E. **Seller agrees** to indemnify and hold Firm harmless against all claims, damages, losses, expenses or liabilities, other than violations of the Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Seller shall have a duty to protect Seller's own interests and should read any lease or purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Seller wants included in said agreement.

12) COUNTERPARTS; ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY; ATTORNEYS FEES; GOVERNING LAW

This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same origin document. Copies of original signature pages of this agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement contains the entire agreement of the parties and supersedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto. No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were

not included. If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding. This Agreement shall be governed by and construed in accordance with the laws of the state where Business and/or Property is located.

In the event a deposit, down payment, and/or earnest money deposit are forfeited; it shall be split fifty percent (50%) to the Seller and fifty percent (50%) to the Broker.

THE BROKER SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT. FURTHER, BROKER WILL CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OF ANY PARTY OR PROSPECTIVE PARTY TO THIS AGREEMENT.

Seller hereby acknowledges having read this agreement and received a copy. Seller represents and warrants to Firm that it has the right to offer the Business and/or Property for lease and/or sale and if same is found not to be true Seller acknowledges that the commission due Firm stated herein would constitute reasonable liquidated damages. Signee for a business entity agrees to be personally responsible along with the business entity for the commission due Firm.

SELLER - Business

Individual

_____ (SEAL)

Date: _____

Individual

_____ (SEAL)

Date: _____

Business Entity

by: _____ (SEAL)
Title: _____

Date: _____

SELLER - Property

Individual

_____ (SEAL)

Date: _____

Individual

_____ (SEAL)

Date: _____

Business Entity

by: _____ (SEAL)
Title: _____

Date: _____

Firm:

County South Realty & Business Brokers

Winkie & Associates Realty

2505 Jefferson Davis Hwy Sanford, NC 27332

Broker: _____

License No: _____

Date _____