

EXCLUSIVE SALES LISTING AGREEMENT

Paragraph 1. Establishes the Term, Offering Price and Terms, and Identity of the Property Listed.

1. In consideration of the listing for sale of the real property hereinafter described (the "Property") by CB RICHARD ELLIS , INC. ("Broker") and Broker's agreement to use its best efforts to effect a sale of same, the undersigned ("Owner") hereby grants to Broker the exclusive right to sell the Property for a period commencing [A] and ending midnight [A], (the "Term"), at a price of [B] upon the following terms: [B]. The Property is situated in the City of [C], County of [C], State of [C], and is further described as [C]. References herein to the Property shall be understood to include portions of the Property.

1. Term, Price, and Property

A. Term: *Sets out beginning and ending of the period during which CBRE has the exclusive right to sell the property.*

It is essential that a fixed term be established; under most if not all states' laws, an exclusive listing without a fixed date of termination is unenforceable by the broker. If state law requires such a date, then the listing will not be included in the listing system without one.

B. Price & Terms: *Sets out the sales price, as well as any terms (e.g., assumption of financing, etc.) upon which the owner is willing to sell the property.*

The establishment of a fixed price and terms upon which the owner is willing to sell is vital to marketing the property and to proving performance of the terms of the listing, in the event that the owner refuses to sell. Under paragraph 2 below, for example, Broker has earned a commission if it procures an offer "at the price and on the terms above stated," even if the owner refuses to accept those terms. If no fixed price or terms are set forth, the owner is free to reject any offer without liability for commission.

If fixed price or terms are stated in the listing, it is also advisable to then add the words "or other terms acceptable to Owner" in case the owner agrees to take a lesser or greater price.

No property shall be listed or offered at a price higher than that which the owner has agreed, in writing, to accept.

•Objections and How to Handle Them:

Sometimes the owner refuses to set a price and insists that the price be stated "as determined by owner." Point out that in order to be included in the listing system, the owner must authorize CBRE to offer the property for a specific sum. Absence of an asking price hampers marketing, limits the property's exposure to the market, and may inhibit an interested party from making an offer.

Occasionally the actual acreage or square footage of the property to be sold is uncertain and the owner will not set a price until it is established. In such a circumstance, use of a price "per acre/square foot, total price subject to determination of acreage/footage," should be used.

C. Identity of the Property: *Requires a clear, unambiguous description of the property subject to the listing agreement.*

In addition to the city, county, and state in which the property is located, the property may be identified by Assessor's Parcel Number (APN) or Permanent Index Number (PIN), metes and bounds description, or street address, but whatever method is used, it must be precise. If the property has a common name which does not include the street address (e.g., "Creekside Apartments"), both this common description **and** a street address should be included.

•Objections and How to Handle Them:

Occasionally the property description is unclear; as, for example, when the property subject to sale is to be determined by a subsequent survey. Use as specific a general description as possible (e.g., "that property bounded on the west by Elm Street, on the north by Main Street, and on the east and south by the dirt road"), or an approximation (e.g., "approximately 4.5 acres, the precise property lines and actual acreage to be determined by a survey conducted by Owner").

Some appellate cases have denied the broker his commission if the commission or listing agreement failed to describe the property with enough detail to distinguish that property or available space from all other property.

Paragraph 2. Events Which Trigger CBRE's Right to Compensation.

2. **[A]** Owner agrees to pay Broker a sales commission in accordance with Broker's Schedule of Sale and Lease Commissions (the "Schedule"), a copy of which is executed by Owner, attached hereto and hereby made a part hereof. **[B]** This commission shall be earned for services rendered if, during the Term: **[B.1]** (a) the Property is sold to a purchaser procured by Broker, Owner or anyone else; **[B.2]** (b) a purchaser is procured by Broker, Owner, or anyone else who is ready, willing and able to purchase the Property at a price and on the terms above stated, or on any other price and terms agreeable to Owner; (c) **[B.3]** any contract for the sale of the Property is entered into by Owner; (d) **[B.4]** Owner removes the Property from the market or the Property is transferred due to eminent domain or the threat thereof, foreclosure, or conveyance in lieu of foreclosure; (e) **[B.5]** Owner contributes or conveys the Property to a partnership, joint venture or other business entity; (f) **[B.6]** Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property. **[C]** Broker is authorized to co-operate with and to share its commission with other licensed real estate brokers, regardless of whether said brokers represent prospective purchasers or act as Broker's subagents.

2. Owner's Agreement to Pay: Triggering Events

A. Agreement to Pay: *States clearly that the owner will pay CBRE for specified performance*

•Objections and How to Handle Them:

Exceptions to the Listing: Commonly the owner may want to except from the listing all obligation to pay upon a transaction involving certain prospects, (a) for which he is obligated under a prior listing, (b) with whom he has previously dealt, (c) who are already known to the owner as possibilities, or (d) with whom owner is affiliated.

(a) Prior listing obligation: Find out the terms under which the owner is obligated to the prior broker; it may be that the "safety net" does not cover the transaction, is of short duration, or that the prospect was not registered as required. If the prior broker's protection may expire during your listing, place a time limit on the exception: "No commission on a sale to XYZ Corp., provided that such sale is fully consummated before [date]; however, such exception shall expire on said date and any sale thereafter shall be result in a full commission to Broker hereunder."

(b) Prior dealings not subject to prior listing: Find out how close they are. If a deal is imminent, your marketing efforts may well be wasted; on the other hand, if they have been negotiating for several months without success, you can argue that due to prior lack of success, your involvement is necessary to bring the deal to consummation, for which you should be paid. One alternative is to set up an expiration date for the exception, as described above; another is to provide for a graduated scale of commission, such as: No commission if sold within 30 days of the listing, 50% commission if sold 30-60 days from listing, and a full commission if sold after 60 days to the listed exception.

(c) Mere possibilities should never be exceptions to the listing. A broad list of exceptions to an exclusive listing effectively turns it into an exclusive agency, permitting the owner to deal freely with the excepted prospects.

(d) Any exclusions should be specifically identified. You should not accept the name of a broker as an exclusion, since this could exclude one or more prospects procured by that broker.

(e) "Affiliates" is a broad, ambiguous term. While an internal transfer from one subsidiary to another may be an acceptable exception, transfer among loosely affiliated entities is not. Instead, list the excepted transferees specifically, and limit the excepted transfers to those which the owner controls.

B. What Triggers the Owner's Obligation to Pay: *The owner is obligated to pay if any of the following events occurs during the Term:*

1. ***"(a) the Property is sold to a purchaser procured by Broker, Owner or anyone else;"***

This language makes this an exclusive right to sell listing, under which CBRE is entitled to compensation whether the buyer is procured by CBRE, by the owner, by an outside broker, or otherwise. It therefore covers all sales.

•Objections and How to Handle Them:

Beware of the owner who wants to change this provision! Any change alters the very character of the listing: If buyers procured by owner are excluded, the listing is an "exclusive agency agreement," giving the owner the right to market and sell it himself without liability for commission. A listing of this type makes CBRE and the owner competitors. If only buyers procured by CBRE are included, it is an "open listing," and CBRE would have to prove procurement in order to qualify for compensation.

2. ***"(b) a purchaser is procured by Broker, Owner, or anyone else who is ready, willing and able to purchase the Property at the price and on the terms above stated, or on any other price and terms agreeable to Owner;"***

This language provides for compensation, even if the owner changes his mind about consummating the sale after a ready, willing and able buyer is procured. "Ready, willing and able" means a buyer prepared to buy the property, agreeable to the terms set out in the listing (or other terms to which the owner has agreed), and having sufficient funds and/or assets to accomplish the purchase.

In order for this provision to apply, the listing (or an offer from the owner) must set out a fixed price and terms, and the buyer's offer must conform strictly to those terms without contingencies, other than those contingencies to which the owner has agreed (either in the listing, such as those in paragraph 7 below, or in any other offer signed by the owner). Furthermore, this provision would not apply if, after entering into contract, the buyer defaults, as this would demonstrate that the buyer was not "ready, willing and/or able" to perform.

•Objections and How to Handle Them:

The most frequent objection to this provision is the owner's insistence that he will only pay a commission if a sale is consummated, therefore seeking to delete the provision entirely. There may be business reasons for agreeing to such a demand. However, the agent should stress that, having performed by delivery of a ready, willing and able buyer, the broker should be compensated for his efforts.

Owners frequently object that they should not have to pay a commission if the buyer defaults. Point out that if the buyer defaults, he is thereby not "ready, willing and able," and therefore no compensation would generally be due. If necessary to clarify, add: "If no transaction is consummated, then no commission shall be due,

unless such nonconsummation is due to Owner's default under a contract of sale."

3. ***"(c) any contract for the sale of the Property is entered into by Owner;"***

This provision, like the preceding one, provides for compensation even if the owner changes his mind about consummating the sale, or defaults. The contract may have contingencies, may call for closing months or even years after the termination of the listing, and need not conform to the price and terms set out in the listing agreement for this provision to apply.

•Objections and How to Handle Them:

The most frequent objection to this provision is the owner's demand that he will only pay a commission if a sale is consummated, therefore seeking to delete the provision entirely. There may be business reasons for agreeing to such a demand. However, the agent should stress that, having performed by securing a fully ratified contract, the broker should be compensated for his efforts. If necessary to amend, add: "If no transaction is consummated, then no commission shall be due, unless such nonconsummation is due to Owner's default under a contract of sale."

4. ***"(d) Owner removes the Property from the market or the Property is transferred due to eminent domain or the threat thereof, foreclosure, or conveyance in lieu of foreclosure;"***

This provision addresses several possible outcomes which may not be foreseeable at the time a property is listed, and assures that if these events occur during the term, CBRE's efforts have not been wasted:

a. ***"Removal from the market"*** may include the owner's **explicit** early cancellation of the listing, for whatever reason: change of heart, cancellation of the listing, or because he wants to sell the property directly to an interested buyer kept waiting in the wings for CBRE's listing to expire. It may, under certain circumstances, also apply where there has been an **implicit** cancellation of the listing, such as when the owner lets the listing expire while refusing to consider any offer presented. The purpose is to protect the broker who has diligently performed, particularly where the owner is not acting in good faith.

•Objections and How to Handle Them:

Owners often want to retain the absolute right to change their minds, demanding deletion of this provision. One of the means by which owners often seek to retain the right to remove the property from the

market is to insist upon a right of cancellation. A right to cancel the listing on 10 days notice is nothing more than a 10 day listing: point out that CBRE will not be inclined to devote substantial marketing effort and resources on such a listing. If the owner does insist on a cancellation right, the following provisions should be included: (a) cancellation for cause only; (b) CBRE must be given reasonable [e.g., 10 days] written notice of intent to cancel and the reasons therefor, and (c) an opportunity to cure any defaults or defects in performance. If it is necessary to accept a "not for cause" right of cancellation, consider recoupment of advertising/marketing expense: One alternative is to provide that if the listing is cancelled within the first 30 days, CBRE shall be entitled to recover 100% of its marketing expenses; if cancelled 30-60 days after execution, 75% of its marketing expenses, etc. In some cases a partial commission may be negotiated for early termination.

b. ***"Transfer due to eminent domain or the threat thereof"*** includes both the forced taking by eminent domain [governmental taking], and a voluntary sale entered into between the owner and the governmental entity as a negotiated resolution under threat of an eminent domain proceeding.

•Objections and How to Handle Them:

The owner may object to inclusion on the basis that he does not control governmental taking, and therefore the broker's services are not necessary. Point out that the broker's services are useful in establishing a value in the eminent domain proceedings, and in negotiating fair terms for a negotiated compromise under threat of eminent domain.

c. ***"Transfer due to ... foreclosure, or conveyance in lieu of foreclosure"***: Calls for a commission based, under the Schedule, on consideration including the release of existing liabilities.

•Objections and How to Handle Them:

The owner may object on the grounds that losing the property in foreclosure results in no benefit to the owner, or evidences the total failure of the marketing venture. Point out that transfer in lieu of foreclosure often may benefit the owner, by avoiding existing liabilities. An owner who objects to this provision may have a private agenda which should be explored: there may be foreclosure imminent, or the owner may wish to use superficial marketing efforts to forestall foreclosure, with no real intent to sell. If foreclosure is imminent, the opportunity may not be worth the effort of marketing; if the broker does undertake marketing in such a context, he should be compensated for that effort.

5. *"(e) Owner contributes or conveys the Property to a partnership, joint venture or other business entity;"*

This provision applies where the owner, rather than selling the property outright, forms or joins a partnership, joint venture, or other entity with another, using the value of his property as his contribution, in exchange for which he receives (directly or indirectly) the benefit of contributions by the other partners or joint venturers.

•Objections and How to Handle Them:

This provision is often misunderstood and therefore objections are raised, that the owner isn't divesting himself of the property and/or not receiving any cash in exchange for it, and therefore should not have to pay a commission. The response to such an objection is to clarify its application, stressing that the scenario entails exchanging the property for another valuable property right or interest in the same manner that selling it constitutes an exchange for cash. Explanation of this provision should be dovetailed with explanation of the Schedule which details how the commission is calculated in such a transfer.

Sometimes owners want to carve out an exception, to permit transfer to any other entity with which it is affiliated. "Affiliated" is a very loose and ambiguous term; exceptions to the operation of this provision must be specifically identified. Point out that if a transfer occurs to an entity in which the Owner is involved, the commission is based, under the Schedule, upon the value of the interest divested, excluding the value retained. If an exception for this type of transfer is included, it should be limited to entities in which Owner has a controlling interest, and/or identify specific entities excepted from the listing.

6. *"(f) Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property."*

•Objections and How to Handle Them:

This provision is often misunderstood and therefore objections raised, that the owner isn't divesting himself of the property and/or not receiving any cash in exchange for it, and therefore should not have to pay a commission. The response to such an objection is to clarify its application: For example, suppose that the owner is a partnership whose subject property constitutes 50% of its assets; it needs cash and puts the property on the market. A purchaser steps forward with interest in buying the property, but upon investigation concludes that it

would prefer to work with the owner in developing the property. Instead of sale of the property, the purchaser buys a 50% interest in the partnership. The broker's services resulted in accomplishment of the owner's goals: it has achieved the necessary cash infusion; and the broker should therefore be paid a commission which is calculated on the 50% interest sold to the purchaser.

C. Authorization for Broker Cooperation. *Expressly permits Broker to work with others, have other brokers expose the property to the market, and to share its commission.*

•Objections and How to Handle Them:

On occasion, an owner may want to compel a specific a commission split, i.e., 50% to cooperating brokers. That requirement should be resisted, by pointing out that the broker should have discretion to share its commission as appropriate and that some situations -- such as a referral or one in which the cooperating broker does nothing to facilitate the sale -- do not warrant a 50% fee. One compromise solution: an agreement that the commission shall be shared in a manner that is "customary" in the industry, as such custom takes into consideration variables in individual transactions.

Paragraph 3. *Provides for commissions on exchanges and options, and specifies how commissions are paid on both the option consideration and sale if the option is exercised.*

3. **[A]** As used in this Agreement the term "sale" shall include an exchange of the Property, and also the granting of an option to purchase the Property. **[B]** Owner agrees that in the event such an option is granted, Owner shall pay Broker a sales commission in accordance with the schedule on the price paid for the option and for any extensions thereof. This commission shall be paid upon receipt by Owner of any such payment(s). **[C]** In the event that such option is exercised, whether during the Term or thereafter, Owner shall also pay Broker a sales commission on the gross sales price of the Property in accordance with the Schedule. **[D]** Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by Owner to Broker on account of such option payments shall be credited against the commission payable to Broker on account of the exercise of the option.

3 *Commissions for exchanges and options*

- A. Options and Exchanges Included in Definition of "Sale."**
- B. Payment of Option Commission When Option Granted:** *Specifies that the commission is earned when the option is granted, and due when any option or option extension payments are made.*
- C. Payment of Sales Commission When Option Exercised:** *Specifies that whenever the option is ultimately exercised, commission shall be payable on the gross sales price.*
- D. Coordination of Option Commission with Sales Commission.** *Specifies that if the option price is credited to the sale price, then the option commission is likewise credited to the sale commission.*

•Objections and How to Handle Them:

The most frequently raised objection lies in the payment of a commission for the option itself. Clarification of the terms is the best response: point out that option payments are consideration to the owner as a direct result of the broker's performance, and should be compensated. If the sales price includes those option payments, the option commissions will be credited against the sales commission, avoiding a double recovery for the broker. If the sales price expressly does not include those option payments, then the owner has effectively achieved a "premium price," on which he should pay the full commission.

Occasionally the owner will agree to pay a commission on options during the term, but refuse to pay on the exercise of the option occurring after the end of the term. That is an unjust result, since exercise of an option entails only the consummation of a deal whose terms were negotiated in the granting of the option. Stress: CBRE's performance brought about the sale, and it should be paid on the sale.

Paragraph 4. *Provides post-termination commission protection.*

4. **[A]** Owner further agrees that Owner shall pay Broker a commission in accordance with the Schedule if, within one hundred twenty (120) calendar days after the expiration or termination of the Term, the Property is sold to, or Owner enters into a contract of sale of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of the Term. **[B]** Broker is authorized to continue negotiations with such persons or entities. **[C]** Broker agrees to submit a list of such persons or entities to Owner no later than fifteen (15) calendar days following the expiration or termination of the Term, provided, however, that if a written offer has been submitted then it shall not be necessary to include the offeror's name on the list.

4 Safety Net

A. Commissions Payable If Negotiations Occur Within Safety Net, Even Though Closed After the Safety Net Expires. *The "safety net" provides that a commission will be paid on transactions commenced during the term, with anyone (1) to whom the property was submitted [whether by Broker, owner, or anyone else], or (2) with whom negotiations took place. The transaction need not be consummated during the 120 day safety net; but negotiations must "continue, commence or resume" during the net, and lead to consummation at some time thereafter.*

•Objections and How to Handle Them:

This provision generates considerable discussion and revision, and efforts to limit its application. The most frequent areas of dissent are as follows:

Owner only wants to pay if the transaction is consummated within the safety net period. The owner may object that the provision is unreasonable because it could apply to a transaction closed years after the listing expires. In response, point out that the broker's job is to bring in the buyer/tenant, and once done, the broker should be paid irrespective of a delay in close: "He who shakes the tree is entitled to its fruit." For example, often all the deal points are negotiated quickly, but escrow is delayed because of permits, governmental regulations, or other matters outside the broker's control; in other instances, the

negotiation of the deal points themselves may depend on matters which are likewise out of the broker's control; and it would be inequitable to terminate the broker's rights merely due to such delay, after the broker's work has been successfully accomplished.

Owner wants to limit application of the safety net. Owners often object that they will not recognize a "telephone book" registration. The owner may insist that the safety net be limited to a more narrowly defined class of prospects, such as: (1) only those with whom broker negotiated (eliminating those to whom the property was only "submitted"); (2) those with whom written negotiations occurred during the term; (3) those who made bona fide offers during the term; (4) those shown as interested on written periodic progress reports during the term; (5) a limited number of prospects; or other similar limiting conditions. The response is the same as that above: if the broker's activity bears fruit, then the broker should be compensated for it. Furthermore, if only those with whom "negotiations" occur are covered, there is a disincentive for the broker to continue to submit the property up until the expiration of the term, as it would be unlikely that a submittal on the final days of the term would result in negotiations, or a bona fide offer, during the term of the listing.

Suggestions for acceptable limitations on the safety net.

"...leading to a sale of the Property to any person or entity (including his/her/its successors, assigns or affiliates) ...

"...with whom Broker has negotiated (either directly or through another broker or agent, or to whom the Property has been submitted *and who has expressed interest in the Property* prior to the expiration or termination of the Term. ..."

"...with whom Broker has negotiated *in writing* ..."

"...who has responded to Broker's marketing and/or advertising prior to the expiration or termination of the Term..."

"..who has evidenced interest in the Property by responding to any submittal of the Property, either orally or in writing;". . . [include if necessary]: "evidence of which shall be provided by Broker at the conclusion of the Term, which may include [but shall not be limited to] an offer, proposal, written correspondence, or record of telephonic response and/or inquiry by or on behalf of the registered prospect, or other similar evidence. . . ."

"procured by Broker (either directly, or through an outside broker) during the Term..."

B. Authorization for Broker's Continued Participation in Negotiations on Post Term Transactions.

•Objections and How to Handle Them:

Commonly the owner either wants to control negotiations itself, or retain a new broker who will conduct the negotiations. Such a suggestion should be firmly resisted and avoided if possible. As a practical matter, if the agent is not involved in the negotiations, whether or not the contract technically protects the broker, then the broker is far less likely to be paid. Objections will be raised later that "you weren't involved," or that the new broker is entitled to be paid for the effort it put into the consummated transaction. Stress that the prospect was procured through your efforts, and you should therefore be entitled to see it through to consummation. Often there is a relationship between CBRE and the prospect such that CBRE's continued involvement may make the transaction more likely to come to fruition, and that aspect should be stressed as well. See also paragraph 19 below. Acceptable compromises: That "owner shall keep broker advised of the status of negotiations with such persons"; or that "broker shall, at owner's direction, continue negotiations with such prospects." Resist any absolute bar upon continued involvement in negotiations after the expiration of the term; and note that *any* limitation on the broker's involvement in future negotiations is subject to the understanding that if CBRE represents the buyer in those negotiations, it may continue to do so in post-termination negotiations, and clarify in such a case whether CBRE continues to represent the seller in those transactions.

C. Registration List. *Provides for a means to identify those prospects subject to the protections of the safety net; and excepts from the registration requirement those who have made a written offer.*

•Objections and How to Handle Them:

The major objection raised is to "telephone book" registration, tying in with efforts to limit the safety net, and response thereto, as discussed above. Sometimes, in addition, the owner seeks to shorten the time for registration. Whatever period is agreed, the agent should carefully calendar that date with a "tickler" and be certain that all prospects are registered in a timely fashion.

Rarely, an owner objects to the exception for those who have made written offers as too vague. If necessary, clarify: "written offers have been delivered to owner" or "written offer by way of purchase agreement and deposit receipt, letter of intent to purchase or lease the property, or proposal to purchase or lease, whether or not acceptable in

whole or in part by owner." If this is not acceptable to the owner, agents must take care to register these prospects as well.

Paragraph 5. Provides for commission in the event that, instead of a sale, the property is leased.

5. Owner further agrees that **[A]** If a lease of the Property is entered into during the Term to anyone, or **[B]** If, within one hundred twenty (120) calendar days after the expiration or termination of the Term, the Property is leased to, or Owner enters into a contract to lease the Property with, or negotiations continue, resume or commence and thereafter continue leading to the lease of the Property to any person or entity as described in paragraph 4 above, Owner shall pay Broker a leasing commission in accordance with the Schedule.

5 Lease Commissions

•Objections and How to Handle Them:

The owner may seek to strike this provision on the grounds that "I'm hiring you to sell it, not lease it; I don't want a lease!" Response: Explain the purpose of the provision: it is not to make this a lease listing, but is meant to provide for the possibility that a different transaction may ensue as a result of the marketing efforts. For example, a "sale" of property may turn into a ground lease, or pad lease; or the prospect procured by CBRE may be a user who would prefer to lease the entire parcel rather than buy it. In any case, if the owner's financial needs are met through the transaction, then CBRE should be paid even if the nature of the transaction changes as an unexpected opportunity presents itself.

It may be necessary (for example, in sale of shopping center, or multitenant investment) to clarify that the agreement is not intended to constitute a leasing listing agreement, and that this provision is only intended to apply if a lease of [specify percentage, e.g., 80%, or all] of the property is made to a single tenant.

Paragraph 6. Establishes that the commission is payable at the earlier of the listed events.

6. Commissions shall be payable hereunder when earned or at closing, closing of escrow, recordation of deed, lease execution, or taking of possession by the purchaser or tenant.

6 When Payable

•Objections and How to Handle Them:

The most frequent revision offered to this provision is to state that no commission shall be earned unless the transaction is "consummated"; in a sale transaction this may translate to close of escrow (eliminating "when earned"). The term "consummated" is problematical for lease transactions and should be avoided. Problems are encountered when the date for payment of a commission is unduly delayed: the parties may have developed relationship friction, suffered buyers/seller's remorse, or decided after the fact that the broker's services were not worth nearly what they contracted to pay. Any efforts to tie the earning of a commission to the ultimate success of the transaction should be resisted, as the broker is no guarantor of the ultimate satisfaction of the parties with the transaction. Translate: strive to be paid when the services have been completed, and avoid hinging compensation to any later events than necessary.

Paragraph 7. Further sets out acceptable terms of sale.

7. Unless otherwise provided herein, the terms of sale shall be, at the option of the purchaser, either cash or cash to any existing loan. Any offer may contain normal and customary contingencies such as those relating to the condition of the Property, title report, and timing of closing.

7 Acceptable Contingencies

The purpose of this provision is to protect the commission in the event that an offer consistent with the terms of the listing is procured, but the owner refuses to sell. Under paragraph 2(b) above, CBRE would be entitled to compensation, **unless** the offer is contingent or otherwise includes terms not authorized by the owner.

This provision authorizes the inclusion of normal contingencies, inclusion of which will not defeat CBRE's claim for compensation in the event the owner refuses, for reasons of its own, to sell the property.

•Objections and How to Handle Them:

Sometimes owners make this their "wish list" and include all the terms they desire, such as "all cash, close within 30 days, no inspection or other contingencies." Reasonable clarification of the terms is useful; but overexhaustive detail may limit the marketing or the buyer's flexibility. The broker cannot quote a price or terms contrary to the listing; if asked, in this example, the broker would have to tell the buyer and/or his broker that the seller demands an all cash noncontingent sale closed within 30 days -without implying that the seller would be willing to do otherwise.

Paragraph 8. Antidiscrimination.

8. Owner and Broker agree that the Property will be offered in compliance with all applicable anti-discrimination laws.

8 Nondiscrimination

CBRE policy adds:

"All employees of the Company will serve all customers in a courteous, professional manner regardless of the customer's race, color, sex, religion, marital status, ancestry, national origin, physical disability or sexual orientation."

"Salespersons will not solicit or induce the sale, lease, or listing for sale or lease of any type of property on the grounds, wholly or in part, of loss of value due to increase in crime, decline of the quality of the schools, or the present or prospective entry into the neighborhood of a person or persons of another race, color, sex, religion, ancestry, or national origin. Deviations from this provision are not permitted."

•Objections and How to Handle Them:

Believe it or not, some owners object to this provision on the stated grounds that "That's the law anyway, why does it have to be in the listing?" More sophisticated owners may also object on the grounds that their unknowing violation of the law might make them additionally liable to CBRE for breach of contract. Beware of anyone who is not willing to agree to comply with the law! Explore with the owner the reasons behind any objections, and point out that whether or not this

provision is included in the contract, it is illegal to discriminate and that CBRE will not engage in any activity not in compliance with these laws. Finally, many state license laws require inclusion of this language in all listing agreements.

Paragraph 9. Establishes the rights and obligations of the broker and the owner in the sale process with respect to cooperation, negotiations, advertising, deposits, and legal counsel.

9. [A] Owner agrees to cooperate with Broker in bringing about a sale of the Property and to refer immediately to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker. [B] Broker is authorized to accept a deposit from any prospective purchaser and to handle it in accordance with the instructions of the parties unless contrary to applicable law. [C] Broker is exclusively authorized to advertise the Property and, exclusively, to place a sign(s) on the Property if, in Broker's opinion, such would facilitate the sale of the Property. [D] Owner and its counsel will be responsible for determining the legal sufficiency of a purchase and sale agreement and other documents relating to any transaction contemplated by this Agreement.

9 Owner's Obligations and Broker's Rights

A. Owner's Obligation to Keep Broker Involved and to Refer All Inquiries.
These terms prohibit the owner from negotiating with any prospect without the broker's knowledge and involvement and requires the owner to refer to CBRE all inquiries received.

•Objections and How to Handle Them:

Sometimes owners prefer to conduct the negotiations themselves, and want the broker to stay out of the negotiations. However, continued involvement in the negotiation process is essential to concluding the transaction and getting paid; stress with the owner that the broker brings valuable experience to his aid in the negotiations. One acceptable compromise is to provide that the broker is to "remain involved" in all negotiations, thus permitting the owner to take the leading role.

Resist any attempt to delete the owner's obligation to refer all inquiries. This language will ensure that CBRE is advised of all inquiries, and CBRE can determine if they are serious or not. If any owner hides an inquiry received during the listing and after expiration of the listing, negotiates

a direct deal, CBRE would have a valid commission claim against the owner.

Resist any absolute bar upon continued involvement in negotiations after the expiration of the term; and note that *any* limitation on the broker's involvement in negotiations is subject to the understanding that if CBRE represents the buyer in those negotiations, no restrictions upon its involvement in negotiations apply; and clarify in such a case whether CBRE continues to represent the seller in those negotiations.

B. Handling of Deposits. *Clarifies that the scope of the agency includes limited responsibility for handling funds.*

C. Advertising and Signage Rights. *Establishes broker's exclusive right to advertise and to place signs on the property. Note that this provision does not require the placement of signs, but permits them if the broker determines they would facilitate the sale of the property.*

•Objections and How to Handle Them:

The most commonly sought amendment to these provisions is to require specific advertising (e.g., placement of ads in specified newspapers or other media, at specified intervals, or of a specified type or size), and/or to require placement of signs on the property. The owner should be gently but firmly reminded that the broker is the person best qualified to identify and utilize the most effective means of advertising, and must have the discretion to select and use such methods in his own best judgment, particularly inasmuch as the broker bears the full cost of such advertising without any guarantee of recoupment. If the owner insists on an unusually extensive advertising and marketing program, the agent should explore with the owner sharing in those costs, either by way of contributions to the marketing budget, or recoupment of a portion of the costs in the event that no transaction is consummated, or in like manner. In the case of investment listings where the potential sale of the property is not to be disclosed to tenants, we can modify or even delete the provision as to signs.

D. Responsibility for Review of Legal Documents. *This important provision makes the owner, not the broker, responsible for determining the legal sufficiency of the documents prepared.*

•Objections and How to Handle Them:

Owners object, "I'm hiring you to be my broker; you're the professional here, and I expect you to prepare my real estate contract." Response: CBRE is a broker, not a lawyer; the broker cannot provide legal or tax

advice and is limited, by law, to filling in the blanks of pre-printed real estate forms without, however, warranting that contracts so prepared satisfy all the client's legal needs and requirements. Therefore, in any transaction it is important that the owner and his advisors review the contract, even the printed form, to make sure it meets all the owner's needs. **In no event should the agent agree to striking this provision**, thereby implicitly accepting the responsibility for determining the legal sufficiency of such documents. If the owner so desires, you may specify the form of purchase agreement to be used, whether a specific CBRE form, or one prepared and delivered by the owner.

Paragraph 10. Provides for an extension of the term of the listing if the property has been off the market during the term, due to an unsuccessful escrow or otherwise; its purpose is to assure that the broker is given a full-term opportunity to bring in a buyer

10. In the event the Property is removed from the market due to the opening of an escrow or acceptance of an offer to purchase the Property during the Term, or any extension thereof, and the sale is not consummated for any reason then, in that event, the Term shall be extended for a period of time equal to the number of days that the escrow had been opened and/or the Property had been removed from the market, whichever is longer, provided that, in no event shall such extension(s) exceed one hundred eighty (180) calendar days in the aggregate.

10 Extended Term Due to Escrow

•Objections and How to Handle Them:

The owner may sometimes object that if the broker hasn't been successful during the term, he doesn't want to continue the listing; or that the broker can continue to market the property while in escrow, avoiding any need for extensions to perform. In response, point out that marketing during escrow is often unfruitful as few buyers will make an offer on property already in escrow, and therefore the broker should have the full period of the term to perform. Some owners object on the grounds of ambiguity, that such extensions create uncertainty about the ending date. However, in application this is rarely the case: the extension is a simple matter of counting the number of days from the opening of escrow until its close, and adding those days to the end of

the term. Even if more than one escrow has failed, the maximum aggregate extension is 180 days.

In response to owner's assertion that if an escrow fails it must have been the broker's fault, for bringing in a nonperforming buyer: point out that escrow might fail for many reasons, including the many out of the broker's control. One compromise: use this paragraph, but add: "... if the sale is not consummated for any reason (*except for the default of the buyer*) then, in that event ..."

Paragraph 11. *Owner's agreement to disclose information about the property to the broker as well as prospective buyers and tenants.*

11. Owner agrees to disclose to Broker and to prospective purchasers and tenants any and all information which Owner has regarding present and future zoning and environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to structural, mechanical and soils conditions, the presence and location of asbestos or mold, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks, in, on, or about the Property. Broker is authorized to disclose any such information to prospective purchases or tenants.

11 Disclosure of Information

CBRE policy requires the sales professional to make inquiries regarding hazardous materials and to disclose to all prospects.

Refer to **Section 3.10** of the Legal Reference Guide and Policy 10.7.1. This provision accomplished the requirements of the Policy.

•Objections and How to Handle Them: Beware of any objection to this provision! Any owner who objects to disclosure of material information concerning the property may be trying to hide something; such concealment may expose the owner, and its agents, to liability for fraud. Therefore, explore with the owner his reasons behind any objection to this provision, and resist changes. Advise the owner that such an agreement to disclose is required by CBRE policy, and no listing may be accepted without it.

Owners sometimes object to this provision, on the grounds that they want to sell the property "As Is". However, an "As Is" provision does not avoid the owner's obligation to disclose known material information about the property, and will not avoid liability for failure to disclose such information. Further, state law varies as to the validity and "magic language" necessary in an "as is" clause, and the owner should be advised to consult his attorney, and have the attorney draft whatever such clause will be required for the contract.

Owners, especially large institutional owners, sometimes object that they cannot agree to disclose "all" information because the real estate manager may not know everything about the property known by all the other employees of owner. Once again, note that the fact that the owning entity may include many employees is no defense to a potential action for fraudulent concealment, and the owner is legally obliged, whether or not this provision is included, to disclose all material information known by any of its employees about the property.

Some owners, notably holders of REO after foreclosure, object that they cannot disclose information because they don't know anything about the property, don't want to investigate the property, or perhaps have boxes of documents but don't know the contents thereof. They may wish to strike this paragraph in its entirety, insisting instead that any contracts contain a "no representations or warranties" clause. While inclusion of a "no representations or warranties" clause in the purchase agreement is certainly acceptable if drafted by the owner's attorneys, nonetheless resist the attempt to strike this paragraph; note that it requires only that the owner provide everything it does know, and does not require the owner to conduct any tests or investigations or develop any more information about the property than it then has. Explain to the owner that it may be held to have knowledge of everything in those boxes anyway, and liability for failure to disclose them, so the simplest solution is to agree to hand them over to the purchaser and let the purchaser assess them. One acceptable alternative: "Owner shall *deliver* to Broker and to prospective purchasers and tenants, *without representation or warranty*, any and all information *in Owner's possession* regarding ..."

Sometimes an owner seeks a limiting condition, on the grounds that it does not want its information disseminated to anyone until a contract is signed, or otherwise to only a limited class of bona fide prospects. If such a limiting condition is imposed, add the following to the paragraph: "Owner agrees that Broker shall include in its marketing and/or advertising materials a statement that information regarding environmental and/or other conditions of the property shall be made available to a bona fide offeror, and that any contract entered into shall be subject to offeror's review of such information."

On occasion, the owner may insist on a confidentiality clause, agreeing to disclose such information only to those brokers and purchasers who sign an agreement to maintain confidentiality and/or return all such information after review. If the owner wants CBRE to sign any confidentiality agreement, that agreement must be reviewed by management and/or the legal department before signing. Any confidentiality agreement for buyers to sign should be drafted by the owner and its counsel, not CBRE.

Paragraph 12. Provides assurances that the person with whom you are dealing is the owner of the property, and identifies transactions which may have FIRPTA implications.

12. **[A]** Owner represents that it is the owner of the Property **[B]** and that, except as may be set forth in an addendum attached hereto, no person or entity who has an ownership interest in the Property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").

12 Warranty of Ownership; FIRPTA

A. Representation of Ownership. On occasions, a chagrined agent discovers he has been vigorously marketing the property under agreement with an ousted partner, a son with no authority, or someone else, not an owner, who does not have the ability to convey the property. The person signing the listing must be the owner, with ability to convey if CBRE performs; CBRE may have remedies for fraud against the person upon whose false statement CBRE relied in expending sums in marketing.

B. FIRPTA. CBRE policy requires delivery of "Notice to All Buyers and Sellers" (CBRE Form 5437) at the "earliest possible time" -- i.e., upon listing the property -- and, if the seller is not a foreign person the affidavit portion of the form should be signed at that time. The original of the affidavit must be delivered to the buyer or the closing agent at or before closing. The deal file should document such deliveries. See also **Section 3.9** of the Legal Reference Guide.

Paragraph 13. Provides for a fee or commission of 1/2 of any forfeited deposits.

13. If earnest money or similar deposits made by a prospective purchaser or tenant are forfeited, in addition to any other rights of Broker pursuant to this Agreement, Broker shall be entitled to one-half (1/2) thereof, but not to exceed the total amount of the anticipated commission.

13 Commission Upon Forfeited Deposits

•Objections and How to Handle Them:

The owner may object that a forfeited deposit, or liquidated damages, is intended to make the owner whole and compensate owner for losses and damages caused by the property having been taken off the market by an unsuccessful purchaser. Point out that the broker, too, is entitled to compensation: first, because the offer resulted in income to the seller in which the broker should be entitled to share; and secondly because the broker, too, has been damaged in that the property's removal from the market has interfered with the broker's ability to secure a successful purchaser and receive a commission.

Sometimes the owner inserts a provision under which anything paid broker under this provision shall be a credit against commissions earned on any sale later consummated. Such a limitation is acceptable if restricted to the same buyer; however, if a new buyer consummates, the broker's work has been doubled and he should be compensated. One possible compromise is a scaled credit, depending on when the sale is ultimately consummated with the new buyer: e.g., if sold again within 30 days, a full credit, or if within 60 days, 50% of the forfeiture shall be credited against the sales commission.

Paragraph 14. Provides alternate means of assuring that the commission is paid, through deduction from deposits or assignment of proceeds of escrow.

14. **[A]** To the extent permitted by applicable law, Broker is authorized to deduct its commissions from any deposits, payments or other funds, including proceeds of sale or rental payments, paid by a purchaser or tenant in connection with a transaction contemplated by this Agreement, and **[B]** Owner hereby irrevocably assigns said funds and proceeds to Broker to the extent necessary to pay said commissions. **[C]** Broker is authorized to provide a copy of this Agreement to any escrow or closing agent working on such transaction, and such escrow or closing agent is hereby instructed by Owner to pay Broker's commissions from any such funds or proceeds available. Owner shall remain liable for the entire amount of said commissions regardless of whether Broker exercises its rights under this paragraph.

14 Assignment of Proceeds

A. Deduction from Purchaser's Payments. *If permitted under applicable state law, this provision allows the broker to deduct its commission from deposits by the purchaser/tenant. It comes into play most often where a sales transaction is transmuted into a ground lease, or where the sale is accomplished without escrow.*

•**Objections and How to Handle Them:**

The most common objection is to the broker's rights being extended beyond the typical escrow situation; the owner may object that it does not want to pay until the deal has been closed, and therefore is unwilling to make deposits vulnerable to a claim for a commission. In response, point out that in the typical escrow-type transaction this provision would probably not come into play, but it is intended to apply to the less-typical transactions such as those noted above, and is intended to provide protections which are absent when there is no escrow.

B. Assignment of Proceeds. *Establishes that the broker's rights to commission cannot be changed or abridged by the subsequent agreement or escrow instructions of buyer and seller, to which broker is not a party.*

It is not uncommon that the buyer and seller try to reduce or even eliminate the commission by signing escrow instructions which call for a commission less than that specified in the listing. In the absence of such a provision as this, the broker has no rights or recourse within the escrow instructions because he is not a party to the escrow and the escrow holder cannot satisfy a demand for commission contrary to the instructions of the parties to the escrow. This provision prevents such unilateral commissionectomies: by "assigning" proceeds to satisfy the commission, the broker

becomes a party to the escrow, whose rights may not be abridged without its agreement.

C. Escrow Instructions. *Permits delivery of the listing agreement as evidence of assignment and escrow instructions to pay the commission.*

Paragraph 15. *Acknowledgement and consent to dual agency, and agreement of confidentiality.*

15. Owner acknowledges that Broker is a national brokerage firm and that in some cases it may represent prospective purchasers and tenants. Owner desires that the Property be presented to such persons or entities and consents to the dual representation created thereby. Broker shall not disclose the confidential information of one principal to the other.

15 Acknowledgement of dual agency

This provision is intended to confront squarely the potential conflict inherent in marketing the property. By addressing this issue at the outset, the owner understands that the agent may, if successful, procure and also represent the buyer. Notwithstanding this provision in the listing, the agent is reminded that in the event of an actual dual agency transaction, both purchaser and seller's consent to the actual dual agency should be secured, and oftentimes in writing, depending upon a particular state's law. It is preferable, if not mandatory in some states, that disclosure of and consent to the actual dual entities be in writing.

See **Section 1.1.5** of the Legal Reference Guide for a more detailed discussion of this topic.

•Objections and How to Handle Them:

Sometimes the owner refuses to give blanket consent to dual agency, requiring instead that specific consent to dual representation be sought as each potentially represented buyer is identified. Sometimes the owner refuses to consent to dual agency either generally or specifically, demanding instead that the broker's loyalties be utterly undivided. The usual concern is that, notwithstanding the confidentiality clause, the broker in a dual agency capacity cannot retain absolute confidentiality, nor serve two masters with an equal degree of fiduciary respect. In response: Explain to the owner that the advantage of working with CBRE is its size: with a vast network of CBRE agents, CBRE offers the benefit of contacts with numerous potential buyers; and to prohibit dual agency eliminates that vast pool of candidates for the property. One compromise solution is an agreement that the listing agent or team will

represent the seller only, and any prospective buyers will be represented by other CBRE agents; and that confidential information will not be shared by the seller's team with the buyer's team.

Paragraph 16. Establishes the owner's obligation to notify broker in the event of bankruptcy, and obtain bankruptcy court approval for the listing; and permits the broker, at its option, to cancel the listing.

16. In the event that the Property comes under the jurisdiction of a bankruptcy court, Owner shall immediately notify Broker of the same, and shall promptly take all steps necessary to obtain court approval of Broker's appointment, unless Broker shall elect to terminate this Agreement upon said notice.

16 In Event of Bankruptcy

The filing of a bankruptcy petition places a broker in an uncertain position. Under bankruptcy law, a trustee has the right to assume (i.e., recognize) or reject (i.e., invalidate) the listing. The trustee has the option to recognize the listing, or he can treat it as terminated even though it was already signed and in effect. Until it is deemed terminated, the broker may remain obligated on the listing but have no commission rights.

This term provides a means of clarifying that uncertain position. It places the initial burden on the owner to notify the broker of the filing, and the burden of seeking approval by the trustee of the agreement. If approval is then denied, the broker's obligations are clearly terminated. (If approved, the broker's right to a commission in the event of performance is fixed, but the amount thereof is generally subject to subsequent court proceedings.)

In order to terminate the listing after the owner has filed bankruptcy, it may be necessary to seek approval of the Bankruptcy Court. Consult with a CBRE Legal Department attorney.

Sometimes the broker may not want to continue with the listing, as, for example, in situations in which the sole creditor, the lender on the property, solicits CBRE to act as its agent in sale of the note. In such circumstances, this provision permits CBRE to terminate the listing, freeing it to act in another role with respect to the property.

The Managing Director should be immediately advised of any situation involving bankruptcy, and the **Legal Reference Guide 3.2** should be consulted for applicable procedures and forms.

Paragraph 17. Provides for automatic suspension of the listing in the event of foreclosure, freeing the broker to represent others with interests in the property, thereby avoiding conflicts of interest.

17. In the event that the Property becomes the subject of foreclosure proceedings prior to the expiration of this Agreement, then this Agreement shall be deemed suspended until such time as Owner may reacquire the Property within the Term. If this Agreement is suspended pursuant to this paragraph, Broker shall be free to enter into a listing agreement with any receiver, the party initiating the foreclosure, the party purchasing the Property at a foreclosure sale, or any other person having an interest in the property.

17 *In Event of Foreclosure*

Where a property is forced into foreclosure during the sales listing, the owner may often want the broker to continue marketing, as this may be the only way the owner can protect its equity from the foreclosure process or avoid a deficiency judgment. However, this poses a great risk to the broker. While the broker markets the property to third parties, there is nothing to prevent the third party from buying the property, not from the owner, but rather at the foreclosure sale from the trustee or mortgagee. In such case, no commission would likely be paid.

Suspension of the listing permits the broker to assess the situation, and proceed with other relationships and agreements with the lender, receiver, or purchasers.

The Managing Director should be immediately advised of any situation involving foreclosure or receivership, and the [Legal Reference Guide 3.8](#) should be consulted for applicable procedures.

Paragraph 18. Provides that any disputes between broker and owner will be resolved in binding arbitration, allowing for recovery of compensatory damages but without the wild threat of excessive punitive damages.

18. In the event of any dispute between Owner and Broker relating to this Agreement, the Property or Owner or Broker's performance hereunder, Owner and Broker agree that such dispute shall be resolved by means of binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings in the state where the office of Broker executing this Agreement is located. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar type damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses, including the costs of the arbitration proceeding, and reasonable attorneys' fees.

18 Arbitration of Disputes

State laws vary on the requirements of arbitration provisions in real estate contracts, and the form for your state should be used exclusively.

•Objections and How to Handle Them:

Few owners who have been engaged in litigation in the past will object to this provision, for they know that the cost -- both monetary and in terms of time -- of litigation is exorbitant. Arbitration is a means of dispute resolution which is faster, and more economical, than the court system.

Some owners object to this provision on the grounds that it gives up certain rights (i.e., to punitive damages and to appeal). "Punitive damages" are money damages meant to punish the wrongful party, awarded in addition to actual damages, and bearing only nominal (if any) relation to the amount of damages actually incurred. This provision does not limit the amount of actual damages awarded and does permit the aggrieved party to recover all money damages actually incurred. Thus, this provision eliminates the uncertainty inherent in punitive damages awards, while preserving the right to full

compensation. It operates to the benefit of both the owner and the broker.

It is acceptable to specify binding arbitration before a different tribunal of comparable stature, or by arbitrators to be selected by the parties (in such a case, one good approach is to specify three arbitrators, one chosen by each party and a third chosen by the two arbitrators so selected).

Paragraph 19. This provision addresses a frequently encountered "safety net" issue: Owner lists the property with a subsequent broker, who then claims a commission on the transaction commenced during CBRE's term but closed during the subsequent listing; the owner, finding himself liable to the new broker, objects to paying CBRE under the safety net. This provision puts the owner on notice of its responsibility to create an exception in the subsequent listing for CBRE's post-termination transactions, and that if it does not do so, it may face double liability.

19. In the event that Owner lists the Property with another broker after the expiration or termination of this Agreement, Owner agrees to provide in the subsequent listing agreement that a commission will not be payable to the new broker with respect to transactions for which Owner remains obligated to pay a commission to Broker under paragraph 4 or 5 hereof. Owner's failure to do so, however, shall not affect Owner's obligation to Broker under paragraph 4 or 5 hereof.

19 Subsequent Listing Exceptions

•Objections and How to Handle Them:

The owner occasionally objects on the grounds that it may elect to have the new broker handle the negotiations on the transaction and therefore must retain the right to compensate him. So long as CBRE is paid its full commission for the transaction, there is no objection to the owner's paying additional sums to the new broker; however, the agent should reiterate clearly that in no event will compensation paid to the new broker reduce or abridge CBRE's rights to a full commission for qualifying transactions.

Paragraph 20. This provision assures CBRE that the person signing the agreement has been authorized to do so, and that the owner of the property is bound under the listing.

20. Each signator to this Agreement represents and warrants that he or she has full authority to sign this Agreement on behalf of the party for whom he or she signs and that this Agreement binds such party.

20 Warranty of Authority

CBRE agents often deal with corporate employees whose title may give little or no clue to that person's authority level within the entity. If a person without authority to bind the corporation signs a listing, CBRE may later find itself unable to hold the corporate entity to pay under the terms of the agreement. Under this provision, if the person signing the agreement is later found to have been unauthorized to act, CBRE at least retains a claim against the signing party, for breach of his warranty of authority.

Paragraph 21. Protects from claims there were differing (prior or subsequent) oral agreements, prevents unilateral cancellation, binds successors. Assures the continued validity of the balance of the agreement if any severable part is found unenforceable.

21. This Agreement constitutes the entire agreement between Owner and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration, cancellation or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Owner and Broker. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assignees of the parties. In the event any clause, provision, paragraph or term of this Agreement shall be deemed to be unenforceable or void based on any controlling state or federal law, the remaining provisions hereof, and each part, shall remain unaffected and shall continue in full force and effect.

21 Integration and Miscellaneous Provisions

This term provides assurance that the written listing agreement embodies all the terms to which the parties agreed, and prevents either party from later claiming that it does not accurately and completely reflect their agreements, or that there were subsequent oral modifications.

Paragraph 22. Embodies the parties' agreement that each will comply with all applicable laws and regulations.

22. The parties hereby agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

22 Compliance with Laws

CBRE policy requires that this language be included in any listing. In addition, the agent should disclose to the client that the Americans with Disabilities Act (ADA) could affect the responsibility of owners, operators, and tenants of "Public Accommodations" and "Commercial Facilities" to remove certain barriers to access by and/or provide access to disabled persons and to provide auxiliary aids and services for hearing, vision, or speech impaired persons.

•Objections and How to Handle Them:

Occasionally the owner or his attorney will object and insist upon removal of this provision, arguing that in the event of noncompliance with some obscure law, the owner does not want to be liable for breach of contract to the broker in addition to the other liabilities imposed for noncompliance. However, beware any owner who will not agree to comply with the law: explore with the owner his reasons for refusal to so agree, advise the owner that CBRE policy requires such a provision, and reiterate that CBRE will, and will expect the owner to comply with all laws and will not knowingly be a party to any violation of such laws. Removal or modification of this paragraph should be accomplished only with the approval of your Managing Director and/or the Legal Department.

Acknowledgement of Receipt. The owner must be provided with a copy of the agreement and Schedule; this provision serves as a reminder and as evidence that such delivery has been accomplished.

The undersigned Owner hereby acknowledges receipt of a copy of this Agreement and the Schedule.

23 Acknowledgement of Receipt

Consult Your Advisors Box. This prominently displayed advice serves as a bold reminder to the client that CBRE is a real estate broker, not an attorney or financial advisor, and reserves to the owner the responsibility for evaluating the legal and financial consequences of the proposed transaction.

CONSULT YOUR ADVISORS - This document has legal consequences. No representation or recommendation is made by Broker as to the legal or tax consequences of this Agreement or the transaction) which it contemplates. These are questions for your attorney and financial advisors.

24 Consult Your Advisors

If this form of listing agreement, or any other agreement, is reproduced in another format, be sure to include this box or its equivalent into such agreement, as it provides essential protection from the frequent claims that the broker should have been a better lawyer.

Signature Lines. Before entering into the listing agreement, determine who the owner really is by checking title or otherwise securing evidence of title; and be sure to identify correctly (by legal name) the owner. Confirm that the person you are dealing with has the authority to act for the entity and if more than one person is required to sign binding documents, then have all such persons sign the listing.