



BUSINESS LISTING AGREEMENT

(C.A.R. Form BLA, Revised 10/01)

(A separate listing agreement is required for any real property to be included in sale.)

1. EXCLUSIVE AUTHORIZATION: ("Owner") doing business as: a (check one) sole proprietor, partnership, corporation, limited liability company, other, hereby employs and grants ("Broker") beginning (date) and ending at 11:59 P.M. on (date) ("Listing Period") the exclusive and irrevocable right to sell the business situated in the City of Contra Costa, California, commonly described as: ("Business").

2. BUSINESS DISCLOSURE STATEMENT: A. PURPOSE OF BDS: Owner acknowledges and agrees that the attached Business Disclosure Statement ("BDS") is provided to Broker as: (i) a tool to assist in establishing the listing price; (ii) a disclosure of material facts regarding the operation of the Business; and (iii) a proposal of items included in or excluded from the offering of the Business for sale. B. RELATION TO PURCHASE AGREEMENT: Owner acknowledges and agrees that: (i) the agreement between Owner and buyer supersedes any intention expressed in the BDS and will ultimately determine which items are either included in or excluded from the sale; and (ii) Broker is not responsible for and does not guarantee that the items included or excluded in the BDS will be in the agreement. C. OWNER WARRANTY: Owner warrants the accuracy of the information furnished herein, and on the attached BDS, or as modified hereafter with respect to the Business, and Owner agrees to indemnify, defend and hold harmless Broker from all claims, costs, expenses, disputes, litigation, arbitration, judgments and awards arising from any incorrect information supplied by Owner or from any material fact that Owner knows but fails to disclose. D. AUTHORIZATION: Broker is authorized to provide the BDS to prospective buyers.

3. DOCUMENTATION: Owner shall provide to Broker the following lists of items or documents, or copies thereof, within 10 calendar days of the execution of this agreement. For each item, as applicable, Seller shall include a statement of whether the item is owned or leased and whether Seller has any legal, proprietary interest, or intellectual property rights in, or restrictions on, the item: Inventory, including work in progress; Machinery; Furniture, fixtures, and other equipment; Other personal property; Leasehold improvements; Government licenses and permits; Customer lists; Fictitious business name statement; Trade names and trademarks; Logos; Copyrights and patents; Schedule of accounts receivable; Business appraisal; Other assets; Schedule of accounts payable; Other liabilities; Sales tax returns for the years; Federal and state income tax returns for the years; Financial statements for the years; Employment withholding returns for the years; Signs and advertising materials; Telephone and fax numbers; Websites, URL addresses and E-mail addresses; Vendor lists and catalogs; Goodwill; Agreements not to compete; Franchise agreements; Distribution rights; Employee lists and information; Computer and customer software; Customer deposits; Leases; Service/maintenance/advertising agreements.

OWNER REPRESENTS THAT: (i) THE BOOKS AND RECORDS THAT OWNER PROVIDES ARE THOSE MAINTAINED IN THE ORDINARY AND NORMAL COURSE OF BUSINESS; AND (ii) FEDERAL AND STATE TAX RETURNS THAT OWNER PROVIDES ARE COPIES OF THOSE FILED WITH THE APPLICABLE GOVERNMENTAL AGENCY.

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Owner's Initials ( ) ( ) Reviewed by Date



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

**4. REAL PROPERTY:**

- A. INTENTION TO SELL:**  (If checked) Owner owns the real property on which the Business operates and intends that the sale of the Business is contingent upon Owner's sale of such real property. **A separate real property listing agreement is required.**
- B. RELATION TO PURCHASE AGREEMENT:** Owner acknowledges and agrees that: **(i)** the agreement between Owner and buyer supersedes any intention expressed above in paragraph 4A and will ultimately determine whether any real property is included in the sale or whether the sale of the Business is contingent upon the sale of any real property, and **(ii)** Broker is not responsible for and does not guarantee that any real property will be included in the purchase agreement or that the sale will be contingent upon the sale of any real property.

**5. TERMS OF SALE:**

- A. LIST PRICE:** The list price shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )
- B. ADDITIONAL PURCHASE TERMS:** \_\_\_\_\_

**6. COMPENSATION TO BROKER:**

- A.** Owner agrees to pay to Broker as compensation for services irrespective of agency relationship(s): EITHER  \_\_\_\_\_ percent of the list price (or if a contract is entered into, of the contract price) (compensation due Broker shall be calculated on all assets of the Business that are either offered for sale on the BDS or in the contract entered into, whichever is applicable), OR  \$ \_\_\_\_\_, as follows:
- (1)** If Broker, Owner, cooperating broker, or any other person, produces a buyer who offers to acquire the Business on the above price and terms, or on any price and terms acceptable to Owner during the Listing Period, or any extension.
  - (2)** If Owner, within **180 (or  \_\_\_\_\_ ) calendar days** after the end of the Listing Period or any extension, enters into a contract to sell, convey, lease or otherwise transfer the Business to anyone ("Prospective Buyer") or that person's related entity: **(i)** who physically entered and was shown the Business during the Listing Period or any extension by Broker or a cooperating broker; **(ii)** for whom Broker or any cooperating broker submitted to Owner a signed, written offer to acquire, lease, exchange or obtain an option on the Business; or **(iii)** to whom Broker submitted written information regarding the Business at the request of such person. Owner, however, shall have no obligation to Broker under this sub-paragraph 6A(2) unless, not later than **10 calendar days** after the end of the Listing Period or any extension, Broker has given Owner a written notice of the names of such Prospective Buyers. A Prospective Buyer shall not include a person to whom Broker furnished unsolicited information concerning the Business.
  - (3)** If, without Broker's prior written consent, the Business is: **(i)** withdrawn from the market; **(ii)** sold, conveyed, exchanged, optioned, or otherwise transferred; or **(iii)** made unmarketable by a voluntary act of Owner during the Listing Period, or any extension.
- B.** If Owner enters into a listing agreement with another broker within the time period set forth in paragraph 6A(2), Owner shall provide to such broker the names of Prospective Buyers, as supplied to Owner by Broker.
- C.** If completion of the transaction is prevented by a party to the transaction other than Owner, then compensation due under paragraph 6A shall be payable only if and when Owner collects damages by suit, arbitration, settlement, or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.
- D.** In addition, Owner agrees to pay Broker: \_\_\_\_\_
- E.** **(1)** Broker is authorized to cooperate and compensate brokers participating through a multiple listing service(s) ("MLS"): **(i)** in any manner, OR **(ii)** (if checked) Broker shall offer MLS brokers: either  \_\_\_\_\_ percent of the sales price, or  \$ \_\_\_\_\_.
- (2)** Broker is authorized to cooperate and compensate brokers operating outside the MLS in any manner.
- F.** Owner hereby irrevocably assigns to Broker the above compensation from Owner's funds and proceeds in escrow. Broker may submit this listing agreement to any escrow holder as instructions to compensate Broker pursuant to paragraph 6A, if the terms of compensation are consistent with the business purchase agreement between Owner and the buyer.
- G.** **(1)** Owner represents that Owner has not previously entered into a listing agreement with another broker regarding the Business, except as follows: \_\_\_\_\_
- (2)** Owner warrants that Owner has no obligation to pay compensation to any other broker regarding the Business unless the the Business is transferred to any of the following individuals or entities: \_\_\_\_\_
- (3)** If the Business is transferred to anyone listed above during the time Owner is obligated to compensate another broker: **(i)** Broker is not entitled to compensation under this Agreement; and **(ii)** Broker is not obligated to represent Owner with respect to such transaction.



**7. BUSINESS ESCROW AND APPRAISAL:**

**A.  Business Escrow:** (If checked) Owner agrees to cooperate with and use a business escrow in any resulting sale pursuant to this agreement.

**B.  Appraisal:** (If checked) Owner agrees to hire and pay for a qualified business appraiser to appraise the Business.

**8. MULTIPLE LISTING SERVICE:** Information about this listing  will  will not be provided to the MLS of Broker's selection and all terms of the transaction, including, if applicable, financing, will be provided to the MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Owner authorizes Broker to comply with all applicable MLS rules.

**9. TITLE: UNLESS OTHERWISE AGREED, OWNER WARRANTS THAT, EXCEPT AS SPECIFIED IN WRITING, OWNER HAS GOOD AND MARKETABLE TITLE TO THE BUSINESS AND PERSONAL PROPERTY THAT ARE OFFERED FOR SALE.**

**10. OWNER REPRESENTATIONS:** Owner represents that unless otherwise specified in writing, Owner is unaware of: **(i)** any Notice of Default recorded against the Business; **(ii)** any delinquent amounts due under any loan secured by, or other obligation affecting, the Business; **(iii)** any bankruptcy, insolvency or similar proceeding affecting the Business; **(iv)** any current, pending or proposed special assessments affecting the Business; or **(v)** any pending or threatened action or adverse condition which does or may affect the Business or Owner's ability to transfer it, including but not limited to, any litigation, arbitration, administrative action, or government investigation. Owner shall promptly notify Broker in writing if Owner becomes aware of any of these items during the term or any extension of the Listing Period.

**11. BROKER'S AND OWNER'S DUTIES:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this agreement. Unless Owner gives Broker written instructions to the contrary, Broker is authorized to advertise and market the Business, including the Business name and address, in any method and in any medium, including the internet, selected by Broker, and, to the extent permitted by these media, including MLS, control the dissemination of the information submitted to any medium. Owner agrees to consider offers presented by Broker, and to act in good faith toward accomplishing the transfer of the Business. Owner agrees to immediately refer to Broker any party interested in the Business. All negotiations are to be disclosed to Broker. Owner agrees to provide Broker and transferee(s) all written disclosures, as required by law. Owner further agrees to immediately disclose in writing any condition known to Owner that affects the Business, including, but not limited to, any past or current generation, storage, release, threatened release, disposal, and presence and location of asbestos, PCB transformers, petroleum products, flammable explosives, underground storage tanks and other hazardous, toxic or contaminated substance or condition in, on, or about the Business. Owner shall maintain public liability and property damage insurance on the Business during the Listing Period, or any extension. Owner waives all subrogation rights under any insurance against Broker, cooperating brokers or employees. **Owner further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney fees arising from any incorrect information supplied by Owner, or from any material facts that Owner knows but fails to disclose.**

**12. DEPOSIT:** Broker is authorized to accept and hold on Owner's behalf a deposit to be applied toward the sales price.

**13. SIGN:** Owner does (or if checked  does not) authorize Broker to install a FOR SALE/SOLD sign on the Business premises.

**14. INSPECTIONS:** Owner shall make the Business available for all inspections called for in any purchase agreement.

**15. AGENCY RELATIONSHIPS:**

**A. Owner Representation:** Broker shall represent Owner in any resulting transaction, except as specified in paragraph 6G.

**B. Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Owner and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Owner any election to act as a dual agent representing both Owner and Buyer. If a Buyer is procured directly by Broker or an associate licensee in Broker's firm, Owner hereby consents to Broker acting as a dual agent for Owner and such Buyer. In the event of an exchange, Owner hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Owner understands and agrees that: **(i)** Broker, without the prior written consent of Owner, will not disclose to Buyer that Owner is willing to sell the Business at a price less than the listing price; **(ii)** Broker, without the prior written consent of Buyer, will not disclose to Owner that Buyer is willing to pay a price greater than the offered price; and **(iii)** except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Business to both parties.

**C. Other Owners:** Owner understands that Broker may have or obtain listings on other businesses, and that potential buyers may consider, make offers on, or purchase through Broker, a business the same as or similar to Owner's Business. Owner consents to Broker's representation of owners and buyers of other businesses before, during and after the end of this listing agreement.

Owner's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



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

- 16. **EQUAL OPPORTUNITY:** The Business is offered in compliance with federal, state, and local anti-discrimination laws.
- 17. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Owner and Broker regarding the obligation to pay compensation under this listing agreement, the prevailing Owner or Broker shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 19A.
- 18. **ADDITIONAL TERMS:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**19. DISPUTE RESOLUTION:**

**A. MEDIATION:** Owner and Broker agree to mediate any dispute or claim arising between them out of this listing agreement, or any resulting transaction, before resorting to arbitration or court action, subject to paragraph 19B(2) below. Paragraph 19B(2) below applies whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

**B. ARBITRATION OF DISPUTES:**

(1) Owner and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this listing agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraph 19B(2) below. The arbitrator shall be a retired judge or justice, or an attorney with experience in the purchase and sale of businesses, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

(2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; (iv) any matter which is within the jurisdiction of a probate, small claims, or bankruptcy court; and (v) an action for bodily injury or wrongful death, or for latent or patent defects to which Code of Civil Procedure §337.1 or §337.15 applies. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a violation of the mediation and arbitration provisions.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Owner's Initials \_\_\_\_\_ / \_\_\_\_\_ Broker's Initials \_\_\_\_\_ / \_\_\_\_\_



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

**20. ENTIRE CONTRACT:** All prior discussions, negotiations, and agreements between the parties concerning the subject matter of this listing agreement are superseded by this listing agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this listing agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This listing agreement and any supplement, addendum, or modification, including any photocopy or facsimile, may be executed in counterparts. This listing agreement and any addendum or modification shall be binding upon, and inure to the benefit of, the heirs, successors and assignees of the parties.

**Owner warrants that Owner has the authority to execute this listing agreement. If the Business is owned by a corporation, Owner's authority to execute this Agreement is found in the ATTACHED RESOLUTIONS OF ITS BOARD OF DIRECTORS dated \_\_\_\_\_ . By signing below, Owner acknowledges that Owner has read, understands, accepts and has received a copy of this Agreement, including any attached schedule of compensation. If additional signatures are required, use an addendum.**

Owner \_\_\_\_\_ Date \_\_\_\_\_  
By \_\_\_\_\_ Title \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Owner \_\_\_\_\_ Date \_\_\_\_\_  
By \_\_\_\_\_ Title \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Firm) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_  
By (Agent) \_\_\_\_\_ DRE Lic. # \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

