



GREAT AMERICAN COMMERCIAL REAL ESTATE AUCTIONS

COMMERCIAL REAL ESTATE LISTING AGREEMENT

This COMMERCIAL REAL ESTATE LISTING AGREEMENT ("Agreement") between Great American Commercial Real Estate, a division of Great American Home Auctions, LLC ("Broker") and _____ ("Seller") is made as of _____. Broker and Seller are occasionally referred to below as a "Party" or collectively as the "Parties."

WHEREAS, (i) Seller has agreed to retain Broker to assist in the sale of certain commercial real estate properties (or participation interests therein) as described in Exhibit "A" to this Agreement (each individually the "Property" and collectively the "Properties"); (ii) Broker has agreed to list the Properties for sale on Broker's web site, www.gacommercialre.com (the "Web Site") in exchange for the right to market for sale said Properties for the term of this Agreement; and (iii) the Parties have mutually agreed to execute this Agreement in order to evidence their negotiations and discussions regarding the sale of the Properties.

AGREEMENT

1. **Right to Sell.** Seller hereby covenants and agrees that Broker shall have the non-exclusive right, during the term of this Agreement, to assist Seller in the marketing and sale of the Properties for the listing price each Property that shall be provided by Seller.
2. **Marketing Strategy.** Seller and Broker agree that Broker's primary marketing tool in attempting to sell the Properties shall be to list the Properties on the Web Site, and Seller agrees that Broker makes no representation or warranty to Seller concerning the capabilities, appropriateness or usefulness of the Web Site in marketing or selling the Properties. To "List" or the act of "Listing" the Properties shall mean that Broker shall fully utilize the current capability of the Web Site to provide and display to prospective buyers (and to anyone else who may happen to visit the Web Site), on the world-wide web, any information relating to the Properties which have been provided to Broker by Seller, except as otherwise set forth in this Agreement.
3. **Scope, Duration and Termination of Agreement.** This Agreement will continue for a period of one hundred twenty (120) days from the date first written above and, unless extended by the mutual agreement of the parties in writing, will terminate automatically at the end of such period or upon sale of the Properties, whichever date is earlier; provided that either party shall have the right to terminate this Agreement at any time, with seven (7) days advance written notice to other party.
4. **Broker's Obligations.** Broker covenants and agrees as follows:
 - a. Broker will List the Properties on the Web Site as set forth in Paragraph 2 above.
 - b. Broker will provide to prospective buyers, upon the request of the prospective buyer and with the Seller's advance written approval, any additional information furnished to Broker by Seller for the purpose of assisting the prospective buyer in its examination of the Properties.
 - c. Broker will seek to obtain for transmittal to Seller, offer letters from prospective buyers of the Properties, setting forth the basic terms proposed by the prospective buyer for the purchase of the Properties.
 - d. If the terms of the offer letters are acceptable to Seller, Broker will assist Seller and buyer as needed to complete the sale and purchase of the Properties.
5. **Seller's Obligations.** Seller covenants and agrees as follows:
 - a. To cooperate fully in effecting a sale of the Properties through Broker, including without limitation entering into a mutually accepted purchase and Sale Agreement between Seller and a potential purchaser within five (5) days from the within five (5) business days of Seller's receipt of an offer.
 - b. To the extent that Broker introduces Seller to a potential purchaser ("Purchaser") as a result of Seller's Web Site, Seller shall pay to pay Broker the following compensation for Broker's services (the "Fee"):
 - i. In the event Seller has already entered into a listing agreement ("Existing Listing Agreement") with a third party real estate agent or broker ("Seller's Existing Broker"), an amount which shall be equal to the greater of: (A) TWO PERCENT (2%) of the sales price of the Property; or (B) one half of the amount set forth in Existing Listing Agreement that shall be split equally between Broker and Seller's Existing Broker.
 - ii. In the event an Existing Listing Agreement has expired or that Seller has not entered into a listing agreement, an amount equal to six (6%) of the sales price of the Property.
 - iii. In the event there is a Seller's Existing Broker and a Purchaser's broker, then Broker shall be entitled to _____ percent from Seller's Existing Broker.
 - d. To pay Broker the Fee in the event the Seller sells, within one (1) year of the expiration or termination of this Agreement, to any prospective buyer who was introduced to Seller, or to whom Seller was introduced, by Broker during the term of this Agreement.
 - e. To give Broker direct access to Seller or an authorized representative or agent of Seller, by telephone, facsimile, e-mail or in person, for any purpose necessary in order to consummate the sale of the Property.

The Fee shall apply to any and all Properties that Broker negotiates Closing during (i) the term of this Agreement; (ii) any renewals, extensions rollovers, additions or any new or transfer contract resulting indirectly or directly from this Transaction; (iii) any renewal of the term of this Agreement. Such amounts payable under this subsection shall be paid to Broker: (A) upon the close of escrow of the Property through the escrow agent; or (B) should Seller refuse to sell the Property to a buyer who is ready, willing and able to purchase the Property at or above the Reserve Price, pursuant to terms and conditions which would be reasonably acceptable to a seller of such Properties which are similar in nature to the Properties.



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6. No Usurpation. The Services and information that Broker will be providing to Seller is a product of extensive research, cost, time and money, and is the substance of Broker's business. Seller and Seller's Existing Broker and/or Seller's agents and affiliates shall not usurp any potential transaction and/or confidential information to the detriment of Broker. Such usurpations shall materially, substantially and irreparably damage Broker. Consequently, Seller and Seller's affiliates shall agree that for a period of one (1) year from the Effective Date, they will not use any Confidential Information or any other information learned from its engagement or involvement with Broker.
7. Contact Strictly Limited. Seller agrees that under no circumstances will Seller circumvent Broker, nor attempt to source contacts directly or indirectly, nor negotiate, nor engage in any transaction or future transactions, nor relate to any projects, associates, correspondents, "network" affiliations, potential joint venture partners, or presenters of business opportunities that have been introduced to Seller by Broker, without the express written consent of Broker.
8. Notices. All notices or other communications required or permitted to be given to a Party to this Agreement shall be in writing and shall be personally delivered, sent by certified mail, postage prepaid, return receipt request, or sent by an overnight express courier service that provides written confirmation of delivery, to such a party at the address listed below. Each such notice or other communication shall be deemed given, delivered and received upon its actual receipt, except that if it is sent by mail in accordance with this Section, then it shall be deemed given, delivered and received three days after the date such notice or other communication is deposited with the United States Postal Service in accordance with this Section. Any Party to this Agreement may give a notice of a change of its address to other Party(ies) to this Agreement.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. For purposes of venue and jurisdiction, the Agreement shall be deemed made and to be performed in the City of San Diego, California.
11. Time of Essence. Time and strict, punctual performance are of the essence with respect to each provision of this Agreement.
12. Attorney's Fees. In the event any litigation, arbitration, mediation, or other proceeding ("Proceeding") is initiated by any Party against any other Party to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with this Agreement, the prevailing Party in such Proceeding shall be entitled to recover from the unsuccessful Party all costs, expenses, and actual attorney's fees relating to or arising out of (a) such Proceeding (whether or not such Proceeding proceeds to judgment), and (b) any post-judgment or post-award proceeding including without limitation one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorney's fees.
13. No Partnership. This Agreement shall in no way be construed to create a partnership or joint venture between any of the Parties hereto and no such relationship shall be created except by writing executed by each Party to such relationship.
14. Miscellaneous. This Agreement may be modified only by a contract in writing executed by the Parties to the Agreement against whom enforcement of such modification is sought. Any waiver of a default under this Agreement must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act. Each Party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.
15. Successors-in-Interest and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successor-in-interest and assigns of each Party to this Agreement.



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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and effective as of the date first set forth above.

BROKER:

GREAT AMERICAN COMMERCIAL REAL ESTATE
a division of Great American Home Auctions, LLC

By: _____

Name: _____

Title: _____

225 Broadway, 18th floor
San Diego, CA 92101

Phone: (619) 687-5000

Fax: (619) 687-5010

SELLER:

By: _____

Name: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Fax: _____