

Property Address: \_\_\_\_\_  
\_\_\_\_\_



Effective Date: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Lock Box: \_\_\_\_\_ Sign: \_\_\_\_\_

Citizen of: \_\_\_\_\_

Seller Name: \_\_\_\_\_ Price: \_\_\_\_\_

Legal Description: \_\_\_\_\_

Special Terms and/or Personal Property Included: \_\_\_\_\_  
\_\_\_\_\_

### **RESIDENTIAL LISTING TERMS**

**EXCLUSIVE LISTING:** Seller hereby grants to **BROKER** the EXCLUSIVE RIGHT TO SELL the real and personal property described above for the listing period as indicated and to procure a prospect ready, willing and able to enter into a transaction with Seller on Seller's property in accordance with the terms and conditions as set forth herein, or upon lesser price, terms and conditions acceptable to Seller. The term "Transaction" includes the sale, lease, option (at the time of exercise thereof), or exchange of the Seller's property.

**BROKER OBLIGATIONS AND AUTHORITY:** Broker agrees to make diligent and continued efforts to procure a Transaction on Seller's property during the listing period. Seller authorizes Broker to:

1. Advertise the Property as **Broker** deems advisable, including advertising the Property on the Internet.
2. Place appropriate transaction signs on the Property, including "For Sale" signs and "Sold" signs.
3. Place the Property in a multiple listing service ("MLS"). **Seller** authorizes **Broker** to report to the MLS this listing information and price, terms and financing information on any resulting sale for use by authorized Board / Association members, MLS participants and subscribers.
4. Provide objective comparative market analysis information to potential buyers.
5. Use a lock box system to show and access the Property if approved above. A lock box does not ensure the Property's security. **Seller** is advised to secure or remove valuables. **Seller** agrees that the lock box is for **Seller's** benefit and releases **Broker**, persons working through **Broker** and **Broker's** local Realtor Board / Association from all liability and responsibility in connection with any loss that occurs.
6. Withhold verbal offers.

**VIRTUAL OFFICE WEBSITES:** Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOW"). An automated estimate of market value or reviews and comments about a property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a Virtual Office Website may gain access to such automated valuations or comments and review about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments/reviews (blogs) about this Property.

Seller does not authorize an automated estimate of the market value of the listing (or hyperlink to such estimate) to be displayed in immediate conjunction with the listing of this property.

Seller does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink to such comments or review) in immediate conjunction with the listing of this Property.

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

1. Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.
2. Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.



Seller(s) Initials \_\_\_\_\_

3. Inform **Broker** prior to leasing, mortgaging or otherwise encumbering the Property.
4. Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs and expenses of any nature, including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's** negligence, representations, misrepresentations, actions or inactions, (2) the use of a lock box, (3) the existence of undisclosed material facts about the Property, or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation. This clause will survive **Broker's** performance and the transfer of title.
5. Hold **Broker** harmless from stolen personal possessions in the property. It is the Seller's sole obligation to secure all valuables at all times.
6. To perform any act reasonably necessary to comply with FIRPTA (Internal Revenue Code Section 1445).
7. Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. **Seller** certifies and represents that **Seller** knows of no such material facts (local government building code violations, unobservable defects, etc.), including any pending liens and/or lawsuits. **Seller** will immediately inform **Broker** of any material facts that arise after signing this Agreement.
8. Consult appropriate professionals for related legal, tax property condition, environmental, foreign reporting requirements and other specialized advice.
9. **Seller agrees that the property shall be offered without respect to race, color, creed, sex, familial status, national origin, handicap, or any other illegal discrimination.**

**BROKERAGE FEE:** Seller agrees to pay **Broker** for **Broker's** service, the fee set forth in the following:

- A. If a prospect is procured for the Transaction by anyone, including **Seller**, another **Broker**, or member of the MLS during the listing.
- B. If a Transaction is entered into or consummated regarding **Seller's** Property within the subsequent 180 day protection period set forth herein, to any prospect whom the **Seller**, **Broker**, subagent, other member of the MLS, or any other person has presented the property prior to the final termination of this listing, provided the **Seller** has been sent notice of the name of prospect before or upon the final termination of this listing. This Provision (B) shall not apply if an exclusive written listing agreement is entered into during the term of the **Broker's** protection period with another licensed real estate broker and a Transaction is entered into with a prior prospect during the protection period.

**BROKERAGE FEE PAYMENT:** Seller(s) jointly and severally agree to pay **Broker** a fee of 6% (minimum fee is \$2000) of the Sales Price for the Property. **Broker's** fees are earned when the **Broker's** service is performed and are payable on or before settlement. In the event a Transaction is entered into and the prospect fails or refuses to consummate the Transaction through no fault of the **Seller**, and the **Seller** elects to retain the earnest money deposit, as full satisfaction of the default of the prospect, then the parties agree that the **Broker** shall be entitled to one half thereof, but not exceeding the fee otherwise due, in full satisfaction for **Broker's** Services pertaining to the **Seller's** obligation in this Transaction. If the Transaction shall not be entered into or consummated because of the failure or refusal of the **Seller** to perform, in accordance with these listing terms or the terms of the Transaction a applicable the full brokerage fee shall be immediately due and payable to the **Broker** upon demand. Should the **Broker** be required to institute legal proceedings to obtain payment of its brokerage fee, then the prevailing party in such proceeding shall be entitled to recover its reasonable attorney's fees and costs incurred, including reasonable attorney's fees and cost on appeal, if any. The Biltmore Group Inc. agrees to cooperate with other real estate agents that hold an active Florida license. These agents may act as Transaction Brokers or Buyer Agents. If acting as Buyer Agents they are to disclose that relationship. The Biltmore Group agents will always act as a Transaction Broker, and never represent a buyer in a Buyer Agent capacity.

**AUTOMATIC EXTENSION:** Seller hereby agrees upon execution of Purchase Agreement, to extend the expiration date of this listing 30 days beyond the expected closing date, as stated on the "Contract for Sale".

**PROTECTION PERIOD:** In the event any prospect exposed to the property by any means, during the listing period, purchases the said property within 90 days of the expiration or withdrawal of this listing, the full Brokerage fee shall be due an payable at or before settlement.

**100% SATISFACTION GUARANTEE:** We guarantee that if you aren't completely satisfied with our services, you have the right to cancel our listing agreement by simply picking up the phone and calling us, except during active negotiations and pending contracts. Our company never settles for anything less than the highest professional standards and we believe that home sellers should have the power to fire their agent if they are unhappy. It's just that easy! No hassles, no problems.

**TITLE TO PROPERTY:** Seller(s) represents that the title and right to possession of the property is free of



Seller(s) Initials \_\_\_\_\_

encumbrances and defects which cannot be removed prior to settlement and will provide title insurance as may be required to consummate that Transaction concerning the property and will execute and deliver all Transaction documents in a timely fashion.

**ESCALATION CLAUSES IN OFFERS:** Some real estate brokerages allow their agents to submit offers with a clause known as an "Escalation Clause". Please See Attachment. The Biltmore Group does not feel this clause benefits the Seller and recommends the Seller not accept the clause within the offer, only the offer price. Any selling agent submitting an offer with this clause included will be notified in writing that only the Purchase Price offered will be considered.

Seller does not authorize acceptance of an Escalation Clause in an offer and directs The Biltmore Group to notify the Buyer in writing that only the offer price will be considered.

**PERSONAL PROPERTY CONVEYS:** Seller acknowledges and understands that certain Personal Property will convey to the Buyer at the time of closing unless otherwise excluded in the Sales and Purchase Contract. Unless excluded, the following items will convey: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s), television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox keys, and storm shutters/storm protection items and hardware.

**DISCLOSURE:** Seller specifically acknowledges and understands that where Seller knows of facts materially affecting the value or desirability of the property, whether said facts are readily observable or not readily observable, the Seller is under a duty to disclose said facts to the Buyer and to the Broker. If Seller knows of any such facts, he shall set them forth in writing in a document presented to Broker at the time of execution of this contract by Seller, which document shall be attached to this Exclusive Right of Sale Contract. Seller has fully reviewed this contract and the information relative to said property (as shown in the listing information in this document and/or the attached listing information sheet) and the Seller warrants, to the best of his knowledge, the accuracy of said information. Seller agrees to indemnify and hold harmless the Broker and those relying thereon for any misinformation that may adversely affect the property. Seller will immediately notify the Broker, in writing, of any information that comes to the attention of the Seller(s) after the execution of this agreement.

**LISTING AGREEMENT:** Pursuant to section 475.42 (1)FS, Seller and Buyer hereby grant Broker the right to place a lien on the property to ensure payment of services rendered.

**ACKNOWLEDGMENT:** Seller and Broker agree that this Listing Agreement constitutes the entire listing agreement between them and may only be modified, extended or cancelled by written agreement between them. Included in this listing agreement is a written MLS Property Data Sheet and a Seller signed Seller Property Disclosure attached hereto. Seller hereby represents all statements contained within these documents to be true and accurate to the best of his/her knowledge and belief, and agrees to indemnify and hold Broker, broker's agents and any cooperating Brokers harmless from any liability in connection therewith.

\_\_\_\_\_  
**Seller(s) Signature**

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

\_\_\_\_\_  
**Seller(s) Signature**

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

\_\_\_\_\_  
**ACCEPTED BY BROKER**

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

\_\_\_\_\_  
**Sales Associate**

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

## ESCALATION CLAUSES EXPLAINED

An Escalation Clause is wording in an offer that states the potential buyer is willing to go above a certain amount. For example, a buyer may agree to pay \$1,000 more than the next highest offer received by a seller.

An Escalation Clause is basically designed to strengthen a buyer's offer in a multiple offer situation. In theory, it is fairly simple. The buyer offers a certain price for the property, but if the seller receives another offer that is higher, this buyer is willing to increase their offer up to a point. Escalation Clauses are a tactic used by some buyers to make their offer more appealing and ensure the seller will choose their offer.

It might sound like a good idea for a buyer trying to win in a bidding war and an even better idea for the seller looking for the highest sales price. Sellers welcome buyers willing to pay more than anyone else. So why do many Realtor Associations discourage the use of Escalation Clauses? Why are they frowned upon by so many real estate industry leaders?

Sellers should realize that until the contract is finalized and executed, a buyer's offer with an Escalation Clause is really just the buyer requesting a free right-of-first refusal. This is why most savvy home sellers will not accept an offer with an Escalation Clause and will only consider an offer with an exact dollar amount and clear terms.

If the offer includes a financing contingency, the purchase price may still be subject to an appraisal.

Proof of another offer becomes tricky. The buyer with an Escalation Clause offer doesn't really know if the next highest offer is legitimate. Are they really competing against another bona fide offer and not just a phony offer solicited by the seller to raise the price for their property? It could be impossible for the buyer to verify that another offer is sincere or genuine and not just a friend or relative of the seller. The buyer basically has no assurances and is stuck outbidding something they can't confirm.

There are also several legal issues surrounding Escalation Clauses. In fact, those gray legal areas have caused many Realtor boards around the country to ban the use of Escalation Clauses. Some of the gray legal areas surrounding Escalation Clauses include privacy issues, illegal practice of law, and ethical issues. The risk for a buyer using an Escalation Clause is that they may want proof that other offers exist that are higher than their original offer and therefore activating the Escalation Clause; however, the privacy and legal issues surrounding a buyer knowing the specifics of other buyers' offers is an area of concern. Accordingly, most sellers choose not accept an Escalation Clause.

Seller does not authorize acceptance of an Escalation Clause in an offer and directs The Biltmore Group to notify the Buyer in writing that only the offer price will be considered.

\_\_\_\_\_  
**Seller(s) Signature**

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

\_\_\_\_\_  
**Seller(s) Signature**

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