

**STANDARD “EXCLUSIVE RIGHT OF SALE” LISTING AGREEMENT**

 *Business Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Business Phone: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_\_*

 *Business Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Seller:*   *(collectively, the “****Seller****”).*

 *Business Description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

 Total Price: $\_\_\_\_\_\_\_\_\_ - Down Payment: $\_\_\_\_\_\_\_\_\_\_ - Financing: Months: \_\_\_\_ Interest: \_\_\_

1. In consideration of the services of **Empire Business Associates, Inc.** d/b/a **Capital Business Solutions,** hereinafter referred to as ***Broker***, to market, advertise and otherwise attempt to find a Buyer for this business through ***Broker***'s efforts, ***Seller*** hereby appoints and grants ***Broker*** the full and exclusive right to sell, and/or if ***Seller*** agrees, to exchange, trade, lease or otherwise dispose of all or any part of the above named business (hereinafter referred to as ***Business***) which shall include the conveyance of all or any portion of its assets, rights, liabilities or property at the Total Price and terms set forth above, or for any other price and terms acceptable to ***Seller***. ***Seller*** and ***Broker*** acknowledge that this Agreement does not guarantee a sale. Total Price is defined as the amount paid for the ***Business*** in a series of transactions or one transaction, including inventory and any liabilities, contingent liabilities and other obligations assumed by the Buyer, consulting agreements, management agreements and any other form of compensation paid by the Buyer.

 **2.** The ***Listing* *Period*** shall be one (1) year following the Effective Date of this Agreement.

 **3.** ***Broker*** hereby accepts this engagement and promises to use its best efforts in its ordinary course of business to offer for

sale and to procure a ready, willing, and able purchaser for ***Business***. ***Seller*** hereby authorizes ***Broker*** to present any and

all offers ***Broker*** may receive, until such time as ***Seller*** accepts an offer to purchase. At such time ***Broker*** need not advise

***Seller*** of any subsequent offer received. If the purchaser whose offer has been accepted either defaults under this agreement or

the purchase agreement is otherwise terminated, subsequent offers will be presented; and Broker reserves the right to determine

if a default has occurred or the purchase agreement has been terminated. ***Seller*** grants to ***Broker*** the right to show ***Business***

upon reasonable notification and to advertise ***Business*** at ***Broker***'s discretion. ***Seller*** agrees to refer all prospects regarding

the business to ***Broker*** during the ***Listing Period***.

1. **4. (i) S*eller*** shall pay to ***Broker*** as compensation or liquidated damages, whichever the case may be, an amount equal toten

percent (10%) of the Total Price, if any of the following occur:

* 1. ***Broker*** procures a Buyer ready, willing and able to purchase ***Business*** or any portion of the ***Business*** in a series of transactions or one transaction, at the terms set forth above, or at any other Price and/or Terms acceptable to ***Seller****;* **or**
	2. If ***Seller*** sells, leases, trades, or otherwise disposes of all or any part of the ***Business*** during the ***Listing*** ***Period***

 regardless of whether ***Broker*** was involved in or responsible for such disposition*;* **or**

* 1. If ***Seller*** enters into a contract for sale, letter of intent, and/or accepts a deposit or causes an amount to be placed in

escrow for said ***Business,*** commission shall be paid for and due at closing*;* **or**

* 1. If ***Seller*** withdraws the ***Business*** for sale, or seeks to terminate or terminates this Agreement prior to the termination

date of the ***Listing*** ***Period****;* **or**

**e.** If ***Seller,*** through no fault of Buyer***,*** fails or refuses to complete a sale, lease, trade or other disposition of ***Business*** after entering into a written agreement to do so*;* **or**

**f.** Should ***Seller*** misrepresent or be fraudulent in communicating any material information, including financial information to ***Broker*** and as a result thereof, a sale or contemplated sale or an “Offer to Purchase” is withdrawn, canceled or does not materialize*;* **or**

**g.** If ***Seller*** sells, leases, trades or otherwise disposes of all or any part of ***Business*** within two (2) years from the termination date of the ***Listing*** ***Period*** to any person, firm, or entity referred to ***Seller*** by ***Broker***, or who became aware of ***Business*** through ***Broker’s*** efforts during the ***Listing*** ***Period***. An employment, merger, joint venture or partnership arrangement between ***Seller*** and a Buyer shall be deemed to be a disposition herein*;* **or**

**h.** The sale or transfer of any or all shares of stock in the selling corporation (if applicable) during the ***Listing Period***

shall be construed to be a sale of the ***Business*** assets at the listed price, and shall be otherwise construed according to the terms hereof*;* **or**

**i.** Should ***Seller*** fail, refuse or neglect to provide ***Broker*** with all reasonable financial information, including but

not limited to Balance Sheets, Profit and Loss Statements, Tax Returns, Leases, Equipment Lists and all other pertinent documentation and information within twenty-one (21) days of the signature of this Agreement*;* **or**

**j.** ***Seller*** agrees with a Buyer to cancel an executed sales contract.

The Compensation shall be due and payable immediately upon the occurrence of any of the acts or dispositions set forth herein. However, in the event of a sale, ***Broker*** may allow for payment of the compensation at closing. The ***Broker***, at ***Seller***’s expense, shall have the right to place an appropriate lien and encumbrance on the ***Business*** necessary to collect any compensation and this shall be the necessary authorization and consent.

***Seller*** agrees that as consideration for Broker’s services, ***Broker*** is entitled to receive fifty percent (50%) of all deposits that ***Seller*** retains as liquidated damages for a Buyer’s default in a transaction, not to exceed the commission set forth in this paragraph.

 ***5. Seller*** represents and warrants the following:

1. ***Seller*** and such portion of ***Business*** operation as is applicable, is now, and shall otherwise remain, in full compliance

with all applicable laws, rules, and regulations regarding the commencement, operation and sale of ***Business***, and to the

best of the ***Seller***'s knowledge and belief there are no environmental or related matters which would adversely affect the

sale of the ***Business****,*

**b.** All facts, figures and other information set forth herein, and all additional supporting documents pertaining to the ***Business***

and as requested by the Buyer has been provided to ***Broker*** by ***Seller.*** ***Seller*** represents that all facts, figures and

other information provided are true and accurate, and

**c.** ***Seller*** shall provide proof of ownership of said business, as well as providing the authority required to execute any and

all documentation needed to affect the sale of said ***Business***.

**6. *Seller*** agrees to cooperate with Broker in carrying out the purpose of this Agreement, including referring immediately

to Broker all inquiries regarding the Business transfer, whether by purchase or any other means of transfer. ***Seller*** shall deliver

to ***Broker*** copies of any agreement between ***Seller*** and any prospective buyer of the ***Business*** within five (5) days after the

execution and delivery of any such agreement or five (5) days before Closing, if earlier; notify ***Broker*** of the date, time and place of the Closing; and permit ***Broker*** or ***Broker***’s representative to be present at the Closing. ***Seller*** shall also notify the Closing

Agent that ***Broker*** or ***Broker***’s representative may be present. If ***Seller*** fails to notify the Closing Agent, ***Broker*** shall

be authorized to do so, and to authorize and instruct the Closing Agent to deduct any and all commissions due to ***Broker***

under this Agreement from the closing proceeds and to pay same to ***Broker*** at Closing.

 **7*. Seller*** understands and acknowledges that all information supplied to ***Broker*** pertaining to ***Business*** will be used for

promoting ***Business*** to potential purchasers and to introduce Buyers to lenders. ***Seller*** further understands and acknowledges that ***Broker*** has not made any independent investigation of the accuracy of the information provided by ***Seller***. ***Seller*** understands that such information will be relied upon by ***Broker***, potential purchasers and the actual purchaser of ***Business*** for the purpose of submitting an Offer to Purchase. ***Seller*** agrees to indemnify and hold ***Broker*** harmless against any and all claims, demands, causes of action, losses, damages and costs and expenses, including attorney's fees and expenses incurred by ***Broker***, regardless of whether a suit is filed or not, in the event ***Seller*** should breach any warranty, representation or obligation set forth herein. Any

 information attached hereto and/or acknowledged by the parties, shall be part of this Agreement. The Corporate Resolution to Sell (if a corporation), and the Owners Benefits Worksheet or Owners Cash Flow Analysis, shall be deemed to be a part of this Agreement.

 **8. A**ny Escrow Agent acceptable to ***Seller*** is authorized to accept, receipt for, and hold all sums paid or deposited as an earnest money deposit; and if such deposit shall be forfeited as liquidated damages by mutual agreement between the parties, half shall be disbursed to ***Seller*** and half to the ***Broker***(s) involved, and this Listing Agreement between ***Seller*** and ***Broker*** shall continue in full force and effect until its termination date.

**9. Dispute Resolution by Arbitration.** This Contract shall be governed by the laws of the State of **Florida**.The parties hereto agree that with respect to all disputes, problems or claims arising out of or in connection with this Agreement and all other agreements or other instruments executed in connection herewith (collectively “Disputes”), the parties hereto shall, in good faith, use their reasonable best efforts to resolve the Dispute. If after such efforts the parties hereto are unable within ten (10) Business Days of the arising of the Dispute to resolve the Dispute in good faith, then either party may submit the Dispute to final and binding arbitration before the American Arbitration Association (“AAA”), with an office located in **Florida**, or its successor, pursuant to the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq. The parties hereto agree that the rules of the AAA applicable to commercial arbitrations shall apply to any such arbitration and that the Expedited Procedures under the Commercial Arbitration Rules shall apply. Either party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with AAA, with a copy to the other party. The arbitration will be conducted in **Broward County, Florida**, in accordance with the provisions of AAA Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with AAA and with one another in selecting an arbitrator from AAA panel of neutrals, and in scheduling the arbitration proceedings. The provisions of this Section with respect to the arbitration before AAA may be enforced by any court of competent jurisdiction. The fees and expenses of such arbitration and the enforcement of any award thereof (including out of pocket costs of investigation, prosecution or defense of any Dispute submitted for arbitration pursuant to this Section, as applicable, and reasonable attorney fees and expenses, in each case incurred by the prevailing party arising out of, by reason of or in connection with such Dispute, the arbitration thereof or the enforcement of any award of such arbitration) shall be borne by the non-prevailing party, as determined by such arbitration, and the arbitrator shall be empowered to award such fees and expenses to the prevailing party. Upon the mutual agreement of the parties involved in the Dispute, the parties may submit to final and binding arbitration before any other recognized alternative dispute resolution company or organization. The parties hereto agree that this Section has been included to rapidly and inexpensively resolve any disputes between them with respect to the matters described above, and that this paragraph shall be grounds for dismissal of any court action commenced by any party with respect to a dispute arising out of such matters.

**10.** The ***Seller*** and/or: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agree to work in the ***Business*** at no compensation for a period of \_\_\_\_\_ days, in order to familiarize the Buyer with the ***Business*** and sign a non-compete agreement for a \_\_\_\_ mile radius of the ***Business***.

**11.** The ***Seller*** authorizes and agrees that ***Broker***, in its sole discretion, may cooperate with other brokers or may refuse to do so. The ***Seller*** authorizes ***Broker*** to cooperate with any other broker regardless of their Agency Status. ***Broker*** may, in its sole discretion; share all or any portion of the total commission with such other broker(s).

 **12.** The ***Seller*** authorizes ***Broker*** and any other broker with whom ***Broker*** is cooperating, to disclose ***Seller***’s reason for

 selling the ***Business*** to any Buyer or prospective Buyer.

 **13.** The “Agency Relationship” between ***Broker*** and ***Seller*** is: **transactional**.

**14.** No waiver, amendment or other modification of this Agreement shall be effective unless in writing and signed by each party to be bound thereby.

**15.** This Agreement constitutes the entire Agreement between the parties and it supersedes all negotiations, preliminary

agreements, and all prior and contemporaneous discussions and understandings between the parties and shall not be

modified except in writing executed by the parties. ***Seller*** expressly acknowledges reading, understanding and receiving a

copy of this Agreement. ***Seller*** agrees that should ***Broker*** mail a copy of this Agreement within twenty-four (24) hours of the signature of this Agreement by the ***Seller***, such mailing shall be deemed to be in compliance with local and State Statutes.

facsimile copy of this Agreement and any signatures shall be considered for all purposes to be original.

If any paragraph, subparagraph, or provision of this Agreement is held invalid by a court of competent jurisdiction, the

remainder of the Agreement and the application of such paragraph, subparagraph, or provision to persons or circumstances

other than those with respect to which it is held invalid, shall not be affected. This Agreement is binding on ***Broker***’s and

***Seller***’s heirs, personal representatives, administrators, successors, and assigns.

**The *Seller* acknowledges that there are no oral representations upon which *Seller* relied upon in entering into this Agreement.**

**THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ IT CAREFULLY BEFORE SIGNING.**

TO BIND this agreement, a corporate officer of Capital Business Solutions MUST SIGN BELOW.

Accepted and agreed to be *on the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (the “Effective Date”).*

***Seller’s*** or ***Sellers*’** agent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Send correspondence to: ( ) Home ( ) *Business*

 Signature

By:

***Seller*** (Printed) Title

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who personally guarantees performance of this Agreement.

 Signature

Address:

 City: State: Zip Code:

 **FOR *Broker*:**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

 Listing Agent’s Name (Printed) Listing Agent (Signature) Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

 Corporate Officer’s Acceptance Title Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Corporate Officer’s (Printed)

I hereby acknowledge having received a copy of this Agreement on the \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature of *Seller* Title

**Capital Business Solutions**

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