



MORLEY FREDERICKS
REAL ESTATE SERVICES

PROPERTY MANAGEMENT

What are the responsibilities of the property manager?

- Collect the rent and, in most cases, pay all invoices.
- Interface with governmental agencies regarding licensing, permits and compliance issues
- Respond to calls from the tenant(s).
- Arrange for repairs and see that the repairs are done properly.
- Send appropriate tenant notices for inspections, late / nonpayment of rent, violations of the rules, etc
- Do or oversee evictions.
- Gather bids for major repairs and obtain your approval for major expenses.
- Gather W9s from contractors and distribute 1099s at year end
- Inspect the property occasionally
- Provide you with an accounting of all money received and disbursed monthly or quarterly, as well as keep a client trust account for owner money.
- State law regulates property managers much as it does real estate agents and in California – a property manager must be a licensed Real Estate Broker.
- And whatever else you agree upon between you. In fact every responsibility of the property manager is agreed upon contractually. Property Management agreements must be in writing.
- Residential properties with 16-units or more require an on-site manager. The on-site manager will be considered an employee and an Employer / Employee relationship will be formed.
- You may designate/negotiate other terms that a Property Manager is to perform.
- For residential/ multi-family properties – Property Managers typically help set market rents, execute Lease Agreements and provide & complete all required documentation and disclosures

Approximately how much would it cost to have the property managed and maintained by a property manager?

- 5-10%
- Fees are typically influenced by size of property, amount of income generated and duties performed

What variables do I need to consider when trying to choose a property manager?

- Experience & resources
- Proximity
- Accessibility
- Specialization requirements. If the property is a farm or recreation facility, for example, you may need to consider different hiring criteria
- At least as important as asking the property manager questions would be asking the property manager's clients questions. Get a list of references, and call them, just as you would landlord references.



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LISTING AGREEMENT

A “listing agreement” is a contract between a Real Estate Agent (the listing agent) and an Owner that provides the Agent the right to list (advertise and handle the sale/lease of) a particular property on behalf of the Owner. A listing agreement is desirable for the Agent, because it obligates the Owner to work with the Agent for at a certain (minimum) period of time and beneficial to the Owner because it details the Agent’s responsibilities and the Owner’s recourse if the Agent does not meet them.

Listing Agreements:

- Are between the Owner and the Brokerage Company. The Salesperson carries out the duties on behalf of the Broker
- Must be in writing
- Must have an expiration date
- Must specify price and the duties the parties have to one another
- Must specify the commission to be paid and the terms under which they are to be paid.
- Used for Sales or Leasing
- May be “Exclusive”, which allows only one Broker to market the Property, or “Open” which allows more than one Broker to market the Property, but defines the duties, term and compensation associated with the Listing.

Key Terms of Home Listing Agreements

Some of the most important terms of a real estate listing agreement.

- **The commission amount due and costs/services included.** This is negotiable. Commission can be fixed or variable. Fixed is the most common. Fixed commissions are typically negotiated based on the size of the transaction. Will Agent or Owner pay for specific advertising etc?
- **Exclusive right to sell.** Provides the Agent the exclusive right to sell the property for the duration of the agreement. Other types of arrangements with an Agent are possible, but the exclusive arrangement is the most preferred by Agents because it provides them with the most security.
- **Duration.** The listing agreement will last for a set amount of time, such as three or six months.
- **Safety or protection clause.** Even though the contract has an expiration date, it will likely include a clause that protects the Agent or Broker after that date (typically 180 days). This prevents an Owner from trying to avoid paying an agent’s commission by waiting until the Listing Agreement expires before accepting an offer. A safety clause should contain a requirement that the Agent “register” buyers in writing that will be covered by the safety clause. This list should only contain those parties that made offers during the listing period or displayed a bona fide interest in purchasing the property. This list should then be shared / disclosed to the next Agent to be hired to avoid paying excessive sales commissions.
- **Duties.** The agreement may lay out the activities the agent is authorized to be conduct on your behalf. Read through the list carefully, making sure you understand everything. If there are specific duties you want to require of the agent—for example, listing the property on the MLS, posting a yard sign, or creating a listing sheet, mail post cards —specify those as well.

- **Representations.** The agreement may also require Owner to verify certain facts—for instance, that Owner is in a legal position to sell the property and that to Owner’s knowledge, no one else has an ownership interest in it.
- **Dispute resolution.** The agreement will probably specify how the parties will handle disputes that they can’t work out informally, such as through mediation or binding arbitration.
- **“Carve Outs”.** Examples include an Owner’s right to pay a reduced commission to Agent in the case the Property is purchased by the tenant or another party who has made an offer prior to the Listing Agreement

Changing a Standard Listing Agreement

- Many real estate listing agents use standard forms created by state or local Realtor© associations to create their listing agreement. Don’t sign without reading carefully, however—and don’t be afraid to ask for any changes or amendments.
- Agents may resist changing their standard agreements, having used them many times in the past without incident. Nevertheless, if you’re uncomfortable with something, there’s no reason it can’t be changed. Small changes can be written right on the contract (make sure you get a copy), and large changes can be added on separate addendums and referred to in the contract itself (there’s usually a space for additional terms; here you can refer to the addendum).



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SELF-DEALING

Self-dealing Defined is the conduct of a trustee, an attorney, a corporate officer, or other fiduciary that consists of taking advantage of her/his position in a transaction and acting for her/his own interests rather than for the interests of the beneficiaries of the trust, corporate shareholders, or her/his clients.

What is real estate broker “SELF DEALING” under California law?

- Practically speaking, self-dealing in a real estate transaction involves the broker or agent using their fiduciary role to unfairly profit from the transaction. For example, it may involve the manipulation of fact or circumstances to allow for them to purchase a property at the expense of a trustee.
- And in general, a real estate broker in California must avoid self-dealing and seeking profits at the expense of his client. California case law has discussed this legal principle:
- The real estate broker is brought by his calling into a relation of **trust and confidence**. Constant are the opportunities by concealment and collusion to extract illicit gains. See *Richards Realty Co. v. Real Estate Com’r*, 144 Cal. App. 2d 357, 362, 300 P.2d 893, 897 (1956).
- An agent is **under a duty not to compete with his principal** on matters connected with the agency and a contract of agency may be implied from the parties’ conduct. See *Pollack v. Lytle* (1981) 120 Cal.App.3d 931, 940, 175 Cal.Rptr. 81.
- An agent is charged with the duty of fullest **disclosure of all material facts** concerning the transaction that might upset the principal’s decision. See *Buckley v. Savage* (1960) 184 Cal.App.2d 18, 27, 7 Cal.Rptr. 328.
- A real estate agent has the same obligation of **undivided service and loyalty** that is imposed on a trustee in favor of his beneficiary. See *Gann v. Williams Bros. Realty, Inc.*, 231 Cal. App. 3d 1698, 1705, 283 Cal. Rptr. 128, 133 (Ct. App. 1991).

A real estate broker has to be very careful to make sure they do not compete with their clients. This can be tough on the occasions that the real estate broker sees a great deal (ex. a great fix and flip opportunity, or an ability to buy a property and try to assign the contract for a profit). A real estate broker has a duty to disclose their relationship **as a Buyer or if directly related to a Buyer** in a transaction at the time the offer is presented to Seller for consideration.

A duty of loyalty is one of the most fundamental fiduciary duties owed by an agent to his principal. This duty obligates a real estate broker to act at all times solely in the best interests of his principal to the exclusion of all other interests, including the broker’s own self-interest. A corollary of this duty of loyalty is a duty to avoid steadfastly any conflicts of interest that might compromise or dilute the broker’s undivided loyalty to his principal’s interests. Thus, a real estate broker’s duty of loyalty prohibits him from accepting employment from any person whose interests compete with, or are adverse to, his principal’s interests. A classic example of breach of this duty of loyalty by a real estate broker is a broker who purchases property listed with his firm and then immediately resells it at a profit. Such conduct ordinarily is perfectly appropriate and lawful by persons acting “at arm’s length.” But a fiduciary will be deemed to have “stolen” a profit opportunity rightfully belonging to his principal and thus to have breached his duty of loyalty.



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COMMON LEASE TERMS IN COMMERCIAL / RESIDENTIAL

COMMERCIAL

NET LEASE

There are numerous forms of net leases. The most common of these is the Triple Net lease. In a Triple Net lease, the tenant is responsible for their proportionate share of property taxes, property insurance, common operating expenses and common area utilities. Tenants are further responsible for all costs associated with their own occupancy including personal property taxes, janitorial services and all utility costs.

This type of lease is rarely utilized in a multi-tenant office building. As with a modified gross lease, a modified net lease is also available. There are no set standards as to what costs may be excluded in a modified net lease; the lease is usually customized according to need.

Types of Net Leases

Net leases define the responsibilities of the landlord and the tenant differently. The following are types of net leases:

- Single Net Lease – A single net lease is a net lease where the tenant agrees to pay a monthly lump sum base rent as well as the property taxes. The landlord is responsible for all other operating expenses of the premises.
- Double Net Lease (NN) – A double net lease is a net lease where the tenant agrees to pay a monthly lump sum base rent as well as the property taxes and the property insurance. The landlord is responsible for all other operating expenses of the premises.
- Triple Net Lease (NNN) – A Triple net lease is a net lease where the tenant agrees to pay a monthly lump sum base rent as well as the property taxes, the property insurance, and the routine maintenance. The lease will need to specify who is responsible for maintaining the roof and structure.
- Absolute Triple Net Lease (Bond Lease) – An absolute triple net lease is a net lease where the tenant agrees to pay a monthly lump sum base rent as well as the property taxes, the property insurance, and the maintenance. Under an absolute triple net lease there are no legal defenses if a tenant fails to meet his responsibilities.

Gross lease: A property lease in which the tenant pays the base rent and the landlord agrees to pay all expenses which are normally associated with ownership, such as utilities, repairs, insurance, and (sometimes) taxes.

Modified Gross lease would be where the above is modified to whatever extent the 2 parties to the lease can agree upon. The most common types of modified gross leases excludes maintenance, janitorial and electrical. This type of lease is commonly utilized in medical office buildings or multi-tenant single floor office buildings, where different tenants have varying needs for electrical or janitorial services.

Industrial Gross Lease: An industrial gross lease means that the tenant pays rent plus a share of services. Taxes and insurance are included in the base rent; however, at the end of the year any increases in taxes and insurance are passed on to the tenant as additional rent.

The primary difference between typical Gross Lease and Industrial Gross Lease is that a typical Gross Lease calls for Tenant to pay base rent and Landlord to pay most all other costs as indicated whereas a typical Industrial Gross Lease calls for Tenant to pay base rent and Landlord to pay most all other costs as identified but where the Tenant may be expected to cover any increases in specified costs such as taxes, maintenance, insurance and/or utilities over the initial year of the lease.

The Full Service lease is similar to the Gross lease except it contains provisions to pass on escalating costs to the tenant. The landlord quotes a rate that includes paying the taxes, insurance premiums, utilities, and CAM. In order to protect Landlord from escalating costs the landlord will include either a base year or expense stop. To understand Full Service leases it is imperative that one understand these concepts.

The Gross Industrial lease is similar to the Triple Net lease except the lease rate includes the payment of taxes and insurance. So the Tenant pays for their maintenance and utilities. The tenant is responsible for paying any increase over the amount of taxes and insurance for a given year much like a base year. If the property is a multi-tenant property the common area charges will also be added and usually are quoted as a per square foot cost much like an expense stop. **Industrial leases are generally Gross Industrial or Triple Net leases**

PROPORTIONATE SHARE

A Tenant's proportionate share of operating expenses are calculated on a square footage basis.
Tenant's Sq. Ft. divided by Total Building Sq. Ft. = Tenant's proportionate share

BASE YEAR

A "Base year" is typically utilized in multi-tenant industrial building leases to determine "base" cost for operating expenses cost of the space. The base operating expense account is the floor over which any increases in operating expenses will be passed on to the tenants of the building. In general, a base year is calculated on a calendar year basis or the first 12 months of Tenant's occupancy.

MULTI-TENANT OFFICE BUILDINGS

Full Service Gross: A full service gross lease is where the Landlord is responsible for the payment of taxes, maintenance, insurance and utilities. All of the costs are included in the base rent figure.

The tenant is typically responsible for their own property insurance and taxes and any excess utility consumption beyond building standards. Further, Tenant is typically responsible for their proportionate share of any increase in base operating expenses over a base year or expense stop.

EXPENSE STOP

An expense stop is the preferred method for expense calculation by a Landlord. This vehicle allows a Landlord to estimate the approximate expenses the building will incur and the tenant is responsible for payment of their proportionate share of actual operating expenses over the estimated expense stop. This is rarely utilized anymore as it led to fraudulent estimates of expenses in the past and unexpectedly high operating expense pass-throughs to tenants.

PERCENTAGE OF SALES

Retail lease can have a provision where the Landlord will receive a percent of the gross sales of the business after reaching an established dollar volume of the business.

GROUND LEASE

A lease whereby the Tenant leases the ground that a building resides on. The tenant maintains the structure and all expenses. Since there are no improvements owned by the landlord there is no depreciation available. At the end of the lease term, the ownership of the building will typically transfer to the owner of the land (landlord).

MASTER LEASE

A lease that identifies one Tenant who is responsible for a lump sum lease payment for the entire property. That "Master" Tenant then possesses the right to sublease the property at a rate they alone determine. The Master Tenant's obligations under the lease may vary and may include the requirement that the Master Tenant assume responsibility for all expenses.

Term

The length of time specified in the lease

RESIDENTIAL

California has several residential rental laws & forms aimed at protecting tenants that an Owner/Landlord needs to be aware of:

- **Rent control** – The municipalities of Oakland, Berkeley, San Francisco, East Palo Alto, Hayward, Los Angeles and Santa Monica all have their own versions of rent control that limits a Landlord's ability to increase rents and process evictions
- **Notice period** – When a Tenant has occupied the same residence for a period of one year or more – a Landlord must provide Tenant with a 60-day to increase rent or to terminate the Tenancy. There are a few exceptions to this, for example the sale of a SFR that will become owner occupied after purchase.
- **Security Deposits.** A landlord may not charge in excess of 2x the monthly base rent for an unfurnished dwelling and 3x the monthly rent for a furnished unit. Pet deposits are not factored into this limitation.
- **Estoppel.** An estoppel is a form completed by tenant and landlord that states the "then current" terms of the tenancy. Having signed estoppels are always in the landlord's best interest as they are an essential part of the sales and financing process when a landlord has long term tenants that may have had a change-in-terms-of-tenancy. Most residential/commercial leases contain a clause requiring tenant to execute an estoppel to avoid being in default.
- **Occupancy Disclosures.** Lead-based paint, smoke detector, water heater, carbon monoxide detector, Megan's Law, earthquake, mold – the list is seemingly endless. It is best to document everything well.

Before a tenant can rent a rental unit, the tenant and the landlord must enter into one of two kinds of agreements: **periodic rental agreement** or a **lease**.

- If the periodic rental agreement requires that rent be paid once a month it is a month-to-month rental agreement and tenancy and if it is paid once a week it is a week-to-week rental agreement and the tenancy is a week-to-week tenancy.

- In effect, a periodic rental agreement expires at the end of each period for which the tenant has paid rent, and is renewed by the next rent payment. A periodic rental agreement does not state the total number of weeks or months that the agreement will be in effect. The tenant can continue to live in the rental unit as long as the tenant continues to pay rent, and as long as the landlord does not ask the tenant to leave.

In a periodic rental agreement, the length of time between the rent payments (the rental period) determines three things:

- How often the tenant must pay rent;
- The **amount of advance notice** that the tenant must give the landlord, and that the landlord must give the tenant, if either decides to terminate (end) the tenancy; and
- The amount of advance notice the landlord must give the tenant if the landlord decides to change the terms of the rental agreement other than the rent.

Oral rental agreements

Are binding. In an oral rental agreement, the tenant and the landlord agree orally (not in writing) that tenant will rent the rental unit. This kind of rental agreement is legally binding on both tenant and the landlord, even though it is not in writing unless a tenant and a landlord agree to the lease of a rent unit for more than one year, the agreement must be in writing. If such an agreement is not in writing, it is not enforceable. However, even if the agreement is oral, the landlord must provide tenant a written statement regarding the name, street address, and phone number of the landlord or agent for receipt of legal notices; the contact information for the person who is to accept the rent; and how the rent is to be paid (for example by cash, check or money order.)⁵⁶

Written rental agreements

A written rental agreement is a periodic rental agreement that has been put in writing. The written rental agreement specifies all the terms of the agreement between tenant and the landlord - for example, it states the rent, the length of time between rent payments, and the landlord's and tenant's obligations. It may also contain clauses on pets, late fees, and amount of notice. **A rental agreement must be in writing if the term of tenancy is for more than one year.**

SHARED UTILITY METERS

Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose to tenant that utility meters are shared before tenant signs the rental agreement or lease.⁶¹ If you become a tenant, the landlord must reach an agreement with you about who will pay for the shared utilities.

Rental units in older buildings may not have separate water meters or sub-meters. California law does not specifically regulate how landlords bill tenants for water and sewer utilities.

TRANSLATION OF PROPOSED RENTAL AGREEMENT

A landlord and a tenant may negotiate primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean for the rental, lease, or sublease of a rental unit. In this situation, the landlord must give the tenant a written translation of the proposed lease or rental agreement in the language used in the negotiation before the tenant signs it. This rule applies whether the negotiations are oral or in writing. The rule does not apply if the rental agreement is for one month or less. The landlord must give the tenant the written translation of the lease or rental agreement whether or not the tenant requests it. The translation must include every term and condition in the lease or rental agreement, but may retain elements such as names, addresses, numerals, dollar amounts and dates in English.



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COMMERCIAL REAL ESTATE BROKER

Commercial Real Estate defined: Property that is used solely for business purposes. Examples of commercial real estate include multi-family properties, malls, office parks & buildings, retail buildings (restaurants, gas stations, convenience stores) and office towers. Commercial real estate is one of the three primary types of real estate. The other types are residential real estate, which is used for living purposes; and industrial real estate, which is used for manufacturing and production. The businesses that occupy commercial real estate usually lease the space. An investor usually owns the building and collects rent from each business that operates there.

What to consider when looking for a Commercial Real Estate Broker

- **Expertise and experience in commercial real estate.** Even within commercial real estate, there are specialists and generalists. Many of the men and women working in commercial real estate work with clients that invest in a wide variety of property types. As a result, many brokers have worked with many different property types. If you have a specialized property type – you’ll want to make sure that the broker has the appropriate experience, understands the asset and has developed a solid plan for executing their assignment.
- **Leasing vs. Sales.** Depending on the needs of the property, you’ll want to make sure that they are well qualified in the field for which you’re hiring them. Sales and Leasing are different animals and you’ll want to make sure they’re comfortable and experienced with the required discipline.
- **Market where the property is located.** While it is usually most advantageous to hire a broker that is close to the subject geographically, some marketing campaigns can benefit from hiring a larger company with a wider audience to handle the assignment. Investment properties located in small towns often benefit from having out of the area brokers because they can increase the buying pool dramatically. In many cases, an owner can request that the broker who has the larger audience partner with a local broker to facilitate the gathering of local market data, capture any local buyers and conduct property tours.
- **An established business in your geographical area.** Look for someone who’s been in commercial real estate long enough to know how deals are done and how buyers and their brokers work.
- **Gathering opinion of value proposals - aka “BPO” (Broker’s Pricing Opinion) “BOV” (Broker opinion of value)** Doing so is the best opportunity to screen the potential candidates. Contacting three different brokerage companies should give you an adequate sampling. The presentations will tell you all you need to know about their ability and experience. A successful proposal should include a range of recommended pricing, recent activity of comparable properties, a detailed marketing plan and cost of sale analysis, as well a snapshot of their qualifications. A broker should make every effort to present this valuation in person.
- **To locate prospective brokers** begin by contacting any real estate professionals you have worked with in the past and ask if they have any referrals or recommendations. Most commercial brokers are well connected throughout a large geographical area and can make your search quicker and easier while delivering much better candidates than you would find via the internet.



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COST SEGREGATION AND REAL PROPERTY

What is Cost Segregation?

Cost Segregation is the practice of identifying assets and their costs, and classifying those assets for federal tax purposes. In a cost segregation study, certain costs previously classified as subject to a 27.5 or 39-year depreciable life, can instead be classified as personal property or land improvements, with a 5, 7, or 15-year rate of depreciation using accelerated methods. An "engineering-based" study allows a building owner to depreciate a *new or existing* structure in the shortest amount of time permissible under current tax laws.

The benefits of a cost segregation study include:

- An immediate increase in cash flow
- A reduction in current tax liability
- The deferral of taxes
- The ability to reclaim "missed" depreciation deductions from prior years (without having to amend tax returns)

Eligibility

- Real property eligible for cost segregation includes buildings that have been purchased, constructed, expanded or remodeled since 1987.
- A study is typically cost-effective for buildings purchased or remodeled at a cost greater than \$200,000.
- A cost segregation study is most efficient for new buildings recently constructed, but it can also uncover retroactive tax deductions for older buildings which can generate significant short benefits due to "catch-up" depreciation.

Property asset classification

- Analysis of capital expenditures is used to determine appropriate asset classifications.
- Cost segregation identifies building costs that would typically be depreciated over a 27.5 or 39-year period and reclassifies them to permit a shorter, accelerated method of depreciation for certain building costs.
- Costs for non-structural elements, such as wall covering, carpet, [accent lighting](#), portions of the electrical system and building components, such as electrical installations, plumbing, mechanical components, finishes, and exterior site improvements such as sidewalks and landscaping, can often be depreciated over five, seven or 15 years, rather than over 27.5 or 39 years.

Cost Segregation Qualifications & Opportunities

- New construction
- Purchase of existing property
- Renovations or expansion
- Leasehold improvements
- Real property stepped-up through estate

Why a specialist is needed?

For both *new and existing* properties, the IRS requires that engineering-based cost segregation studies be performed in order to realize the maximum depreciation benefits. Engineering-based cost segregation studies provide more precisely segregated property information, giving CPAs the information and detailed supporting documentation they need to meet with strict IRS regulations and requirements for audit defense.

- In general, a study by a construction engineer is more reliable than one conducted by someone with no engineering or construction background. Experience in cost estimating and allocation, as well as knowledge of the applicable tax law, are other important criteria.
- Usually, a construction engineer will analyze architectural drawings, mechanical and electrical plans, and other blueprints to segregate the structural and general building electrical and mechanical components from those linked to personal property. The study also allocates “soft costs,” such as architect and engineering fees, to all components of the building.

Tax Benefits of Cost Segregation

In addition to providing lower taxes, cost segregation can benefit businesses in a number of ways:

- Maximizing tax savings by adjusting the timing of deductions. When an asset’s life is shortened, depreciation expense is accelerated and tax payments are decreased during the early stages of a property’s life. This, in turn, releases cash for investment opportunities or current operating needs.
- Creating an audit trail. Improper documentation of cost and asset classifications can lead to an unfavorable audit adjustment. A properly documented cost segregation helps resolve IRS inquiries at the earliest stages.
- Playing Catch-Up: Retroactivity. Since 1996, taxpayers can capture immediate retroactive savings on property added since 1987. Previous rules, which provided a four-year catch-up period for retroactive savings, have been amended to allow taxpayers to take the entire amount of the adjustment in the year the cost segregation is completed. This opportunity to recapture unrecognized depreciation in one year presents an opportunity to perform retroactive cost segregation analyses on older properties to increase cash flow in the current year.
- Additional tax benefits. Cost segregation can also reveal opportunities to reduce real estate tax liabilities and identify certain sales and use tax savings opportunities.

Downsides to Cost Segregation Studies

- Downsides to cost segregation studies include the cost of the study, the triggering of depreciation recapture and understatement penalties for taxpayers that use cost segregation too aggressively.



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EXAMPLE OF EXCLUSIVE LISTING AGREEMENT

EXCLUSIVE AUTHORIZATION TO SELL

Good Time Investments ("Owner") hereby grants to **Morley Fredericks Real Estate Services** ("Broker") the exclusive right to sell, convey, or exchange the real property described below ("Property"), under the terms and conditions of this Authorization ("Authorization") for a period commencing on January 1, 2016 and ending on June 30, 2016 ("Listing Period"). In the event that an escrow is opened for the sale of the Property during the Listing Period, the Listing Period shall automatically be extended by the number of days of the escrow period.

In consideration hereof Owner and Broker agree as follows:

- Property:** All land, improvements, rights and interests of Owner in the property located at 2468 Main Street in the CITY OF WALNUT CREEK, COUNTY OF CONTRA COSTA, STATE OF CA, APN# 123-456-78
- Price:** Broker shall offer the Property for sale at the price of One Million DOLLARS (\$ 1,000,000) or other price and terms as Owner may agree to.
- Commission.** If during the Listing Period, the Property is sold a commission equal to Six PERCENT (6.0%) of the gross sales price, shall be paid to Broker in cash at and through close of escrow. Owner hereby irrevocably assigns to Broker proceeds from escrow sufficient to pay the commission set forth herein. Owner shall pay the commission to Broker if, during the term hereof: (a) the Property is sold to a purchaser, whether through Broker, or by Owner, or through anyone else; or (b) a contract for sale is entered into for the Property, whether through Broker, Owner, or anyone else; or (c) a satisfactory purchaser is procured or introduced by Broker, Owner, or anyone else, who is ready, willing and able to purchase the property on the terms stated above or other terms acceptable to Owner. In the case Steve Crane or Morley Fredericks Real Estate Services represents the Buyer as well ("Dual Agency"), the commission shall be equal to Five percent (5.0%).
- Registration.** Broker shall, within ten (10) business days following expiration of the Listing Period or other termination of this Authorization, provide Owner with a Registration List containing the name of prospective buyers to whom Broker has presented the Property and who appear to have an interest in purchasing the Property ("Registered Prospects"); provided, however, that if a written offer has been received, that offeror shall be a Registered Prospect whether or not included on the Registration List. If within one hundred eighty (180) days following Owner's receipt of the Registration List the Property is sold to, or Owner enters into a contract to sell the Property to a Registered Party, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to any Registered Prospect (including his/her/its successors, assigns or affiliates) then Owner shall pay Broker the Commission specified in Paragraph #3 above upon the closing of said sale. Broker is authorized to continue negotiations with such persons or entities.
- Owner's Duties; Broker's Rights and Authority.** Broker shall assist Owner in marketing the Property and in negotiating the terms and conditions of sale with any prospective purchaser. Owner shall cooperate fully with Broker in effecting the sale of the Property and shall immediately refer to Broker all inquiries of any party interested in the Property. All negotiations shall be conducted through Broker. Broker is authorized to accept a deposit from any prospective purchaser. Broker is authorized to advertise the Property. Broker shall not, however, have authority to bind Owner to the terms of a purchase agreement. Owner shall, within five (5) business days after the execution hereof, provide Broker with full and complete information regarding the Property, including its physical condition,

leases and other agreements, and any other matter affecting its value or utility. Owner acknowledges that Owner and Broker may have an obligation to disclose to a prospective purchaser whether the Property is located within certain Natural Hazard Zones, and Owner hereby authorizes Broker to secure, for the benefit of Owner and Broker, a Natural Hazards Report concerning the Property, the costs of which shall be deducted from Owner's proceeds in the event of a sale.

6. **Non-Discrimination.** It is understood that it is illegal for either Owner or Broker to refuse to show, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status or physical disability.
7. **Authority.** Owner warrants that he or she is the owner of record of the Property and/or has full legal authority to execute this Authorization, and that neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding. Owner shall notify Broker immediately if Owner discovers that any of the above warranties is untrue.
8. **Consent to Dual Agency.** Owner understands and agrees that if Broker finds a prospective purchaser for the Property, Broker may also represent and act as the agent for such purchaser, and Owner authorizes and consents to such dual agency.
9. **Owner's Acknowledgments.** Owner acknowledges that it has been advised by Broker to consult with and retain experts to advise and represent it concerning the legal and tax effects of this Authorization and any transaction involving the Property, as well as the condition and/or legality of the Property, including, but not limited to, its environmental aspects. Broker shall have no obligation to investigate such matters unless expressly otherwise agreed to in a writing signed by Owner and Broker. Owner agrees that Broker is not providing, and under no circumstances shall provide, legal, financial, tax or accounting advice; Owner shall seek any such advice from other professionals and shall under no circumstances obtain or rely on such advice from Broker. Owner agrees that Broker is under no obligation or duty to investigate any prospective purchaser or others, or to evaluate their financial condition or ability to close escrow. Owner further acknowledges that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation, notwithstanding Broker may have assisted in gathering such information. Except with respect to confidential information provided to Broker by Owner and the terms of a prospective purchase and sale agreement negotiated between Owner and a prospective buyer, Owner and Broker agree that their relationship is at arms length and not confidential in nature.
10. **Arbitration of Disputes.** Broker and Owner agree that any dispute or claim, at law or in equity, arising out of this Authorization or any resulting transaction shall be decided by neutral binding arbitration in accordance with the rules of the American Arbitration Association, and not by court action except as provided by California law for judicial review of arbitration proceedings. The arbitrator shall apply California law and shall have no authority to disregard or wrongly apply such law in reaching a decision. Judgment upon the award rendered in such arbitration proceeding may be entered in any court having jurisdiction thereof. In the arbitration proceeding, the parties shall have the right to discovery in accordance with California Code of Civil Procedure Section 1283.05. Notwithstanding the foregoing, the following matters are excluded from arbitration hereunder: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or real property sales contract as defined in California Civil Code Section 2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanics' lien; or (iv) any matter which is within the jurisdiction of a probate or bankruptcy court. The filing of a judicial action to enable the recording of a notice of pending action, or to request an order of attachment, receivership, preliminary injunction or other provisional remedy, shall not constitute a waiver of the right to arbitrate under this provision.

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.

BY INITIALING BELOW WE ACKNOWLEDGE THAT 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.

Broker's Initials _____

Owner's Initials _____

11 Miscellaneous.

- A. This Authorization constitutes the entire agreement between the parties. Any prior agreement or understanding is void and of no further force and effect. No amendments or alterations in the terms hereof or withdrawal of this Authorization shall be valid or binding unless made in writing and signed by both Owner and Broker. There are no statements, representations, inducements, warranties or promises made or relied upon by either party, except as expressly stated herein. In the event any provision or portion of a provision of this Authorization is found to be unenforceable, then the remaining provisions shall be given full force and effect.
- B. Owner agrees to defend, indemnify and hold Broker harmless from any liabilities, costs, damages and/or expenses, including without limitation attorney's fees and costs, arising from or connected with (a) any environmental claim; (b) any claim alleging a material omission, misrepresentation, or incorrect information supplied by Owner, (c) alleged discrimination or other acts or omissions of Owner, and (d) claims for injury or damage to any prospective purchaser, guest, or invitee occurring on the Property. Owner hereby releases and relieves Broker, and waives Owner's entire right of recovery against Broker, for direct or consequential loss or damage arising out of or incident to the perils covered by property or liability insurance carried by Owner, provided, however, that the foregoing release shall not apply to claims for professional negligence based on the wrongful acts or omissions of Broker.
- C. In any action for a commission arising out of this Authorization, the prevailing party, whether in court, on appeal, or by use of alternative dispute resolution methods, shall be entitled to recover from the other its reasonable attorney's fees, court costs, expert witness fees and other costs of suit.
- D. Broker agrees to advertise Property for sale on Loopnet, MLS and to distribute mailers to bona fide purchasers. Broker shall be responsible for the cost of all advertising and marketing materials.
- E. Owner shall file any claim against Broker within one hundred and eighty (180) days of the earlier of: (i) any alleged breach by Broker, (ii) any damage to Owner, (iii) Owner's knowledge of such claim or a potential claim, or (iv) such time as Owner should have been aware of such claim. Subject to the foregoing, in no event will any action be brought by Owner more than one year after expiration of this Authorization.

OWNER:

Good Time Investments

By: _____

Name Printed: Good Time Investments

Date: _____

ADDRESS:

888 Lucky Drive

San Francisco, CA 94111

Phone: (415) 555-1212

Fax: _____

Email address: _____

BROKER:

Morley Fredericks REAL ESTATE SERVICES

By: _____

Name Printed: Steve Crane

Date: _____

ADDRESS:

1010 B Street, Suite 216

San Rafael CA 94901

Phone: 415-847-1224

Fax: 415-532-3200

Email address: steve@morleyfredericks.com