



TEXAS ASSOCIATION OF REALTORS®

COMMERCIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

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1. PARTIES: The parties to this agreement (this Listing) are:

Seller: Yvette J. Gonzales, Chapter 7 Trustee for the Chapter 7 estate of Furr's
Supermarkets, Inc., Case No. 7-01-10779 SA, Bankruptcy Court, District of New Mexico
Address: P.O. Box 1037
City, State, Zip: Placitas, NM 87043-0621
Phone: 505-771-0700 Fax: 505-771-0621
E-Mail: _____

Broker: HIRSCHI REALTORS
Address: 3631 Maplewood, Ste. 1
City, State, Zip: Wichita Falls, TX 76308
Phone: (940) 692-8120 Fax: (940) 691-1213
E-Mail: _____

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY:

A. "Property" means the following real property in Texas:

Address: 1915 LOOP 11
City: WICHITA FALLS County: WICHITA Zip: 76305
Legal Description (*Identify exhibit if described on attachment*):
LOT 2, BLOCK 3, LYNWOOD WEST 3 ADDITION

B. Except as otherwise provided in this Listing, Broker is to market the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- ✓ (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: N/A

(Describe any exceptions, reservations, or restrictions in Special Provisions or an addendum. If the Property is a condominium, attach Condominium Addendum.)

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3. LISTING PRICE:

- A. Seller instructs Broker to market the Property at the following gross sales price: \$ 275,000.00
 _____ (Listing Price).
- B. Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of commercial real estate in Texas (seller's typical closing costs are those set forth in the commercial contract forms published by the Texas Association of REALTORS®) except _____

4. TERM:

- A. This Listing begins on AUGUST 1, 2004 and ends at 11:59 p.m.
 on ~~AUGUST 1, 2005~~ APRIL 30, 2005.
- B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. BROKER'S FEE:

A. Fee: When earned and payable, Seller will pay Broker a fee of:

- (1) SIX % of the sales price.
- (2)

B. Earned: Broker's fee is earned when any one of the following occurs during this Listing:

- (1) Seller sells, exchanges, agrees to sell, or agrees to exchange all or part of the Property to anyone at any price on any terms;
- (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy all or part of the Property at the Listing Price or at any other price acceptable to Seller;
- (3) Seller grants or agrees to grant to another person an option to purchase all or part of the Property;
- (4) Seller transfers or agrees to transfer all or part of Seller's interest (stock or shares) in any entity that holds title to all or part of the Property for the purpose of conveying all or part of the Property to another person; or
- (5) Seller breaches this Listing.

C. Payable: Once earned, Broker's fee is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) Seller's refusal to sell the Property after Broker's Fee has been earned;
- (3) Seller's breach of this Listing; or
- (4) at such time as otherwise set forth in this Listing.

Broker's fee is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

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D. Other Fees:

(1) Lease of Property: If during this Listing Broker procures a tenant to lease all or part of the Property and Seller agrees to lease all or part of the Property to the tenant, Seller will pay Broker at the time the lease is executed the fee described below. If, during the term of the lease, the tenant agrees to purchase all or part of the Property, Seller will pay Broker the fee specified in Paragraph 5A.

(a) _____ % of all rents to be paid for the term of the lease.

(b) N/A

(2) Breach by Buyer Under Contract:

(a) If a buyer with whom Seller has entered into a contract for the sale of the Property during this Listing breaches the contract and Seller receives all or part of the earnest money, Seller will pay Broker the lesser of one-half of such amount or the amount of the Broker's Fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(2)(a) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(b) If Seller collects the sales price or damages by suit, compromise, settlement or otherwise from a buyer who breached a contract for the sale of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(2)(b) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(3) Service Providers: If Broker refers Seller or a prospective buyer or tenant to a service provider (e.g., mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(3) is in addition to any other compensation Broker may receive under this Listing.

(4) Transaction Fees and/or Reimbursable Expenses:

E. Protection Period:

(1) "Protection period" means that time starting the day after this Listing ends and continuing for 90 days.

(2) Not later than 10 days after this Listing ends Broker may send Seller written notice specifying not more than TEN names of persons whose attention Broker has called to the Property during this Listing. If Seller agrees to sell or lease all or part of the Property during the protection period to a person named in the notice or to a relative or business associate of a person named in the notice, Seller will pay Broker, upon the closing of the sale or upon execution of the lease, the amount Broker would have been entitled to receive if this Listing were still in effect.

(3) "Person" means any person in any capacity whether an individual or entity. "Sell" means any transfer of any interest in the Property whether by agreement or option.

(4) This Paragraph 5E survives termination of this Listing.

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F. County: All amounts payable to Broker are to be paid in cash in WICHITA FALLS, WICHITA County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

6. EXCLUSIONS:

A. Under a prior listing agreement Seller is obligated to pay another Texas licensed broker a fee if Seller sells or leases all or part of the Property before N/A to any of the following persons: _____

_____ (named exclusions).

B. If Seller enters into a contract to sell or lease all or part of the Property to a named exclusion before the date specified in Paragraph 6A, Seller will not be obligated to pay Broker the fees under Paragraph 5 of this Listing, but Seller will pay Broker, upon the closing of the sale or upon execution of the lease, a fee equal to:

- (1) _____% of the sales price if Seller sells the Property;
- (2) _____% of the total base rents to be paid over the term of the lease if Seller leases the Property; and
- (3) _____

C. If Seller enters into a contract to sell or lease all or part of the Property to a named exclusion, Broker will will not assist Seller in negotiating and closing the sale or lease to the named exclusion.

7. ACCESS TO THE PROPERTY:

A. To facilitate the showing and sale of the Property, Seller instructs Broker and Broker's associates to:
(1) access the Property at reasonable times; and
(2) authorize other brokers, inspectors, appraisers, lenders, engineers, and repair persons to enter the Property at reasonable times.

B. Authorizing access to the Property means giving permission to another person to enter the Property, disclosing any security codes necessary to enter the Property to such person, and lending a key to the Property to such person.

C. When authorizing access to the Property or showing the Property, Broker and other brokers are not responsible for personal injury or property loss to Seller or any other person. Seller will indemnify and hold Broker and other brokers harmless from any loss or damage claimed by persons authorized to access the Property if such loss or damage is caused by Seller or Seller's negligence.

8. COOPERATION WITH OTHER BROKERS: Broker will allow other brokers to show the Property to prospective buyers and tenants and if another broker, who represents a buyer or tenant, procures an acceptable offer, Broker will pay the other broker part of Broker's fee described in Paragraph 5A. Broker will determine the terms and conditions of offers to compensate other brokers.

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9. AGENCY RELATIONSHIPS:

- A. Seller acknowledges receipt of the attached exhibit entitled "Information About Brokerage Services" which is incorporated in this Listing for all purposes.
- B. Broker will exclusively represent Seller in negotiations for the sale or lease of the Property. However, if a prospect that Broker represents desires to purchase or lease all or part of the Property, Seller instructs Broker as follows. (Check (1) or (2) only.)
 - (1) Intermediary Relationship Authorized: Seller authorizes Broker to show the Property to prospects whom Broker has agreed to represent. If Broker represents a prospect who offers to buy or lease all or part of the Property, Seller authorizes Broker to act as an intermediary between the prospect and Seller, to present any offer such prospect may wish to make, and to assist both Seller and the prospect in negotiations for the sale or lease of the Property. Broker's compensation will be paid by Seller as provided in Paragraph 5. If Broker acts as an intermediary, Broker may appoint a licensed associate(s) of Broker to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to the prospect.
 - (2) Intermediary Relationship not Authorized: Broker will exclusively represent Seller and may not act as an intermediary between Seller and a prospect. Seller understands that Broker will not show the Property to any prospective buyer or tenant whom Broker represents.

Notice: If Broker acts as an intermediary, Broker and any of Broker's associates:

- ◆ may not disclose to the prospect that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- ◆ may not disclose to Seller that the prospect will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospect;
- ◆ may not disclose any confidential information or any information Seller or the prospect specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the Property;
- ◆ shall treat all parties to the transaction honestly; and
- ◆ shall comply with the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will make reasonable efforts and act diligently to sell the Property.
- B. In addition to other authority granted by this Listing, Broker may:
 - (1) advertise the Property by means and methods as Broker determines in any media, including but not limited to:
 - (a) placing a "For Sale" sign or similar marketing sign on the Property; and
 - (b) placing information about the Property and interior and exterior photographs of the Property:
 - (i) on the Internet on Broker's website and on other websites as Broker determines;
 - (ii) in any advertisements whether in print or electronic media; and
 - (iii) into computerized listing services on the Internet;

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- (2) furnish comparative marketing and sales information about other properties to prospects;
 - (3) disseminate information about the Property to other brokers and prospects, including applicable disclosures or notices that Seller is required to make under law or a contract;
 - (4) obtain information from any holder of any note secured by a lien on the Property;
 - (5) accept, in trust, any earnest money, option fee, security deposit, or other money related to the purchase or lease of the Property and deliver such money for deposit in accordance with a contract for the sale or lease of the Property;
 - (6) disclose the sales price and terms of sale or lease to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property is placed;
 - (7) place information about this Listing and a transaction for the Property on an electronic platform (an electronic platform is typically an Internet-based system where professionals related to the transaction, such as title companies and lenders, may receive, view, and input information); and
 - (8) advertise that Broker "sold" or "leased" the Property after the closing of a sale or execution of a lease of the Property in which Broker was involved.
- C. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.
- D. Compilations of information submitted to a listing service are the property of the listing service for all purposes.

12. REPRESENTATIONS:

- A. Except as provided otherwise in this Listing, Seller represents that:
- (1) Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to convey the Property;
 - (2) Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
 - (3) no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
 - ~~(4) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;~~
 - ~~(5) the Property is not subject to the jurisdiction of any court, and~~
 - (6) all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge.
- B. Seller and Broker must disclose any known material defect in the Property to a prospective buyer. (Check only one box.)
- (1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Broker to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.
 - (2) Except as otherwise provided in this Listing, Seller is not aware of:
 - (a) any subsurface: structures, pits, wastes, springs, or improvements;
 - (b) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (c) any environmental hazards or conditions that materially affect the Property;
 - (d) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (e) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
 - (f) any wetlands, as defined by federal or state law or regulation, on the Property;

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- (g) any threatened or endangered species or their habitat on the Property;
- (h) any present or past infestation of wood-destroying insects in the Property's improvements;
- (i) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
- (j) any material physical defects in the improvements on the Property; or
- (k) any condition on the Property that violates any law or ordinance.

(List any exceptions to (a)-(k) in Special Provisions or an addendum.)

- C. Seller will protect, defend, indemnify, and hold Broker, Broker's associates, and any other brokers or their associates harmless from any damages, costs, attorney's fees, or expenses arising from Seller's failure to disclose any material or relevant information or the giving of any incorrect information to Broker, Broker's associates, any other brokers or their associates, or prospects.

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing and marketing of the Property;
- B. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- C. not enter into a listing agreement with another Broker for the sale or exchange of the Property to become effective during this Listing;
- D. not enter into a listing agreement for the lease of all or part of the Property with another broker to become effective during this Listing without Broker's written permission;
- E. provide Broker with copies of the following, if any, relating to the Property: a current rent roll, all leases including any amendments, architectural plans and drawings, a current operating statement; environmental inspection reports; engineering reports; and other relevant information that broker may request during this Listing;
- F. advise Broker of any tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property;
- H. amend any applicable notices and disclosures if any material change occurs during this Listing; and
- I. at Seller's expense, remove from the Property all:
 - (1) "For Sale" (or similarly worded) signs other than Broker's signs; and
 - (2) "For Lease (or similarly worded) signs from the Property unless the Property is listed for lease with another broker.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker's negligence, including but not limited to:
 - (1) other brokers, inspectors, appraisers, lenders, contractors, and other persons who are authorized to access the Property;
 - (2) acts of third parties (for example, vandalism or theft);
 - (3) freezing water pipes;
 - (4) a dangerous condition on the Property; and
 - (5) the Property's non-compliance with any law or ordinance.
- C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any damages, costs, attorney's fees, and expenses:
 - (1) that arise from Seller's failure to disclose any material information about the Property;
 - (2) that are caused by Seller giving incorrect information to Broker, other brokers, or prospects; or
 - (3) that are otherwise caused by Seller or Seller's negligence.

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15. SPECIAL PROVISIONS:

This listing agreement is subject to approval of the United States Bankruptcy Court for the District of New Mexico in the case captioned In re Furr's Supermarkets, Inc., case no. 7-01-10779 SA, and is subject to the terms of the order entered in that case approving the listing agreement.

Notwithstanding anything to the contrary herein, the Broker's fee is not earned and payable until and unless the United States Bankruptcy Court for the District of New Mexico enters an order authorizing a proposed sale and payment of the Broker's fee.

16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of an exchange or breach of this Listing, the Listing Price will be the sales price for the purpose of calculating Broker's fee. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the costs of mediation equally.

18. ATTORNEY'S FEES: If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party may recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA: Addenda or information that are part of this Listing are:

- A. Information About Brokerage Services
- B. Property Description Exhibit identified in Paragraph 2
- C. Condominium Addendum
- D. Commercial Property Condition Statement
- E. Information About On-Site Sewer Facility
- F. Information about Special Flood Hazard Areas
- G. _____

20. AGREEMENT OF THE PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligations to pay Broker an earned fee is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assigns.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.

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- E. **Governing Law:** Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. **Severability:** If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. **Partial Sales or Leases:** If Seller sells or leases part of the Property before the date this Listing ends, this Listing will continue for the remaining part of the Property through the term of this Listing.
- H. **Notices:** Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS® or any listing service. Broker's fees are negotiable.**
- B. **The Property must be made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**
- C. **If the Property contains a residential dwelling built before 1978, federal law requires the Seller to: (1) provide the buyer with the promulgated lead hazard information pamphlet; and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. **Broker cannot give legal advice. This is a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

Seller: *Walter J. Alvarez Trustee*
 By: *Walter J. Gonzalez Trustee*
 Printed Name & Title: 8-4-04
 Date: _____

Seller: _____
 By: _____
 Printed Name & Title: _____
 Date: _____

Broker: HIRSCHI REALTORS
 By: *W.E. Anderson*
 Printed Name & Title: COMMERCIAL MANAGER
 Date: June 15, 2004