

## MEMORANDUM

---

December 19, 2014

**TO:** Honorable Mayor and City Commission

**FROM:** Kenneth Fields, City Manager

**RE:** Marketing of Longleaf Business Park Property

**SYNOPSIS:** The City Commission will consider approval of the contract with Coldwell Banker Commercial Real Estate Brokers to market the remaining City owned parcels at Longleaf Business Park.

### **RECOMMENDATION**

It is recommended that the City Commission authorize the City Manager to execute the attached Agreement with Coldwell Banker Commercial Real Estate to represent the city and market the city owned parcels in the Longleaf Business Park.

### **BACKGROUND**

The undeveloped parcels in the Longleaf Business Park are still owned by the City of Lake Wales but the City has no way of actively marketing them except by referrals from the Economic Development Council. By listing these properties with the largest commercial real estate broker in the area, the city will gain access to the Coldwell Banker network and gain additional visibility for these valuable commercial/industrial parcels. Giving Coldwell Banker the opportunity to represent the City will also allow confidential inquiries to be made from interested parties which can increase the number of potential buyers. Coldwell Banker is also an active participant in the Economic Development Council. I believe this justifies awarding this contract on a sole source basis.

### **OTHER OPTIONS**

Do not approve the contract with Coldwell Banker and therefore not be able to as effectively market the remaining Longleaf properties to prospective buyers.

### **FISCAL IMPACT**

There are no costs associated with giving Coldwell Banker the representation agreement. They will receive a fee from the purchase or rental of any of the City owned parcels in Longleaf Business Park.

### **ATTACHMENTS**

Listing Agreement with Coldwell Banker Commercial



**COLDWELL BANKER COMMERCIAL  
SAUNDERS RALSTON DANTZLER  
Exclusive Right of Sale Listing Agreement**

This Exclusive Right of Sale Listing Agreement ("Agreement") is entered into between Lake Wales Community Redevelopment Agency ("Seller") and Coldwell Banker Commercial Saunders Ralston Dantzler. ("Broker").

Deleted: \_\_\_\_\_

1. Exclusive Right to Represent: Seller hereby retains Broker as Seller's sole and exclusive agent with the sole right to negotiate the sale of the Seller's property or other transactions concerning the Seller's property as described below.

2. Description of Seller's Property: Seller's property (the "Property") is described as follows:

Address: Longleaf Business Park

Parcel ID: See Exhibit "A"

Deleted: \_\_\_\_\_

Legal description attached.

Deleted: \_\_\_\_\_

3. Term of Agreement: This Agreement shall commence on the date of execution by the last party executing it and shall expire on the last calendar day of the 12th month from the effective date.

Deleted: \_

This Agreement shall be automatically extended for the length of time that the Property is placed under a fully executed contract for sale and purchase that fails to close. This extended term of the Agreement shall be in addition to the term of this Agreement described above or any extension thereof.

Deleted:

4. Price and Terms: The Property is to be offered for sale on the following terms or on such other terms acceptable to Seller:

(a) Price: To be determined

Deleted: \$ \_\_\_\_\_

(b) Financing Terms:

Cash;

Deleted:

Seller Financing: Seller agrees to hold a purchase money mortgage in the amount of \$ \_\_\_\_\_ according to the following terms:

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Compensation: Seller agrees to compensate Broker as specified below upon the occurrence of any of the following events during the term of this Agreement:

- (a) Broker, Seller, or anyone else procures a purchaser who closes on the purchase of all or a portion of the Property;
- (b) Seller contributes or conveys any interest in the Property to a partnership, joint venture, or other business entity;
- (c) If Seller is a partnership, corporation, or other business entity and an interest in Seller is contributed, conveyed, or transferred in lieu of sale of the Property;
- (d) The Property is exchanged for other property, or the Property or any interest therein is transferred or conveyed as the result of any governmental action;
- (e) Seller leases the Property in lieu of any of the foregoing; or
- (f) Seller enters into an option for the purchase of the Property.

The compensation earned by Broker and due from Seller to Broker shall be six percent (6.0%) of the following:

Deleted: \_\_

Deleted: \_%

- (a) The purchase price paid by a buyer at closing;
- (b) The value of the Property conveyed by the Seller to a partnership, joint venture, or other business entity;
- (c) The value of the partnership, corporation, or other business entity conveyed or Transferred in the event the owner is a partnership, corporation, or other business entity;
- (d) The value of the property for which Seller's Property is exchanged.
- (e) The value of the Property transferred or conveyed as a result of governmental action.

Broker's commission shall be due and payable at closing. Seller shall be responsible to pay any applicable sales taxes.

In the event that Seller enters into a lease of the Property, Seller shall pay Broker six percent (6.0%) of the rent payments due under the lease during the first ten years of any such lease and Seller (landlord) shall be responsible for applicable sales tax. Such commission shall be earned by Broker upon execution of the lease and shall be paid fifty percent upon execution of the lease and fifty percent upon occupancy of the Property by the tenant.

Deleted: \_\_\_%

In the event that Seller enters into an option for the sale of the Property, Seller shall pay Broker six percent (6.0%) of the consideration paid for the option. This option commission shall be due upon the complete execution of the option. If the option is exercised by the Buyer, then Seller shall pay Broker the percentage listed above of the purchase price paid by the buyer, less the option commission paid by Seller to Broker. Broker's commission shall be due and payable at closing and Seller shall be responsible for any applicable sales tax.

Deleted: \_\_\_%

6. Protection Period: Seller further agrees that Seller shall pay Broker the above-described commissions if, within 180 days after the expiration of the term of this Agreement, any person or entity with whom the Broker has negotiated, directly or indirectly, or to whom the Property has been submitted prior to the expiration of this Agreement (hereinafter "Prospect") closes on the purchase of the Property; contracts with Seller to purchase the Property and later closes on the purchase; commences, continues, or resumes negotiations with the Seller, resulting in a sale or exchange of the Property to Prospect; participates with Seller in a joint venture, partnership, or other business entity concerning the Property; enters into a lease of the Property with Seller; or enters into an option to purchase the Property with Seller. Within fifteen days of the expiration of the term of this Agreement, Broker shall submit a list of prospects to Seller. However, with respect to any Prospect which has submitted an offer to Seller, such Prospect's name need not be included on the list.

Deleted: \_\_\_\_

7. Broker's Duties and Authority: Broker agrees to make diligent and continued efforts to market and sell Seller's Property by taking the following actions and Seller authorizes the Broker to do so:

- (a) Inspect the Property and attempt to obtain complete information regarding it;
- (b) Advertise the Property as Broker deems advisable;
- (c) Place appropriate transaction signs on the Property, including "For Sale" signs and "Contract Pending" signs upon the Seller executing a sales contract;
- (d) Furnish information concerning the Property to any real estate broker requesting same and to assist cooperating brokers in the best interest of the Seller in closing a transaction with respect to the Property;
- (e) Pay any cooperating broker who participates in a transaction with respect to the Property for its services upon receipt of payment of commission from Seller; and
- (f) Keep Seller apprised regarding services being provided by Broker and offers and negotiations concerning any transaction.

8. Seller's Obligations: Seller agrees to:

- (a) Cooperate with Broker in bringing about a transaction with respect to the Property;
- (b) Refer immediately to Broker all inquiries of anyone expressing an interest in the Property;
- (c) Conduct all negotiations through Broker, as directed by Seller, or keep Broker informed of all negotiations conducted directly by Seller;
- (d) Inform Broker of any facts materially affecting the value of the Property, whether such facts are readily observable or not or notify Broker in writing that owner elects not to disclose such facts to Broker;
- (e) Indemnify and hold harmless Broker from any and all damages, claims, causes of action, attorney's fees, costs, or other expenses made against or incurred by Broker as a result of Seller's failure to disclose facts materially affecting the value of the Property, as a result of Seller's inaccurate or

Deleted: (66) 937-2246

incomplete disclosure of such facts, or as a result of Seller's representations, actions, or inactions.

In the event that Seller discloses facts materially affecting the value of the Property to Broker, Seller authorizes Broker to disclose all such facts to prospective buyers. If Seller discloses such facts to Broker, they shall be set forth in writing and attached to this Agreement as an exhibit.

9. Broker's Relationship: Broker represents Seller under this Agreement as a single agent.
10. Cooperation With Other Brokers: Broker shall cooperate with other brokers in attempting to effect a transaction with respect to the Property, except when such cooperation is not in the Seller's best interest. Broker reserves the right to insist that such cooperating brokers act as representatives of the buyer or as transaction brokers. Seller agrees that Broker shall not be obligated to offer any sub-agency relationship to any cooperating broker. At Broker's written direction, Seller shall disburse to other cooperating brokers the portion of the commission specified by Broker.
11. Deposits: If a prospective buyer places funds in escrow and fails to perform a contract between such prospective buyer and Seller, Broker shall be paid thirty percent (30%) of such retained escrow deposit, but not in excess of Broker's commission, as full consideration for Broker's services, and the balance of any such retained escrow deposit shall be paid to Seller.
12. Non-Discrimination: Seller understands and agrees that it is illegal for either Seller or Broker to refuse to sell, lease, or enter into any other transaction with respect to the Property based upon a person's race, color, religion, national origin, sex, marital status, or physical disability.
13. Dispute Resolution: This Agreement shall be construed in accordance with the laws of the state of Florida. In the event that Seller or Broker files a legal action for the interpretation or enforcement of this Agreement, each party shall bear its own respective costs and attorney's fees related to any legal action concerning any litigation relating to or arising from the Agreement, including legal assistant fees and any attorney's fees and costs incurred with respect to any appellate or bankruptcy proceedings. Venue for any legal proceeding arising from or related to this Agreement shall be Polk County, Florida.
14. Disclosure: The Florida Commercial Real Estate Sales Commission Lien Act provides that when a Broker has earned a commission by performing licensed services under a brokerage agreement with you, the Broker may claim a lien against your net sales proceeds for the Broker's commission. The Broker's lien rights under the act cannot be waived before the commission is earned. In the event owner closes a sale of the property in accordance with the terms herein, it shall pay

Deleted: the prevailing party shall be entitled to recover his, her, or its attorney's fees and costs from the losing party

Deleted: 66) 937-2246

Coldwell Banker Commercial Saunders Ralston Dantzler  
114 N Tennessee Ave, 3<sup>rd</sup> Floor, Lakeland, FL 33801 (863) 648-1528, Fax: (863) 687-1999

to broker the fees set forth in this agreement. All fees will be paid by a method acceptable to the broker out of the sale proceeds as a line item on the closing statement.

- 15. Assignment: This Listing Agreement may be assigned to CBC Saunders Real Estate.
- 16. Miscellaneous: This Agreement constitutes the entire agreement between Seller and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration, or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Seller and Broker. This Agreement shall be binding on the heirs, successors, and assignees of the parties. Time is of the essence of this Agreement.

- 17. Data Disclosure: Broker is authorized to provide closed transaction information to third party data sources:  
 Yes  No

Deleted:

The undersigned hereby acknowledge receipt of a copy of this Agreement and agree to its terms and conditions.

Seller: \_\_\_\_\_

Dated: \_\_\_\_\_

**Coldwell Banker Commercial Saunders Ralston Dantzler**

By: \_\_\_\_\_ By: \_\_\_\_\_

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

Deleted: ¶  
¶ Seller: \_\_\_\_\_ ¶  
¶ Dated: \_\_\_\_\_ ¶  
¶  
¶ Seller: \_\_\_\_\_ ¶  
¶ Dated: \_\_\_\_\_ ¶  
¶  
Formatted: Centered

Coldwell Banker Commercial Saunders Ralston Dantzler  
114 N Tennessee Ave, 3<sup>rd</sup> Floor, Lakeland, FL 33801 (863) 648-1528 Fax: (863) 687-1999

Deleted: 66) 937-2246

EXHIBIT "A"

POLK COUNTY PARCEL IDENTIFICATION NUMBERS

273014927041000050  
273014927041000220  
273014927041000070  
273014927041000020  
273014927041000060  
273014927041000210  
273014927041000130  
273014927041000230  
273014927041000140  
273014927041000150  
273014927041000160  
273014927041000170  
273014927041000200  
273014927041000040  
273014927041000250

← Formatted: Left

← Formatted: Left

← Formatted: Centered

Deleted: 66) 937-2246

LEGAL DESCRIPTION

Lots 2, 4, 5, 6, 7, 13, 14, 15, 16, 17, 20, 21, 22, 23, 25 LONGLEAF BUSINES PARK, according to the map or plat thereof, as recorded in Plat Book 116, at Pages 24-26 of the Public Records of Polk County, Florida,

Deleted: ¶

Formatted: Left

Formatted: Body Text, Line spacing: single, Tab stops: 0.3", Left + 0.7", Left

Deleted: Legal Description:

\_\_\_\_\_¶  
\_\_\_\_\_¶  
\_\_\_\_\_¶  
\_\_\_\_\_¶  
\_\_\_\_\_¶  
\_\_\_\_\_¶  
\_\_\_\_\_¶

Deleted: 66) 937-2246