

# **Lee County Port Authority** **Real Estate Broker Compensation Policy**

## **Southwest Florida International Airport (RSW) and Page Field (FMY) Properties**

### **I. PURPOSE AND SCOPE**

The purpose of this Real Estate Broker Compensation Policy (“Policy”) is to establish policies and procedures which encourage and outline the participation and compensation of real estate brokers involved in the leasing of real property at airports operated by the Lee County Port Authority (the “Authority”), namely, Southwest Florida International Airport (RSW) and Page Field (FMY). This policy applies to leasing of real property at both RSW and FMY, whether the property is developed or undeveloped, and whether used for aviation or non-aviation purposes, but does not apply to leasing of any “passenger terminal areas” (as defined below), whether landside or airside, at Southwest Florida International Airport. “Passenger terminal areas” means: (1) space inside the terminal; (2) any part of the consolidated rent-a-car complex; (3) existing parking lots south of runway 6/24; and (4) any part of the terminal apron. This policy is not applicable to any leases already existing, or for which the Authority is already engaged in lease discussions with a prospective tenant, as of the date this Policy is adopted by the Authority’s Board of Port Commissioners.

### **II. GENERAL POLICY**

The Authority will encourage brokerage participation while retaining and reserving the right to solicit and acquire tenants using its own staff and consultants.

The Authority may enter into exclusive brokerage listing agreements for any particular properties, or may allow non-exclusive broker participation, as set forth below.

The Authority will be under no obligation to negotiate a lease of any particular property, and, if it is interested in leasing any particular property, may, at its sole discretion issue a Request for Letters of Interest, Request for Proposals, Request for Bids, or other competitive solicitation for that property. The Authority will retain the right to accept or reject any offers to lease, and no real estate commissions will be paid on a transaction which the Authority has rejected.

The Authority will not pay commissions on any sublease or on any assignment of a lease.

All leases will be prepared and executed by the Authority, with the understanding of the parties that the broker has no authority to bind the Authority to particular terms or to execute any lease on behalf of the Authority. The Authority may furnish to any qualifying broker a sample form of lease the Authority intends to use.

### **III. NON-EXCLUSIVE LISTINGS; BROKER RIGHTS AND RESPONSIBILITIES**

A broker will be eligible for a commission as compensation for marketing and pursuing, to successful completion, a lease of property owned or controlled by the Authority which is within

the scope of this Policy, and which is not the subject of an exclusive brokerage listing agreement, if, and only if:

- (1) the broker is licensed as a real estate broker in the state of Florida, has registered the prospect and accepted the terms and conditions of this Policy by submitting a notice to the Authority in substantially the form attached hereto as Exhibit "A" ("Notice of Prospect") prior to the commencement of negotiations between the Authority and the prospect procured by the non-exclusive broker;
- (2) the broker is not affiliated (as defined below) with the prospect it has registered;
- (3) the broker initiated negotiations between the Authority and the prospect and maintained an active and continuing role in communications between the parties during the period of negotiations;
- (4) a proposed lease of the property specified in the broker's Notice of Prospect has been successfully negotiated with such prospect within one hundred and eighty (180) days of the date the Notice of Prospect was received by the Authority. A proposed lease is "successfully negotiated" only when and if it has been fully negotiated between the Authority's staff and the prospective tenant, reduced to writing, and three counterparts of the proposed lease are signed by the broker's registered prospect (as prospective tenant) and submitted to the Authority's staff for subsequent review by the Authority's Board of Port Commissioners;
- (5) said proposed lease is subsequently approved by the Authority's Board of Port Commissioners and executed on behalf of the Authority; and
- (6) the prerequisites set forth below for timing of the payment (in item B. of part IV) have occurred or been satisfied.

A broker is considered affiliated with the prospect when: (1) either is an officer, director, general partner, member, manager, managing member, joint venturer, 10% or greater shareholder, or 10% or greater limited partner, of or with the other; or (2) the broker, directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the prospect.

If a lease is successfully completed with a tenant which was a prospect registered by more than one broker having submitted a Notice of Prospect, such that more than one broker would otherwise qualify for a commission under this Policy, the Authority will nonetheless pay only a single commission, which will be paid to the broker which first submitted a Notice of Prospect that remains in effect with respect to that prospect on the date a lease is executed.

#### IV. NON-EXCLUSIVE LISTINGS; BROKER COMPENSATION

A. Amount. In the event a broker is eligible for commission on the leasing of a non-exclusive listing as set forth above, the amount of such commission shall be five percent (5%) of the Gross Rental (as defined below). The Authority will pay such commission only to the primary broker (i.e., the broker who first submitted the Notice of Prospect) and any commission

splits among two or more brokers sharing in the procurement of the tenant will not be the responsibility of the Authority.

The term “Gross Rental” means only the aggregate amount of non-contingent, pre-determined, minimum guaranteed (or “base”) rent payable by the tenant to the Authority over the initial term of the lease, not to exceed five (5) years, plus fifty percent (50%) of the aggregate amount of such rent payable over any part of the initial term which is after the first five (5) years but within the first ten (10) years. Gross Rental does not include any amounts that are, as of the date the lease is signed, contingent, undetermined, or unliquidated, in any way, such as (but not limited to) percentage rent, CPI or other index-based inflation adjustments, sales tax, maintenance charges, utility fees, real property taxes or assessments, or similar charges or pass-throughs to be remitted by a tenant to the Authority or any third party in addition to the minimum guaranteed rent.

Example commission computation:

Non-exclusive broker:

Ten (10) acres of real property are leased for \$1.00 per square foot per year for a fifteen (15) year initial term.

Gross Rental equals \$435,600 per year.

$$\begin{aligned} \$435,600 \times 5 \text{ years (years 1-5)} &= \$2,178,000 \times .05 &= \$108,900 \\ \$435,600 \times 5 \text{ years (years 6-10)} &= \$2,178,000 \times .05 \times .5 &= \underline{\$ 54,450} \\ \text{Total commission} &= & \$163,350 \end{aligned}$$

B. Time of Payment. In the event a broker is eligible for commission on the leasing of a non-exclusive listing as set forth above:

(1) For leases requiring the tenant to improve any existing building or construct any new building on the leased premises, one-half (50%) of the total commission will be paid following full execution of the lease and either waiver of, or satisfaction of, all lease contingencies, payment of required deposits, receipt of any required performance or payment guarantee, and the delivery of acceptable insurance by the tenant. The other one-half (50%) will be paid upon the tenant’s substantial completion of its minimum required improvements, issuance of a certificate of occupancy, and the tenant’s move-in, occupancy of the premises, opening for business operations, and payment of rent for the first full month of operations.

(2) For leases not requiring the tenant to improve any existing building or construct any new building on the leased premises, the entire commission (100%) would be paid following full execution of the lease and either waiver of, or satisfaction of, all lease contingencies, payment of required deposits, receipt of any required performance or payment guarantee, and the delivery of acceptable insurance by the tenant.

C. Options. Lease renewal or extension options will not be included in the commission calculation.

D. Existing Leases. No commission will be paid to brokers for subleases or for extensions to or renewals of existing leases.

E. Leases Not Approved. Commissions will not be paid on unsuccessful leases or lease offers not approved by the Authority's Board of Port Commissioners.

F. No Discounts. There will be no discount in lease rental rates due to the absence of a broker entitled to commissions from the Authority.

## V. EXCLUSIVE LISTINGS

The Authority, acting through its Board of Port Commissioners, may enter into one or more exclusive brokerage listing agreements. Each such listing agreement may cover the leasing of one or more individual properties. Such an agreement may provide for commission payments to co-brokers.

Following the Authority's decision to engage an exclusive broker, the Authority will solicit potential brokers (persons or entities licensed as a real estate broker under the laws of Florida) by issuing a request for letters of interest (RFLI), interviewing and selecting a broker, and directing staff to negotiate terms of a proposed exclusive listing agreement. This competitive recruitment process will consider, but not be limited to, the type of transaction desired, the broker's relevant experience, qualifications, and knowledge of the marketplace, and potential conflicts, verification of the broker's real estate license (including whether it is valid and in good standing), and other demonstrated competencies. The proposed agreement negotiated by staff will be presented to the Board of Port Commissioners for approval. After the Board's approval of the exclusive brokerage listing agreement, the broker will be engaged pursuant to the terms of that agreement.

The agreement will set forth the commission to be paid upon the successful completion of a lease of the specified property. The amount of the commission will generally be based upon various factors, which may include, but may not necessarily be limited to, the following:

- a. The amount of work to be performed by Authority staff and/or its consultants and contractors;
- b. How quickly the Authority desires the transaction to be completed;
- c. The minimum or total payments to be made to the Authority over the term of the lease or a portion thereof;
- d. How much actual work is expected to be performed and what expenses are expected to be incurred by the broker to procure the tenant, to negotiate the lease, and to successfully complete the transaction; and
- e. The length of time the property is listed with the broker before a lease is successfully completed.

The Authority's award of any particular exclusive listing to a broker will not necessarily entitle the broker to receive any other exclusive listing, but also will not necessarily preclude the Authority from assigning the broker other exclusive listings.

**EXHIBIT "A"**

**NOTICE OF PROSPECT**

Lee County Port Authority  
Southwest Florida International Airport  
11000 Terminal Access Road, Suite 8671  
Fort Myers, FL 33913-8213

Attention: *Mark Busalacchi - Director of Properties & Contracts*

In accordance with the Lee County Port Authority's Real Estate Broker Compensation Policy ("the Policy"), you are hereby notified that the undersigned (is) (are) representing the following Prospect(s):

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who (is) (are) interested in negotiating a lease with the Lee County Port Authority ("Authority") for the following property:

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We acknowledge we have received a copy of the Policy and agree to its terms. We understand this is an open listing and that the Authority reserves the right to lease the property using its own staff, its consultants or Lee County staff, or through any other Broker without payment to us of the commission set forth in the Policy.

We declare that we represent the Prospect(s) named above in negotiating a lease between the Authority and Prospect(s). We acknowledge we are not authorized to bind the Authority in these negotiations.

We hereby certify to you that: (1) we are licensed as a Broker, active and in good standing, under the laws of the State of Florida; (2) we are not affiliated with the Prospect(s) within the meaning of the Policy; and (3) the signature of each Prospect that appears at the end of this Notice is the genuine and authorized signature of each person authorized to bind the legal entity listed.

The above-named Prospect(s) shall hereafter be considered Prospect(s) registered by us within the meaning of the Policy. We acknowledge we will be entitled to a commission only if and when all terms and conditions of the Policy have been satisfied.

The Policy and this Notice contain the entire agreement between the Authority and Broker relating to the subject hereof, and no other agreements or understandings relating to this subject exist between the Authority and Broker. The Policy and this Notice may be amended or supplemented or the terms hereof waived only by written instrument executed by the Authority.

Sincerely,

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**Name of Licensed Florida Real Estate Broker**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

FOR THIS NOTICE TO BE VALID, IT MUST BE COUNTERSIGNED IN THE SPACE PROVIDED BELOW BY EACH OF THE PROSPECT(S) IDENTIFIED ABOVE.

PROSPECT(S)

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**Name of Prospect**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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**Name of Prospect**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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**Received by and dated:**

\_\_\_\_\_  
*(Designated Port Authority contact to sign and date here)*