



DRAFT
STANDARD OWNER-AGENCY EXCLUSIVE RIGHT TO REPRESENT OWNER

FOR SALE OR LEASE OF REAL PROPERTY (Non-Residential) AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 Parties: This agency Owner-Agency Agreement ("Agreement"), dated for reference purposes only between ... is made by and between ... whose address is ... telephone number ... Fax No. ... ("Owner"), and ... whose address is ... telephone number ... Fax No. ... ("Agent").

1.2 Property/Premises: The real property, or a portion thereof, which is the subject of this Agreement is commonly known by the street address of ... located in the City of ... County of ... State of ... and generally described as (describe briefly the nature of the property): ... ("Property"). (See also Paragraph 3).

1.3 Term of Agreement: The term of this Agreement shall commence on ... and expire at 5:00 p.m. on ... except as it may be extended ("Term"). (See also paragraph 4)

1.4 Transaction: The nature of the transaction concerning the Property for which Agent is employed ("Transaction") is (check the appropriate box(es)):

(a) [ ] A sale for the following sale price and terms: ...

and other additional standard terms reasonably similar to those contained in the "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE" published by the AIR Commercial Real Estate Association ("AIR"), or for such other price and terms agreeable to Owner;

(b) [ ] A lease or other tenancy for the following rent and terms: ...

and other additional standard terms reasonably similar to those contained in the appropriate AIR lease form or for such other rent and terms agreeable to Owner.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Owner hereby employs Agent with the exclusive right to sell or lease Owner's Property as Owner's sole and exclusive agent to represent Owner in the Transaction and to find buyers or lessees/tenants ("lessees"), as the case may be, for the Property. Agent shall use reasonably diligent efforts to find such buyers or lessees. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Owner. Owner shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Owner from any source regarding a possible Transaction.

2.2 Owner authorizes Agent to:

- (a) Place advertising signs on the Property;
(b) Place a lock box on the Property if vacant;
(c) Accept deposits from potential buyers or lessees; and
(d) Distribute information regarding the Property to all participants in THE MULTIPLE ("MULTIPLE") of the AIR and/or any other appropriate local commercial multiple listing services, to other brokers, and to potential buyers or lessees of the Property.

Owner shall identify in writing as "confidential" any information provided to Agent that Owner considers confidential and does not want disclosed. All other information provided by Owner may be disclosed as Agent may deem appropriate or necessary. After consummation of a Transaction, Agent may publicize the terms of such Transaction.

2.3 Agent shall comply with the Rules of Professional Conduct of the AIR, if a member or if not, the Rules of Professional Conduct of the Society of Industrial and Office Realtors, and shall submit the Property to the MULTIPLE. Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other real estate brokers (collectively "Cooperating Broker"). A Cooperating Broker may, as an intended third-party beneficiary hereof, enforce the terms of this Agreement against Owner or Agent.

2.4 If the Transaction is a sale and Agent finds a prospective buyer for the Property, or if the Transaction is a lease and Agent finds a prospective lessee for the Property, Owner hereby authorizes Agent also to represent and act as the agent for such buyer or lessee, and Owner consents to such dual agency. If a Cooperating Broker finds such a buyer or lessee, then Agent shall act as agent for Owner only, the Cooperating Broker shall act as agent for the buyer or lessee only, and the Cooperating Broker shall not be Owner's agent, even though the Cooperating Broker may share in the commission paid by Owner to Agent. A Cooperating Broker shall not be an agent or subagent of Owner or Agent.

2.5 Owner agrees that Agent may, during the ordinary and normal course of marketing the Property, respond to inquiries on the Property by showing and providing information on the Property, as well as on other competing properties, to prospective buyers and lessees and that such activities may result in the payment of a commission to Agent by a third party.

2.6 Agent shall provide, at a minimum, the following services: (1) Accept delivery of and present to Owner offers and counteroffers to buy, sell, or lease Owner's

Property or the property Owner seeks to purchase or lease; (2) Assist Owner in developing, communicating, negotiation, and presenting offers, counteroffers until a sale or lease agreement is signed and all contingencies are satisfied or waived; and (3) Answer the Owner's questions relating to the offers, counteroffer, notices, and contingencies; all in addition to specific services.

### 3. PROPERTY.

3.1 The term "Property" shall include all of the following which are currently located on the Property and owned by Owner: permanent improvements, electrical distribution systems (power panels, buss ducting, conduits, disconnects, lighting fixtures, etc.), telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, built-ins such as cabinets, and \_\_\_\_\_

(if there are no additional items write "NONE"). If the Transaction is a sale, the term "Property" shall additionally include, to the extent owned by Owner, oil and mineral rights, leases and other agreements which will continue in effect after Owner's transfer of title to the Property.

3.2 Within five business days after the commencement of the Term hereof, Owner shall provide Agent with the following:

(a) A duly completed and fully executed Property Information Sheet on the ~~most current~~ form ~~attached hereto as Exhibit A~~ published by the AIR;

(b) Copies of all leases, subleases, rental agreements, option rights, rights of first refusal, rights of first offer, or other documents containing any other limitations on Owner's right, ability and capacity to consummate a Transaction, and

(c) If available to Owner, copies of building plans, and if the Transaction is a sale, title reports, boundary surveys, and existing notes and ~~trust deeds mortgages~~ which will continue to affect the Property after consummation of a sale.

3.3 Agent shall have no responsibility for maintenance, repair, replacement, operation, or security of the Property, all of which shall be Owner's sole responsibility. Unless caused by Agent's gross negligence, Agent shall not be liable for any loss, damage, or injury to the person or property of Owner, any lessees of the Property, any buyer, prospective buyer, lessee, or prospective lessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.

### 4. EXTENSION OF TERM.

If the Transaction is a sale, and a sale is not consummated for any reason after Owner accepts an offer to purchase the Property ("**Sale Agreement**"), then the expiration date of the Term of this Agreement shall be extended by the number of days that elapsed between the date Owner entered into the Sale Agreement and the later of the date on which the Sale Agreement is terminated or the date Owner is able to convey title to a new buyer free and clear of any claims by the prior buyer of the Property; provided, however, in no event shall the Term be so extended beyond one year from the date the Term would have otherwise expired.

### 5. COMMISSION.

5.1 Owner shall pay Agent a commission  in the amount of \_\_\_\_\_

in accordance with the commission schedule attached hereto ("**Agreed Commission**"), for a Transaction, whether such Transaction is consummated as a result of the efforts of Agent, Owner, or ~~any some~~ other person or entity. Such Agreed Commission is payable:

(a) If the Transaction is a sale ~~when~~ (i) a buyer is procured who is ready, willing and able to buy the Property at the price and on the terms stated herein, or on any other price and terms agreeable to Owner; (ii) Owner breaches or repudiates any Sale Agreement, escrow instructions or other documents executed by Owner regarding the sale of the Property; (iii) the Property or any interest therein is voluntarily or involuntarily sold, conveyed, contributed or transferred; (iv) the Property or any interest therein is taken under the power of Eminent Domain or sold under threat of condemnation, or (v) if Owner is a partnership, joint venture, limited liability company, corporation, trust or other entity, and any interest in Owner is voluntarily or involuntarily sold, contributed, conveyed or transferred to another person or entity that, as of the date hereof, does not have any ownership interest in Owner;

(b) If the Transaction is a lease ~~when~~: (i) a lease of the Property, or a portion thereof is executed; or (ii) a lessee is procured who is ready, willing and able to lease the Property on the terms stated herein, or on any other rent and/or terms agreeable to Owner; or

(c) If Owner (i) removes or withdraws the Property from a Transaction or the market; (ii) acts as if the Property is not available for a Transaction; (iii) treats the Property as not available for a Transaction; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; or (vi) changes the status of the Property's title, leases, agreements, physical condition or other aspects thereof, which such change adversely impacts the value, use, desirability or marketability of the Property. ~~Owner and Agent agree that any commission paid pursuant to the provisions of this subparagraph (c) is: (i) liquidated damages and not a penalty; and (ii) a reasonable and mutually agreed estimate of the damages that Agent will suffer as a result of the actions of Owner.~~

5.2 ~~3~~ If the Transaction is a sale, the purchase agreement and/or escrow instructions to be entered into by and between Owner and a buyer of the Property shall provide that:

(a) Owner irrevocably instructs the escrow holder to pay from Owner's proceeds accruing to the account of Owner at the close of escrow the Agreed Commission to Agent;

(b) A contingency to the consummation of the sale shall be the payment of the Agreed Commission to Agent at or prior to close of the escrow; and

(c) No change shall be made by Owner or buyer with respect to the time of, amount of, or the conditions to payment of the Agreed Commission, without Agent's written consent.

### 6. ALTERNATIVE TRANSACTION.

If the Transaction changes to any other transaction, including, but not limited to, a sale, exchange, option to buy, right of first refusal, ground lease, lease, sublease or assignment of lease (collectively "**Alternative Transaction**"), then Agent shall automatically be Owner's sole and exclusive Agent for such Alternative Transaction and represent Owner in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Owner shall pay Agent the Agreed Commission.

### 7. EXCLUDED AND REGISTERED PERSONS.

7.1 Owner shall, within five business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Owner by any other broker under any prior agreement concerning the Property ("**Excluded Persons**", see paragraph 7.5). Owner shall also specify for each Excluded Person the type of transaction the consummation of which during the Term of this Agreement entitles such other broker to any compensation ("**Excluded Transaction**"). If Owner timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then the Agreed Commission paid to Agent with respect to consummation of such an Excluded Transaction with an Excluded Person shall be limited as follows: if such Excluded Transaction is concluded within the first thirty days of the commencement of the Term hereof, then Agent shall be paid a commission equal to the reasonable out-of-pocket expenses incurred by Agent in the marketing of the Property during said thirty days; or if such Excluded Transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to a commission equal to one-half of the Agreed Commission. If the specified information concerning Excluded Persons and Transactions is not provided as set forth herein, then it shall be conclusively deemed that there are no Excluded Persons.

7.2 ~~1~~ Agent shall, within five business days after the expiration of the Term hereof, provide Owner, in writing, with the name of those persons or entities with whom Agent either directly or through another broker had negotiated during the Term hereof ("**Registered Persons**", see paragraph 7.5), and specify the type of transaction of the Property for which such negotiations were conducted ("**Registered Transaction**"). Those persons or entities who submitted written offers or letters of intent shall, however, automatically be deemed to be Registered Persons for the type of transaction which was the subject of such offer or letter of intent. If Agent fails to timely notify Owner of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. A person or entity shall not be a Registered Person if Agent fails to timely specify a Registered Transaction for such person or entity. If Agent wishes to register the client of a Cooperating Broker, Agent must obtain and submit to Owner written approval of such registration signed by such Cooperating Broker. The parties are aware that the registration of certain individuals and/or entities might create a Dual Agency, and Owner hereby consents to any such Dual Agency.

7.3 ~~2~~ If, within one hundred eighty days after the expiration of the Term hereof, Owner enters into a contract with a Registered Person for consummation of a Registered Transaction, then Owner shall, upon consummation of such Registered Transaction, pay Agent the Agreed Commission for the Registered Transaction.

7.4 ~~3~~ If, within one hundred eighty days after the expiration of the Term hereof, Owner enters into another owner-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Owner shall provide to Owner's new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such new agreement that the new broker shall not be entitled to receive any of the compensation payable to Agent hereunder for consummation of a Registered Transaction with a Registered Person.

7.5 ~~4~~ In order to qualify to be an Excluded Person or a Registered Person the individual or entity must have: toured the Property, submitted a letter

of interest or intent, and/or made an offer to buy or lease the Property. In addition, Excluded Persons may only be registered by a broker who previously had a valid listing agreement covering the Property, and such broker may only register individuals and entities actually procured by such listing broker.

**8. OWNER'S REPRESENTATIONS.**

- 8.1 Owner represents and warrants that:
- (a) Each person executing this Agreement on behalf of Owner has the full right, power and authority to execute this Agreement as or on behalf of Owner;
  - (b) Owner owns the Property and/or has the full right, power and authority to execute this Agreement and to consummate a Transaction as provided herein, and to perform Owner's obligations hereunder;
  - (c) Neither Owner nor the Property is the subject of a bankruptcy, insolvency, probate or conservatorship proceeding;
  - (d) Owner has no notice or knowledge that any lessee or sublessee of the Property, if any, is the subject of a bankruptcy or insolvency proceeding;
  - (e) There are no effective, valid or enforceable option rights, rights of first refusal, rights of first offer or any other restrictions, impediments or limitations on Owner's right, ability and capacity to consummate a Transaction, except as disclosed in writing pursuant to Paragraph 3.2(b).

**9. OWNER'S ACKNOWLEDGMENTS.** Owner acknowledges that it has been advised by Agent to consult and retain experts to advise and represent it concerning the legal and tax effects of this Agreement and consummation of a Transaction or Alternative Transaction, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title and environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Agent. Owner further acknowledges that in determining the financial soundness of any prospective buyer, lessee or security offered, Owner will rely solely upon Owner's own investigation, notwithstanding Agent's assistance in gathering such information.

**10. MISCELLANEOUS.**

10.1 This Agreement shall not be construed either for or against Owner or Agent, but shall be interpreted, construed and enforced in accordance with the mutual intent of the parties ascertainable from the language of this Agreement.

10.2 All payments by Owner to Agent shall be made in lawful United States currency. If Owner fails to pay to Agent any amount when due under this Agreement, then such amount shall bear interest at the rate of 15% per annum or the maximum rate allowed by law, whichever is less.

10.3 In the event of litigation or arbitration between or among Owner, Agent, a Cooperating Broker, a buyer, prospective buyer, lessee, or prospective lessee of the Property, or any of them, arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term, "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorney's fees reasonably incurred in good faith.

10.4 Owner agrees to indemnify, defend (with counsel reasonably acceptable to Agent), and hold Agent harmless from and against any claim or liability asserted against Agent as a result of the failure of Owner to make a full and complete disclosure pursuant to law and paragraph 3.2(a) or as a result of the fact that any of the representations made by Owner (see paragraph 8) were not true at the time that this Agreement was signed.

10.5 Owner hereby releases and relieves Agent, and waives Owner's entire right of recovery against Agent, for direct or consequential loss or damage arising out of or incident to the perils covered by insurance carried by Owner, whether or not due to the negligence of Agent, to the extent permitted by law.

10.6 In the event that the Transaction is not an outright sale, Owner agrees that if Agent is not paid the Agreed Commission provided for herein within thirty days of the date due, that Agent shall have a lien in the amount of such commission, and may record a notice of such lien, against the Property.

**11. ARBITRATION OF DISPUTES.**

11.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. IN THE EVENT OF ANY DISPUTE BETWEEN OWNER AND BROKER RELATING TO THIS AGREEMENT, OWNER AND BROKER AGREE THAT SUCH DISPUTE SHALL BE RESOLVED BY BINDING ARBITRATION ("ARBITRATION"). THE ARBITRATION SHALL BE CONDUCTED PURSUANT TO THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION. ALL DISCOVERY PERMITTED IN JUDICIAL PROCEEDINGS IN THE STATE OF ILLINOIS SHALL BE PERMITTED IN THE ARBITRATION, AND JUDGMENT ON ANY ARBITRATION AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. THE ARBITRATOR(S) SHALL BE LIMITED TO AWARD ONLY COMPENSATORY DAMAGES AND SHALL NOT HAVE THE AUTHORITY TO AWARD PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES.

11.2 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.

11.3 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.

\_\_\_\_\_  
Owner's Initials

D R A

\_\_\_\_\_  
Agent's Initials

11.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 11.3.

12. 11.4 BINDING NATURE. This Agreement shall be binding upon and shall benefit each party hereto, including its heirs, successors, and assigns. In the event that any clause or provision or other portion of this Agreement shall be determined to be unenforceable or void based on any applicable law, the remainder of this Agreement shall remain in force and continue in full force and effect.

13. 11.5 COMPLIANCE. Agent agrees to offer the Property in compliance with all applicable anti-discrimination laws, statutes, and ordinances. Owner and Agent agree to comply with all applicable federal, state, and local laws, regulations, codes, ordinances, and administrative orders which pertain to the and have jurisdiction over the parties at the Property, including without limitation, the 1964 Civil Rights Act, FIRPTA, the Comprehensive Environmental Response Compensation Act, the Americans with Disabilities Act, and all amendments thereto as may apply.

14. 11.6 DESIGNATED AGENCY. Owner and Agent hereby designate the individual real estate licensee(s) listed below as the Designated Agent(s) of Owner to the exclusion of all other licensees of Agent, who shall be referred to individually or collectively as Designated Agent(s). Owner acknowledges that Agent is a real estate brokerage firm and that in some cases, Agent, either through Designated Agent or through other licensees affiliated with Agent may represent prospective purchasers or tenants. Owner specifically requests that the Property be submitted to all prospective purchasers and tenants specifically including, without limitation, those prospective purchasers and tenants represented by Agent and/or Designated Agent(s); and Owner consents to any dual agency which may be created thereby, if such prospective purchasers or tenants are represented by Designated Agent. Further, Agent agrees that it shall not disclose the confidential information of one principal to another. Designated Agent(s): \_\_\_\_\_

**15. Additional Provisions:** Additional provisions of this Agreement are set forth in the following blank lines or in an addendum attached hereto and made a part hereof consisting of paragraphs \_\_\_\_\_ through \_\_\_\_\_ (if there are no additional provisions write "NONE"):

"OWNER" DRAFT "AGENT"

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_ By: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTICE:** These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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INITIALS

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