



**EXCLUSIVE LISTING AGREEMENT
 FOR SUBLEASE OF REAL PROPERTY**
(Non-Residential)
 AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. BASIC PROVISIONS ("BASIC PROVISIONS").

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

1.2 Master Lease: That certain lease dated _____, which lease was amended on the following dates _____ (if there are no amendments, write "NONE") ("**Master Lease**"), entered into by and between _____, as lessor ("**Master Lessor**") and _____, as lessee. (See also Paragraph 3.)

1.3 Property: The real property which is the subject of this Agreement, which consists of (check the appropriate box) all or a part of the premises leased to Sublessor under the Master Lease, 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)

1.4 Term of Agreement: The term of this Agreement shall commence on _____ and expire at 5:00 p.m. on _____ ("**Term**").

1.5 Sublease Terms: Agent is employed to sublease all or a portion of the Property on the following terms: _____ or such other terms as may be agreeable to Sublessor.

1.6 As used herein the term Sublease shall include: (1) a Sublease of all or any portion of the Property for all or any portion of Sublessor's lease term; (2) an assignment of all or any portion of Sublessor's lease or lease term; or (3) any other transaction or event which causes or allows Sublessor's liability under the lease to be reduced or terminated, including without limitation lease termination for any reason and/or ~~lease~~ **Master Lease** buyout.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Sublessor hereby employs Agent as Sublessor's sole and exclusive agent to represent Sublessor in subleasing the Property. Agent shall use reasonably diligent efforts to find a sublessee. All negotiations and discussions relating to subleasing shall be conducted by Agent on behalf of Sublessor. Sublessor shall promptly disclose and refer to Agent all written or oral inquiries or contacts received by Sublessor from any source regarding a possible sublease of the Property.

2.2 Sublessor 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 Sublessees; and
 (d) Communicate the availability of the Property for sublease and distribute all information regarding the Property to participants in THE MULTIPLE ("**MULTIPLE**") of the AIR Commercial Real Estate Association ("**AIR**") and/or any other appropriate local commercial multiple listing service, to other brokers, and to potential sublessees. Agent shall not, without Sublessor's consent, disclose the monetary terms of the Master Lease. Unless otherwise instructed, Agent shall censor the Master Lease's monetary terms prior to its distribution. Sublessor shall identify as "confidential" any communication or information provided to Agent that Sublessor considers confidential and does not want disclosed. All other information provided by Sublessor may be disclosed as Agent may deem appropriate or necessary. Agent may publicize the terms of any consummated sublease.

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 as available for sublease 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 a third-party beneficiary hereof, enforce the terms of this Agreement against Sublessor or Agent.

2.4 If Agent finds a prospective sublessee for all or a part of the Property, Sublessor hereby authorizes Agent also to represent and act as the agent for such sublessee and Sublessor consents to such dual agency. If a Cooperating Broker finds such a sublessee, then Agent shall act as agent for Sublessor only, the Cooperating Broker shall act as agent for the sublessee only, and the Cooperating Broker shall not be Sublessor's agent, even though the Cooperating Broker may share in the commission paid by Sublessor to Agent. A Cooperating Broker shall not be an agent or subagent of Sublessor or Agent. Sublessor hereby agrees that Agent may represent and act as the agent for the Master Lessor, and Sublessor consents to such multiple agency.

3. PROPERTY; MASTER LEASE.

3.1 The term "Property" shall include all of the following which are owned by Sublessor, currently on or in the Property, and are

permitted to be transferred under the Master Lease: permanent improvements, electrical distribution systems, power panels, buss ducting, conduits, disconnects, lighting fixtures, telephone distribution systems (lines, jacks and connections), space heaters, air conditioning equipment, air lines, carpets, window coverings, wall coverings, partitions, doors, suspended ceilings, and built-ins, such as cabinets.

3.2 Sublessor shall fully and timely perform all of Sublessor's obligations under the Master Lease and maintain the Master Lease in good standing.

3.3 Within 5 business days after the commencement of the Term hereof, Sublessor shall provide Agent with the following:

- (a) A true, correct and complete copy of the Master Lease including any amendments or prior assignments;
- (b) A duly completed and fully executed Estoppel Certificate on the most current form published by the AIR;
- (c) A duly completed and fully executed Property Information Sheet on the most current form published by the AIR (modified by changing the reference to "Owner" in such form to Sublessor);
- (d) Copies of other documents containing any limitations on Sublessor's right, ability and capacity to consummate a sublease; and
- (e) If available to Sublessor, copies of building plans for the Property.

3.4 Agent shall have no responsibility for maintenance, repair, replacement, operation or security of the Property, all of which shall be Sublessor'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 Sublessor, anyone in possession of the Property or any sublessee or prospective sublessee, including, but not limited to, those which may occur as a result of Agent's use of a lock box.

4. COMMISSION.

4.1 Sublessor shall pay Agent a commission in the amount of _____

in accordance with the commission schedule attached hereto ("**Agreed Commission**") for a sublease of the Property, whether such sublease is consummated as a result of the efforts of Agent, Sublessor or other persons or entities. Such Agreed Commission is payable when:

- (a) A sublessee is procured who is ready, willing and able to sublease the Property or a portion thereof on the terms stated herein, or on any other terms agreeable to Sublessor;
- (b) Sublessor executes a sublease of the Property, or a portion thereof;
- (c) The Master Lease is voluntarily or involuntarily terminated or Sublessor is relieved of future liability for rent under the Master Lease, whether by cancellation, Master Lessor's exercise of any of its rights under the Master Lease or otherwise; or
- (d) Sublessor (i) removes or withdraws the Property from the market; (ii) acts as if the Property is not available for a sublease; (iii) treats the Property as not available for a sublease; (iv) breaches, terminates, cancels or repudiates this Agreement; (v) renders the Property unmarketable; (vi) changes the Master Lease (including, without limitation, reduction of the term of the Master Lease) or changes the physical condition of the Property, which such changes adversely impact the value, use, desirability, leasability or marketability of the Property; or (vii) terminates, cancels, repudiates, surrenders, breaches or defaults of its obligations under the Master Lease.

4.2 If Master Lessor's consent or approval of a sublease is required, then Sublessor shall, at Sublessor's sole cost and expense, use Sublessor's reasonable best efforts to obtain such consent or approval, and Agent shall not be entitled to the Agreed Commission for such sublease unless Master Lessor's consent or approval is obtained or waived by Sublessor and sublessee.

4.3 In calculating the Agreed Commission, all forms of consideration payable to Sublessor shall be considered, including, without limitation, Rent, goodwill and key money. If Sublessor is released from future rent liability under the Master Lease, the Agreed Commission shall be calculated on the basis of the total Rent which otherwise would have been due from Sublessor for the remaining term of the Master Lease.

5. **ALTERNATIVE TRANSACTION.** Agent shall also be Sublessor's sole and exclusive agent for an assignment of Sublessor's interest in the Master Lease ("**Alternative Transaction**") and represent Sublessor in such Alternative Transaction, under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is entered into, then Sublessor shall pay Agent the Agreed Commission.

6. EXCLUDED AND REGISTERED PERSONS.

6.1 Sublessor shall, within 5 business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with Sublessor by any other broker under any prior agreement concerning subleasing of the Property ("Excluded Persons", see Paragraph 6.5). If any such names are so provided, then the Commission paid to Agent with respect to consummation of a transaction with an Excluded Person shall be limited as follows: if such transaction is concluded within the first 30 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 30 days; or if such transaction is concluded during the remainder of the Term hereof, then Agent shall be entitled to one-half of the Agreed Commission. If no names are provided as specified, it shall be conclusively deemed that there are no Excluded Persons.

6.2 Agent shall, within five business days after the expiration of the Term hereof, provide Sublessor, in writing, with the names of those persons or entities with whom Agent either directly or through another broker had negotiated for a sublease of the Property during the term hereof ("Registered Persons", see Paragraph 6.5). Those persons or entities who submitted written offers or letters of intent for a sublease of the Property shall, however, automatically be Registered Persons. If Agent fails to timely notify Sublessor of the existence of any other Registered Persons, then it shall be conclusively deemed that there are no other Registered Persons. If Agent wishes to register the client of a Cooperating Broker, Agent must obtain and submit to Sublessor 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 Sublessor hereby consents to any such Dual Agency.

6.3 If, within 180 days after the expiration of the Term hereof, Sublessor enters into a contract with a Registered Person for consummation of a sublease of the Property, then Sublessor shall pay Agent the Agreed Commission for such sublease upon the consummation of such sublease.

6.4 If, within 180 days after the expiration of the Term hereof, Sublessor enters into another sublessor-agency or listing agreement with a broker other than Agent for any transaction concerning the Property, then Sublessor shall provide to Sublessor's new broker the names of the Registered Persons, 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 sublease of the Property with a Registered Person.

6.5 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 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.

7. SUBLESSOR'S REPRESENTATIONS.

Sublessor represents and warrants as follows:

- (a) Each person executing this Agreement on behalf of Sublessor has the full right, power and authority to execute this Agreement as or on behalf of Sublessor;
- (b) Sublessor has the full right, power and authority to execute and deliver this Agreement, to consummate a sublease of the Property and to perform Sublessor's obligations hereunder;
- (c) The execution, delivery and performance of this Agreement by Sublessor or Agent will not breach any provision of the Master Lease;
- (d) Sublessor is not the subject of a bankruptcy, insolvency, probate or conservatorship 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 Sublessor's right, ability and capacity to consummate a sublease of the Property, except as disclosed in writing pursuant to Paragraph 3.3(d).

8. SUBLESSOR'S ACKNOWLEDGMENTS. Sublessor 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 the subletting of the Property, as well as the condition and/or legality of the Property, including, but not limited to, the environmental aspects. Agent shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Sublessor and Agent. Sublessor further acknowledges that in determining the financial soundness of any prospective Sublessee or security offered, Sublessor will rely solely upon Sublessor's own investigation, notwithstanding Agent's assistance in gathering such information.

9. MISCELLANEOUS.

9.1 This Agreement shall not be construed either for or against Sublessor 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.

9.2 All payments by Sublessor to Agent shall be made in lawful United States currency. If Sublessor 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.

9.3 In the event of litigation or arbitration between Sublessor and Agent 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.

9.4 Sublessor 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 Sublessor to make a full and complete disclosure pursuant to law and paragraph 3.3 or as a result of the fact that any of the representations made by Sublessor (see paragraph 7) were not true at the time that this Agreement was signed.

9.5 Sublessor hereby releases and relieves Agent, and waives Sublessor'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 Sublessor, whether or not due to the negligence of Agent.

9.6 Sublessor agrees that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to the services to be performed by Agent pursuant to this Agreement may be brought against Agent more than one year after the expiration of the Term of this Agreement (see paragraph 1.4) and that the liability (including court costs and attorney's fees) of Agent with respect to any such lawsuit and/or legal proceeding shall not exceed any fee received by Agent pursuant to this Agreement; provided, however, that the foregoing limitation on liability shall not be applicable to any gross negligence or willful misconduct of Agent.

10. ARBITRATION OF DISPUTES.

10.1 ANY CONTROVERSY ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE DETERMINED BY BINDING ARBITRATION TO BE CONDUCTED BY: THE AMERICAN ARBITRATION ASSOCIATION OR _____ USING THE COMMERCIAL RULES ESTABLISHED BY SUCH ORGANIZATION OR IF NONE THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL RULES. THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL RULES. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

10.2 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.

10.3 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.

Sublessor's Initials

Agent's Initials

10.4 THE PROVISIONS OF THE ABOVE ARBITRATION CLAUSE SHALL NOT BE BINDING ON EITHER PARTY UNLESS BOTH PARTIES HAVE PLACED THEIR INITIALS UNDER PARAGRAPH 10.3.

11. 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"):

12. Disclosures Regarding The Nature of a Real Estate Agency Relationship. When entering into an agreement with a real estate agent an Owner should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

(i) *Owner's Agent.* An Owner's agent may act as an agent for the Owner only. An Owner's agent or subagent has the following affirmative obligations: *To the Owner:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. *To a potential buyer/lessee and the Owner:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Agent Representing Both Parties.* A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both Parties in a transaction, but only with the knowledge and consent of the Parties. In a dual agency situation,

the agent has the following affirmative obligations to both Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Party. b. Other duties to the Owner as stated above in subparagraph (i). When representing both Parties, an agent may not without the express permission of the respective Party, disclose to the other Party that the Owner will accept rent/purchase price in an amount less than that indicated in the listing or that the buyer/lessee is willing to pay a higher rent/purchase price than that offered.

The above duties of the Agent do not relieve Owner from the responsibility to protect its own interests. Owner should carefully read all agreements to assure that they adequately express its understanding of the transaction.

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"SUBLESSOR"

"AGENT"

By: _____

By: _____

Name Printed: _____

Name Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Agent DRE License #: _____

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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