

3.2 If the Transaction is a lease, and it is not consummated for any reason after Buyer/Lessee's offer to lease the Property is accepted ("**Accepted Offer to Lease**"), then the expiration date of the Term of this Agreement shall be extended by the number of days between the date Buyer/Lessee executed the Lease and the date on which the Accepted Offer to Lease is terminated or the date Owner is able to give Lessee occupancy of the Property, **whichever generates the longer extension**; provided, however, unless otherwise agreed to in writing, the Term shall not be extended beyond one year from the date the Term would have otherwise expired.



**EXCLUSIVE RIGHT TO REPRESENT BUYER/LESSEE FOR PURCHASE
OR LEASE OF REAL PROPERTY**
(Non-Residential/Allows for Dual Agency)
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. BASIC PROVISIONS ("BASIC PROVISIONS").

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

1.2 **Requirements:** Buyer/Lessee intends to purchase or lease, preferably purchase lease, a property having the following characteristics: _____
General location: _____
Approximate building size: _____
Approximate land size: _____
Other: _____

_____ ("Requirements").

1.3 **Term of Agreement:** The term of this Agreement commences on _____, and, unless extended, expires at 5:00 p.m. on _____, ("Term"). (See Paragraph 3)

1.4 **Transaction:** Agent shall use reasonably diligent efforts to find a property which meets the Requirements for Buyer/Lessee to purchase or lease (a "Transaction"). However, Buyer/Lessee is under no obligation to consummate any such Transaction.

2. EXCLUSIVE EMPLOYMENT AND RIGHTS.

2.1 Buyer/Lessee hereby employs Agent as Buyer/Lessee's sole and exclusive agent to represent Buyer/Lessee in the Transaction and to find a property meeting the Requirements. Agent shall use reasonably diligent efforts to find and submit properties for Buyer/Lessee's consideration. All negotiations and discussions for a Transaction shall be conducted by Agent on behalf of Buyer/Lessee. Buyer/Lessee shall promptly disclose and refer to Agent all written or oral inquiries or contacts it receives from any source regarding a possible Transaction.

2.2 Buyer/Lessee authorizes Agent to:

- (a) Solicit information on listed and unlisted properties ("Property" or "Properties") on Buyer/Lessee's behalf;
- (b) Submit and obtain responses to requests for proposals from third parties;
- (c) At Buyer/Lessee's direction, submit offers and deposits on Buyer/Lessee's behalf; and
- (d) Transmit information concerning Buyer/Lessee's Requirements to other broker, owners of potentially suitable property, governmental agencies, municipalities, and to participants in THE MULTIPLE of the AIR Commercial Industrial Real Estate Association ("**MULTIPLE**" and "**AIR**") and/or any other appropriate local commercial multiple listing service. Buyer/Lessee shall identify to Agent as "confidential" any communications or information provided to Agent that Buyer/Lessee considers confidential and desires not to be disclosed by Agent. All other communication and information provided by Buyer/Lessee may be disclosed by Agent as Agent may deem appropriate or necessary. In the event Agent acts as a dual Agent, the terms of Paragraph 2.5 shall be applicable.

(e) Agent is not, however, authorized to, in any way, bind Buyer/Lessee to buy or lease a particular property.

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.

2.4 Agent shall cooperate with participants in the MULTIPLE and may, at Agent's election, cooperate with other Real Estate Brokers (the "**Cooperating Brokers**"). If a Cooperating Broker represents the owner of a property, then Agent shall act as agent for Buyer/Lessee only, the Cooperating Broker shall act as Agent for the property owner only, and the Cooperating Broker shall not be Buyer/Lessee's agent. A Cooperating Broker shall not be an agent of Buyer/Lessee or a subagent of Agent.

2.5 IF AGENT ALREADY HAS, OR SUBSEQUENTLY OBTAINS, WRITTEN CONSENT TO DUAL AGENCY FROM THE OWNER OF A PROPERTY WHICH BECOMES THE SUBJECT OF A TRANSACTION, AGENT SHALL NOTIFY BUYER/LESSEE IN WRITING OF SUCH DUAL AGENCY AND OF SUCH OWNER'S CONSENT. BUYER/LESSEE AGREES TO CONSENT IN WRITING TO SUCH DUAL AGENCY AT THE TIME OF SUCH NOTIFICATION. IN SUCH A DUAL AGENCY SITUATION, THE AGENT HAS THE FOLLOWING AFFIRMATIVE OBLIGATIONS TO BOTH THE OWNER AND BUYER/LESSEE: A) A FIDUCIARY DUTY OF UTMOST CARE, INTEGRITY, HONESTY AND LOYALTY IN THE DEALINGS WITH BOTH OWNER AND BUYER/LESSEE, AND B) OTHER DUTIES INCLUDING:

- (1) DILIGENT EXERCISE OF REASONABLE SKILL AND CARE IN PERFORMANCE OF THE AGENT'S DUTIES;
- (2) A DUTY OF HONEST AND FAIR DEALING AND GOOD FAITH;
- (3) 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. AS SUCH, THE AGENT MAY NOT, WITHOUT THE EXPRESS PERMISSION OF THE RESPECTIVE PARTY, REVEAL THAT OWNER WILL ACCEPT A PRICE/RENTAL RATE THAT IS LESS THAN ADVERTISED OR THAT BUYER/LESSEE WILL PAY A GREATER PRICE/RENTAL RATE THAN THE PRICE/RENTAL RATE THAT IS OFFERED. THE ABOVE DUTIES OF THE AGENT IN A DUAL AGENCY SITUATION DO NOT RELIEVE THE PARTIES FROM THE RESPONSIBILITY TO PROTECT THEIR OWN INTERESTS. BUYER/LESSEE AND OWNER SHOULD CAREFULLY READ ALL AGREEMENTS TO ASSURE THAT THEY ADEQUATELY EXPRESS THEIR UNDERSTANDING OF THE TRANSACTION. BUYER/LESSEE IS ADVISED TO CONSULT COMPETENT PROFESSIONALS IF LEGAL, FINANCIAL OR TAX ADVICE IS DESIRED.

I HAVE READ AND UNDERSTAND THE PRECEDING PARAGRAPH AND AGREE TO CONSENT TO SUCH DUAL AGENCY AS DESCRIBED IN THIS PARAGRAPH 2.5.

Buyer/Lessee's Initials

3. EXTENSION OF TERM.

3.1 If the Transaction includes the purchase of a property, and it is not consummated for any reason after Buyer/Lessee's offer to purchase the Property ("**Sale Agreement**") is accepted, then the expiration date of the Term of this Agreement shall be extended by the number of days between the date Buyer/Lessee executed the Sale Agreement and the date the Sale Agreement is terminated or the date that title to the Property is transferred to Buyer; provided, however, unless otherwise agreed to in writing, the Term shall not be extended beyond one year from the date the Term would have otherwise expired.

3.2 If the Transaction is a lease, and it is not consummated for any reason after Buyer/Lessee's offer to lease the Property is accepted ("**Accepted Offer to Lease**"), then the expiration date of the Term of this Agreement shall be extended by the number of days between the date Buyer/Lessee executed the Lease and the date on which the Accepted Offer to Lease is terminated or the date Owner is able to give Lessee occupancy of the Property, **whichever generates the longer extension**; provided, however, unless otherwise agreed to in writing, the Term shall not be extended beyond one year from the date the Term would have otherwise expired.

4. COMPENSATION.

4.1 Agent shall be entitled to be paid a commission in the amount of _____ in accordance with the commission schedule attached hereto ("**Agreed Commission**") if a Transaction is consummated by Buyer/Lessee or by anyone having an ownership interest in Buyer/Lessee, eg. a shareholder. Said Agreed Commission is payable without regard to whether the Transaction is consummated as a result of the efforts of the Agent, owner, lessor, Buyer/Lessee, or any other person or entity. Agent shall endeavor to have the owner/lessor of the property which is the subject of the Transaction ("**Owner**") pay the commission owed to Agent for the Transaction. Agent may elect, at Agent's sole discretion, to accept Owner's standard commission schedule in lieu of the Agreed Commission. Buyer/Lessee hereby agrees to use its best efforts to support and assist Agent in collecting such brokerage commission from Owner.

4.2 In the event Owner or Owner's agent insists on a commission amount or commission terms less than or materially less favorable than the Agreed Commission, Agent shall have the right, in its sole discretion, to refuse acceptance of the reduced amount or less favorable terms. In such event, Buyer/Lessee hereby agrees to:

- (a) Refuse further consideration of the subject Property for a period of one year after expiration of the Term of this Agreement;
- or
- (b) Compensate Agent directly for the difference in the commission amount (and/or indemnify Agent from less favorable terms) offered by Owner and the Agreed Commission.

5. ALTERNATIVE TRANSACTION. If the Transaction changes to any other transaction, including, but not limited to an exchange, option to buy, right of first refusal, ground lease, sublease or assignment of lease (collectively, an "**Alternative Transaction**"), the Agent shall automatically be Buyer/Lessee's sole and exclusive Agent for such Alternative Transaction and represent Buyer/Lessee in such Alternative Transaction under the terms and conditions of this Agreement. If, during the Term hereof, an Alternative Transaction is consummated, then Agent shall be entitled to a commission for the Alternative Transaction in accordance with Paragraph 4 of this Agreement.

6. EXCLUDED AND REGISTERED PROPERTIES.

6.1 Buyer/Lessee shall, within 5 business days after the date hereof, provide Agent with a written list of Property addresses setting forth those Properties registered with Buyer/Lessee by any other broker under any prior agreement of any kind ("**Excluded Properties**"). Buyer/Lessee's written list shall also specify the type of transaction associated with the Excluded Properties ("**Excluded Transaction**"). Agent may, within 3 business days of receiving such written list, either (a) accept the Excluded Properties or Excluded Transactions, (b) cancel this Agreement, or (c) renegotiate this portion of the Agreement with the Buyer/Lessee. Once accepted by Agent, the written list shall automatically become an exhibit to this Agreement and attached hereto. If Buyer/Lessee timely provides Agent with a complete list of the Excluded Properties and a complete list of the Excluded Transactions and Agent accepts such written list pursuant to this Paragraph 6.1(a), then Agent shall not be entitled to a commission with respect to the consummation of an Excluded Transaction. If the specified information concerning Excluded Properties and Transactions is not provided as set forth herein then it shall be conclusively deemed that there are no Excluded Properties or Excluded Transactions.

6.2 Within 5 business days after the expiration of the Term, Agent shall provide Buyer/Lessee with a written list of the Properties Agent either directly, or through another broker, negotiated on Buyer/Lessee's behalf during the Term hereof ("**Registered Property Listing**"). The Registered Property Listing shall specify the nature of each consummated or nonconsummated Transaction. Those Properties which Buyer/Lessee or Agent, during the Term hereof, submitted written offers, requests for proposals or letters of intent on behalf of Buyer/Lessee shall automatically be deemed, without further action by Agent, a part of the Registered Property Listing. Agent's failure to timely notify Buyer/Lessee of the existence of any other Properties shall mean that such other Properties shall not be included in the Registered Properties Listing.

6.3 If, within 180 days after the expiration of the Term, Buyer/Lessee enters into a contract for a Property specified on the Registered Property Listing, then Agent shall, upon consummation of such transaction, be entitled to a commission for such transaction in accordance with Paragraph 4 of this Agreement.

6.4 If, within 180 days after the expiration of the Term, Buyer/Lessee enters into another agreement, whether or not exclusive, with a broker other than Agent for a Transaction or an Alternative Transaction concerning Property specified on the Registered Property Listing, then Buyer/Lessee shall provide to Buyer/Lessee's new broker the addresses of the Properties specified on the Registered Property Listing, and specify, in writing, that the new broker shall not be entitled to receive any compensation payable to Agent hereunder for the consummation of any Transaction or Alternative Transaction specified in the Registered Property Listing.

6.5 If Buyer/Lessee is involved in active good faith negotiations or maintains continued interest in any Property specified in the Registered Property Listing beyond the time periods provided in this Paragraph 6, then the time periods set forth herein shall be automatically extended so long as negotiations or interest continues. If Buyer/Lessee notifies the Agent in writing and in good faith that such negotiations or interest is terminated, then such notice shall terminate the extension of the time period.

7. BUYER/LESSEE'S REPRESENTATIONS. Buyer/Lessee represents and warrants that:

- (a) Each person executing this Agreement on behalf of Buyer/Lessee has the full right, power and authority to execute this Agreement on behalf of Buyer/Lessee; and
- (b) Buyer/Lessee has neither been deemed nor is it the subject of an actual or pending bankruptcy, insolvency, probate or conservatorship proceeding.

8. BUYER/LESSEE'S ACKNOWLEDGEMENTS. Except to the extent arising from Agent's gross negligence or willful misconduct, or Agent's failure to disclose or perform its obligations under applicable law, Agent shall not be liable to Buyer/Lessee for any (a) claims for personal injury, property damage, or loss in value of the Property arising from or related to the physical condition of the Property, including, without limitation, any soils, structural, or design problems; (b) claims or action arising from or due to any inaccuracy in information known or unknown by the seller or lessor of the Property, or furnished or unfurnished by said seller or lessor; (c) agreement entered into by Buyer/Lessee with respect to the Property and/or addenda thereto; (d) dispute or action concerning or arising from Buyer/Lessee's decision to consummate or not consummate a Transaction or Alternative Transaction; (e) claims, disputes or actions or services including, but not limited to, the inspection, financing, purchase or lease of the Property; and (f) any responsibility for the completion of repairs to the Property, including but not limited to, structural pest control work. Buyer/Lessee

acknowledges that Buyer/Lessee has been advised by Agent to consult and retain experts to advise and represent it concerning the legal, financial and tax effects of this Agreement and the effect of consummating a Transaction or Alternative Transaction, as well as the condition of the Property and/or the legality of the Property uses, 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 Buyer/Lessee and Agent. Buyer/Lessee further acknowledges that in determining the financial soundness of any prospective Property, Transaction or Alternative Transaction, Buyer/Lessee will rely solely upon Buyer/Lessee's own investigation, notwithstanding Agent's assistance in gathering such information.

9. MISCELLANEOUS.

9.1 This Agreement shall not be construed for or against Buyer/Lessee 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 Buyer/Lessee to Agent shall be made in lawful United States currency. If Buyer/Lessee 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 Buyer/Lessee and Agent arising under or relating to this Agreement or the Property, the prevailing party shall be paid its attorneys' 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 attorneys' fees awarded shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all reasonably incurred attorneys' fees.

9.4 In the event of a sublease, all terms relating to lessee shall be deemed to include sublessee and all terms relating to lessor shall be deemed to include sublessor and shall also include master lessor.

9.5 Except as may be caused by Agent's grossly negligent acts or omissions, Agent shall not be liable for any loss, damage, or injury to the person or property of Buyer/Lessee or Buyer/Lessee's employees or business partners during the Agent's transportation of such individuals to any property or to any meeting or while Agent is showing any property or site whatsoever.

9.6 Buyer/Lessee 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 1.3) 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. ARBITRATION HEARINGS SHALL BE HELD IN THE COUNTY WHERE THE PROPERTY IS LOCATED. THE ARBITRATORS SHALL HEAR AND DETERMINE SAID CONTROVERSY IN ACCORDANCE WITH APPLICABLE LAW AND THE INTENTION OF THE PARTIES AS EXPRESSED IN THIS AGREEMENT, AND ANY AMENDMENTS THERETO. PRE-ARBITRATION DISCOVERY SHALL BE PERMITTED AS IS AUTHORIZED UNDER THE COMMERCIAL RULES OR STATE LAW APPLICABLE TO ARBITRATION PROCEEDINGS. JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT OF COMPETENT JURISDICTION NOTWITHSTANDING THE FAILURE OF A PARTY DULY NOTIFIED OF THE ARBITRATION HEARING TO APPEAR.

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. YOU ARE GIVING UP RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE RESOLVED IN A COURT OF LAW. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP 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.

Buyer/Lessee'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 regarding this Agreement may be set forth on the following blank lines or in an addendum (if there are no additional provisions, write "NONE"; if an addendum is attached, check this box):

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.

"BUYER/LESSEE"

"AGENT"

DRAFT

By: _____

Name Printed: _____

Title: _____

Date: _____

By: _____

Name Printed: _____

Title: _____

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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INITIALS

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