



DRAFT

**STANDARD OFFER AND AGREEMENT
TO LEASE REAL ESTATE
(Non-Residential)**
AIR Commercial Real Estate Association
-THIS IS A BINDING AGREEMENT-

California _____ (Date) _____
(City) _____

1. Lessee.

_____, ("Lessee") hereby offers to lease the real property (the "Premises") hereinafter described upon the terms and conditions set forth in this agreement (the "Agreement").

2. Premises. The Premises which are the subject of this Agreement are located in the County of _____, State of _____, commonly known as _____ and described as _____.

3. Broker.

3.1 This Agreement is being submitted to Lessor through _____ ("Broker") who is the procuring cause of this Agreement. Lessee agrees to use the services of Broker exclusively in connection with any and all negotiations and offers with respect to the Premises for a period of one year from the above date.

3.2 The parties acknowledge that the following real estate brokerage relationship exists:

(Check if applicable) Broker represents both Lessor and Lessee; or

(Check if applicable) Broker represents Lessee exclusively and shall not be considered the subagent and/or representative of Lessor's broker.

4. Deposit.

4.1 Lessee hereby delivers to Broker a check in the amount of \$ _____ ("**Deposit**"). Broker is instructed to hold check uncashed until acceptance hereof.

4.2 Upon execution of the lease agreement contemplated hereby:

(a) If the Deposit check is made payable to the Broker, Broker is authorized by Lessor and Lessee to apply the Deposit to any Commission owed to Broker pursuant to the terms of this Agreement and/or the lease agreement and to deliver the balance of the Deposit, if any, to Lessor.

(b) If the Deposit check is made payable to the Lessor, Broker is authorized by Lessee to deliver the Deposit to Lessor.

5. Agreed Lease Terms.

5.1 Term of Lease. The term of the lease shall be _____ months and shall begin on _____ and shall end on _____.

5.2 Rent.

(a) ~~The monthly Base Rent~~ ~~Monthly rent during the initial lease term~~ shall initially be \$ _____ and shall be adjusted as follows: _____ . ~~Base Rent shall be~~ payable, in advance, on the _____ day of each month ~~of the term hereof~~.

(b) On execution of lease, Lessee shall pay to Lessor \$ _____ representing ~~rent~~ Base Rent for _____.

5.3 **Security Deposit.** The Security Deposit shall be in the amount of \$ _____
Total monies due upon execution of Lease (security deposit plus advance rent): \$ _____

5.4 **Agreed Use.** The Premises shall be used only for _____

5.5 **Possession.** If Lessee is not already in possession, Lessor shall deliver the Premises on _____

5.6 **Proportion and Share of Expenses.** If the Premises are part of a larger building or a complex of buildings, Lessee shall pay its proportionate share of the operating expenses, if any, of the property of which the Premises are a part, including, but not limited to, real property taxes, insurance, maintenance, and security costs.

6. **Additional Lease Terms.** In addition to the Agreed Terms described in paragraph 5, the Lease which is to be ultimately executed by the parties shall contain the provisions of the most recent edition of the Industrial/Commercial Single Tenant - Net, Industrial/Commercial Single Tenant - Gross, Industrial/Commercial Multi-Tenant - Net Industrial/Commercial Multi-Tenant - Gross Multi-Tenant Office - Net Multi-Tenant Office - Gross Retail Multi-Tenant Net Other (specify) _____

Standard Lease Form published by the AIR ~~Commercial~~ Commercial Real Estate Association subject to such commercially reasonable modifications as may be mutually agreed upon by the parties in writing. The Parties agree to act reasonably and expeditiously with regard to the negotiation and drafting of the lease agreement. If agreement cannot be reached within fifteen days from the date of the execution of this Agreement, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable attorney or broker to establish the terms of the lease agreement within the next ten days. Any associated costs will be split equally between the Parties.

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(b) Both Lessor and Lessee shall each immediately submit, in writing, a draft of the lease agreement which they propose to arbitrate in accordance with the following provisions:

(i) Within five days thereafter, Lessor and Lessee shall each select an attorney or broker ("**Consultant**" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The three arbitrators shall within ten days of the appointment of the third arbitrator reach a decision as to what terms to insert in the final lease agreement, and whether draft lease agreement submitted by Lessor or Lessee is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified five days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose draft lease agreement is determined to be the one that is NOT the closest to the final lease agreement decided on by the arbitrators.

7. **Offer to Sublease.** _____
 If this box is checked, this is an offer to sublease, and:
(a) All references herein to Lease, Lessor, and Lessee shall be construed to mean Sublease, Sublessor, and Sublessee, respectively.
(b) The sublease shall be subject to and subordinate to the Master Lease and, except for those matters which are directly contradicted by this offer, the terms and conditions of the parties shall be the terms and conditions of the Master Lease.

8. **Contingencies.** The completion of this transaction is contingent upon the satisfaction or waiver of the following contingencies. **IF A PARTY FAILS TO NOTIFY THE OTHER, IN WRITING, OF THE DISAPPROVAL OF ANY OF THE FOLLOWING CONTINGENCIES WITHIN THE TIME SPECIFIED, IT SHALL BE CONCLUSIVELY PRESUMED THAT SUCH PARTY HAS APPROVED SUCH ITEM, MATTER OR DOCUMENT.** With regard to sub-paragraphs (A) through (E) the pre-printed time periods shall control unless a different number of days is inserted in the spaces provided.

(a) Disclosure. Lessor shall provide Lessee with a completed Property Information Sheet ("**Property Information Sheet**") concerning the Premises, duly executed by or on behalf of Lessor in the current form or equivalent to that published by the AIR within 3 or _____ days following acceptance of this offer. Lessee has 3 days from the receipt of the Property Information Sheet to approve or disapprove the matters disclosed.

(b) Lessee Evaluation. Within 3 or _____ days following acceptance of this offer, Lessee shall provide Lessor with a current financial statement, and a credit application and/or tenant information sheet acceptable to Lessor. Lessee shall also make available the premises which it currently occupies for Lessor's inspection. Lessor has 3 days from the receipt of such financial documents to satisfy itself with regard to Lessee's financial condition and to inspect Lessee's current premises.

(c) Governmental Approvals. Lessee has 5 or _____ days from the acceptance of this offer to satisfy itself with regard to approvals and permits from governmental agencies or departments which have or may have jurisdiction over the Premises and which Lessee deems necessary or desirable in connection with its intended use of the Premises, including, but not limited to, permits and approvals required with respect to zoning, planning, building and safety, fire, police, Americans with Disabilities Act requirements, transportation and environmental matters.

(d) Master Lease. If this is an offer to sublease, Sublessor shall provide Sublessee with a complete and accurate copy of the Master Lease within 3 or _____ days following acceptance of this offer. Sublessee has 3 days from the receipt thereof to approve or disapprove such Master Lease.

(e) Approval by Master Lessor. If this is an offer to sublease, and this transaction requires the approval of the Master Lessor, Sublessee shall provide to the Master Lessor all information reasonably required by Master Lessor within 3 or _____ days following acceptance of this offer. Sublessor shall use its best reasonable efforts to obtain Master Lessor's approval. If within _____ business days following acceptance of this offer, the Master Lessor has not approved this transaction, this transaction shall, at the option of Sublessee, be terminated and all amounts deposited by Sublessee shall be returned to Sublessee.

9. **Brokers.**

9.1 **Representations.** Lessor and Lessee acknowledge that Broker has made no representations or warranties regarding the physical condition of the Premises, or its suitability for Lessee's intended use, and that neither Party has made any representations or warranties to the other (except as expressly set forth in this offer) and that Lessor and Lessee are relying upon their own independent investigations in making or accepting this offer.

9.2 **Rights.** If this transaction is not consummated due to the default of either the Lessor or Lessee, the defaulting party shall be liable to and shall pay to Broker the Brokerage Fee that Broker would have received had the transaction been consummated.

9.3 **Fees.** In consideration of the real estate brokerage services rendered by Broker, upon the execution of the lease agreement contemplated hereby, or if Lessee leases, purchases, or acquires any other rights to the Premises or other premises owned by Lessor within six months of the date of this Agreement:

(a) Lessor agrees to pay Broker a fee in accordance with Broker's current Schedule of Commissions. If Lessor has appointed an exclusive agent other than the Broker named herein, the brokerage commission shall be as mutually agreed between the brokers.

(b) Lessee agrees, at all times and in all ways, to protect Broker's right and/or opportunity to collect the Brokerage Fee from Lessor.

(c) While it is understood that the obligation to pay the Brokerage Fee is intended to be primarily that of the Lessor, Lessee agrees to pay to Broker the Brokerage Fee in the event that Broker is unable to collect such Fee from Lessor.

10. **Attorneys' Fees.** Should litigation arise between Lessor, Lessee and Broker, or any of them, concerning this transaction, the prevailing party shall be entitled to reasonable attorneys' fees.

11. **Expiration.** Unless accepted in writing by Lessor on or before _____, this offer shall expire and be of no further force or effect, and Lessee's deposit shall be returned to Lessee.

12. **Time.** Time is of the essence with respect to this offer.

13. **Authority.** If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement and the lease agreement contemplated herein on its behalf. Each party shall, upon request, deliver to the other party satisfactory evidence of such authority.

14. **Addendum.** Any Addendum attached hereto is hereby incorporated in this offer by this reference.

Addendum attached: Yes: (Paragraphs _____ through _____)
No:

THIS OFFER IS INTENDED TO CONSTITUTE A BINDING AND ENFORCEABLE CONTRACT. PLEASE READ IT CAREFULLY.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY REAL ESTATE BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS OFFER OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE ADVISED TO SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS TRANSACTION.

BROKER:

D R A F T

LESSEE:

By: _____ By: _____

Date: _____ Date: _____

Name Printed: _____ Name Printed: _____

Attn: _____ Title: _____

Title: _____

Address: _____ By: _____

_____ Date: _____

Telephone:() _____ Name Printed: _____

Facsimile:() _____ Title: _____

Email: _____

Federal ID No. _____ Address: _____

Telephone:() _____

Facsimile:() _____

Federal Id No. _____

15. **Lessor's Acceptance.** Lessor accepts the foregoing offer to Lease the Premises, hereby agrees to lease the Premises to Lessee on the terms and conditions herein specified, and authorizes Broker to communicate to Lessee Lessor's acceptance hereof and to deliver an executed copy of this Agreement to Lessee.

D R A F T

BROKER:

LESSOR:

By: _____ By: _____

Date: _____ Date: _____

Name Printed: _____ Name Printed: _____

Attn: _____ Title: _____

Title: _____

Address: _____ By: _____

_____ Date: _____

Telephone:() _____ Name Printed: _____

Facsimile:() _____ Title: _____

Email: _____

Federal ID No. _____ Address: _____

Telephone:() _____

Facsimile:() _____

Federal Id No. _____

NOTE: These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AIR COMMERCIAL REAL ESTATE ASSOCIATION, 700 So. Flower St., Suite 600, Los Angeles, CA 90017. (213) 687-8777.

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