



EXCLUSIVE RIGHT TO REPRESENT BUYER/LESSEE FOR PURCHASE OR LEASE OF REAL PROPERTY

(Non-Residential/Allows for Dual Agency)

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 brokers, owners of potentially suitable property, governmental agencies, municipalities, and to participants in THE MULTIPLE of AIR CRE ("**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

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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. **Signatures to this Agreement accomplished by means of electronic signature or similar technology shall be legal and binding.**

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 a Buyer/Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction.

(i) *Buyer/Lessee's Agent.* A Buyer/Lessee's agent may act as an agent for the Buyer/Lessee only. A Buyer/Lessee's agent or subagent has the following affirmative obligations: To the Buyer/Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings. To a potential seller/lessor and the Buyer/Lessee: 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

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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 Buyer/Lessee 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 Buyer/Lessee 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 Buyer/Lessee from the responsibility to protect its own interests. Buyer/Lessee should carefully read all agreements to assure that they adequately express its understanding of the transaction.

BUYER/LESSEE

Date: _____

By: _____

Name Printed: _____

Title: _____

AGENT

Date: _____

By: _____

Name Printed: _____

Title: _____

Broker/~~Agent~~ DRE License #: _____

Agent DRE License # _____

Address: _____

Phone: _____

Fax: _____

Email: _____

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