

DISPUTE RESOLUTION MANUAL

(Adopted: November 8, 1989)
Revised: October 5, 2020



AIR CRE
800 W. 6th Street, Suite 1000
Los Angeles, CA 90017

AIR CRE

DISPUTE RESOLUTION MANUAL

INTRODUCTION AND OBJECTIVES

The AIR CRE sets forth the following objectives to be achieved through the process described in this Dispute Resolution Manual:

1. To provide procedures that will earn public respect, judicial acceptance, and the confidence of members.
2. To provide uniform procedures that assure due process to all parties.
3. To provide a forum for a prompt and inexpensive resolution of monetary disputes.

Resolution of Disputes

Any money-related dispute, not purely a matter of professional conduct, between Accredited Firms, non-Accredited Firms or Associates, may be submitted to AIR CRE for resolution first by mediation and then by binding arbitration if mediation does not lead to a settlement, upon written application of either or both parties to the dispute, subject to the willingness of the AIR CRE to hear the dispute, in accordance with the Bylaws of the AIR CRE and The MULTIPLE. Every Accredited Firm, on behalf of all licensees being held at such Accredited Firm, and whether such licensees are members of the AIR CRE or not, shall be bound to submit to such dispute resolution with respect to any applicable matter concerning any property offered through The MULTIPLE. However, AIR CRE will only hear such disputes to the extent a Member Firm claims an amount is due to the Firm. The decision of the arbitration panel shall be final. The party against whom the decision is made shall comply promptly with any arbitration award made by the panel. The award rendered by the Arbitrators may be confirmed pursuant to Section 1285 of the California Code of Civil Procedure.

AIR CRE DISPUTE RESOLUTION PROCEDURES

The following is a basic outline of the Dispute Resolution Procedures. For further information, please see the attached AIR CRE Dispute Resolution Manual.

To File for Dispute Resolution:

1. Submit Dispute Resolution Application form (A-1) provided by the Association.
2. Enclose a filing fee equal to the greater of 5% of the amount of the claim or \$3,000.
3. Include a statement describing the controversy and the amount in dispute.

The Executive Director and/or Chief Operating Officer and/or the Dispute Resolution Chair, after determining whether the dispute is properly subject to the dispute resolution process by the Association, will notify the other party or parties, and request that they submit their response within fourteen (14) days of receipt of Complaint.

The Respondent(s) are not required to submit a response but, regardless of whether the Respondent(s) does so, he or she is bound to participate in the dispute resolution process according to the Association rules set forth in the Dispute Resolution Manual under the Bylaws of the Association. An arbitration hearing may be scheduled and conducted in the absence of the Respondent(s).

Both the Complaint and Response will be forwarded to the Dispute Resolution. Within twenty-one (21) days, the Dispute Resolution Chair will initiate a phone call to both parties to bring the parties together to mediate the dispute in order to reach a mutually agreeable resolution.

Mediation:

Should the mediation be successful, the parties shall execute a Mediation Settlement Agreement form (MED-2). This agreement specifically states that the agreement itself may be used in court for enforcement purposes. If the parties do not settle their dispute by mediation, they shall maintain their right to arbitrate under the Bylaws and the Dispute Resolution Manual.

Arbitration Hearing:

Three qualified members will be appointed as members of the arbitration tribunal. One will be designated as Presiding Officer. All parties have the right to challenge a tribunal member as provided in Section 7 of the Dispute Resolution Manual.

The hearing will be scheduled giving all parties at least twenty-one (21) days written notice.

All parties may be represented by legal counsel. Notice must be given at least fourteen (14) days before the hearing.

The arbitration tribunal will hear the matter and render a decision. The arbitration award will be made as soon as practicable after the Hearing, but not more than thirty (30) days after the close of the Hearing. **The award is valid and binding and is not subject to review or appeal.** The decision will be sent via certified mail to all parties. Arbitration decisions will not be provided by telephone.

The judgment of any court of competent jurisdiction in the State of California may be rendered upon the award.

AIR CRE

DISPUTE RESOLUTION ARBITRATION MANUAL

TABLE OF CONTENTS

Section 1. Definitions.....	1
Section 2. Duty to Engage in Dispute Resolution Procedures.....	1
Section 3. Association’s Right to Decline Dispute Resolution	2
Section 4. Manner of Invoking Dispute Resolution and Submission	3
Section 5. Mediation.....	4
Section 6. Arbitration Hearing Process.....	5
Section 7. Qualification for Tribunal	6
Section 8. Duty to Give Evidence	8
Section 9. Right to Counsel.....	8
Section 10. Conduct of Hearing	8
Section 11. Notices	9
Section 12. Interpretation of Bylaws	9
Section 13. Waiver	9
Section 14. Communication and Clerical.....	10
Section 15. Attempts to Influence Tribunal/Ex Parte Communication	10
Section 16. Continuance Fees	10
Section 17. Subpoenas	10
Section 18. Arbitration Hearing	11
Section 19. Cost of Arbitration.....	12
Section 20. Settlement	12
Section 21. The Award	12
Section 22. Enforcement.....	13

Appendix A – Sample Forms:

MED-1	Mediation Confidentiality Agreement
MED-2	Mediation Settlement Agreement
A-1	Request for Dispute Resolution
A-2	Dispute Resolution Notice to Respondent
A-3	Dispute Resolution Response
A-4	Notice of Arbitration Hearing
A-5	Award of Arbitrators
A-6	Requested Arbitration Costs
A-7	Reasons for Challenging Qualification of Arbitrator
AH-1	Outline of Procedure for Arbitration Hearing
AH-2	Acknowledgement of Receipt of Outline Procedure for Arbitration Hearing
AH-3	Certificate of Qualification

**AIR CRE
DISPUTE RESOLUTION MANUAL**
(Adopted November 8, 1989/Rev. October 5, 2020)

Section 1. Definitions

Section 1.1

As used in this Manual,

- (a) “Dispute” means a controversy arising out of the industrial or non-residential commercial real estate business.
- (b) “Association” means the AIR CRE.
- (c) “Members” means the Active and Management Members of the AIR CRE.
- (d) “Directors” means the Board of Directors of the Association.
- (e) “Hearing” means a mediation session or an arbitration hearing involving a controversy arising out of the industrial or non-residential commercial real estate business.
- (f) “Mediator” means a person serving as a neutral, third-party to assist/facilitate the resolution of the dispute on a voluntary basis if the parties choose to do so by reaching a mutually acceptable settlement.
- (g) “Member of Tribunal” means a person serving on an arbitration-hearing panel as duly appointed by the Dispute Resolution Chair in consultation with the Chief Operating Officer.
- (h) “Party” means any member authorized by the provisions of Section 2.
- (i) “Principal Broker” means an owner, partner, and corporate officer or manager of the Accredited Firm with authority to bind the Accredited Firm with respect to the Bylaws, Rules of Professional Conduct, regulations, and operating policies of the Association.

Section 2. Duty to Engage in Dispute Resolution Procedures

Section 2.1

By becoming and remaining a member of the AIR CRE (“Association”) and by signing or having signed the agreement to abide by the Bylaws and Rules of Professional Conduct, every member binds himself or herself and the corporation or firm for which he or she acts, and agrees to submit to the dispute resolution process, first by mediation and then, if necessary, by arbitration, all disputes with any other member subject to the conditions or exceptions listed below and in Section 4.3. This shall be deemed an agreement to participate in the AIR CRE

dispute resolution process. within the meaning of *Part 3, Title IX of the California Code of Civil Procedure (Sections 1280 et seq)*.

Section 2.2

For purposes of this Section, the duty to resolve disputes arises and membership shall be determined when events giving rise to the dispute occur. Termination of membership from the Association for any reason or cause shall not relieve the terminated member from the duty to resolve disputes under this Section for disputes - related to commissions - that arose when the person or persons was/were a member/members of the Association.

Section 2.3

The Association will not resolve disputes between members of the same firm or branch thereof, or between a firm and its former sales associates, as to matters that originated during the period of employment or affiliation. The Association shall not resolve any matter in which an Affiliate Member or Affiliate Business Organization is involved as a party. Only Accredited Offices on behalf of Active Members or those who were Active Members at the time of the alleged infraction have the right to apply for dispute resolution. The Association will not resolve any dispute, to the extent that a claim, or a portion thereof is being asserted by a non-member firm. A non-Member associate of an Accredited Firm shall not have the right to request dispute resolution by AIR CRE.

Section 2.4

Notwithstanding any other provisions of this Manual, if any member enters into a binding agreement (either before or after a dispute arises) with non-members or other members to resolve a dispute not using these dispute resolution procedures, the member is not bound to use these dispute resolution procedures to resolve the dispute covered by that agreement.

Section 2.5

If the parties agree and the Association approves, the dispute resolution procedure may be conducted by another dispute resolution provider.

Section 3. Association's Right to Decline Dispute Resolution

Section 3.1

The AIR CRE and its Dispute Resolution Committee may in its absolute discretion determine the dispute will not be handled by AIR CRE.

Section 3.2

If a dispute is the subject of pending civil litigation, AIR CRE shall not exercise its dispute resolution authority unless the litigation is stayed, dismissed or a judgment is rendered, or the matter is referred to the Association by the court for resolution in accordance with these procedures.

Section 4. Manner of Invoking Dispute Resolution and Submission

Section 4.1

Any party authorized by the provisions of Section 2 of this Manual desiring dispute resolution by the Association shall submit a completed and signed complaint with the appropriate filing fee to the Chief Operating Officer. The complaint shall include a statement describing the controversy and the amount in dispute. The Chief Operating Officer shall notify the other party to the dispute by mailing/emailing copies of the Complaint, Notice to Respondent (Form A-2), and Dispute Resolution Response (Form A-3) to the respondent with directions to return the written response within fourteen (14) days from the date of mailing/emailing to the respondent(s).

Section 4.2

Submission of a dispute for resolution by the Association shall consist of signing and delivering to the Chief Operating Officer either a complaint (Form A-1) provided by the Association or any other similar writing permitted by law.

Section 4.3

An administrative fee equal to the greater of 5% of the amount of the claim or \$3,000.

Section 4.4

A complaint must be filed within one (1) year from the close of transaction or from the date of discovery of the matter/facts in dispute, whichever comes later.

Section 4.5

The respondent(s) may submit a response but, regardless of whether a response is filed, the respondent is bound to participate in the dispute resolution process according to the Association rules set forth in this Manual. If the respondent refuses to participate in the dispute resolution process, the matter shall proceed directly to arbitration without first being mediated. The arbitration hearing may be scheduled and conducted in the absence of the respondent and the decision shall be rendered solely on the written evidence and submittals.

Section 4.6

If respondent's response includes an affirmative monetary claim, respondent shall pay (see 4.3).

Section 4.7

Not later than twenty-one (21) days after mailing notice to respondent of complainant's request for dispute resolution, the Chief Operating Officer shall mail to the complainant a copy of the response and respondent's affirmative claim if any. If the Respondent fails to respond to the COO's notice of the complaint being

filed within twenty-one (21) days then COO shall so notify Claimant and an arbitration hearing will be scheduled.

Section 5. Mediation

Section 5.1

The Complainant's and Respondent's forms and documents will then be forwarded to the Dispute Resolution Chair, who will determine, in his/her sole discretion, whether the dispute is appropriate for mediation. If the Dispute Resolution Chair determines that the dispute is appropriate for mediation, then within twenty-one (21) days of receipt, the Dispute Resolution Chair will initiate a phone call to both parties to schedule a mediation conference to attempt to reach a mutually agreeable resolution. The Dispute Resolution Chair may request documents and further information that may be needed to resolve the dispute.

Section 5.2

The Dispute Resolution Chair may choose to serve as the mediator or may appoint a qualified mediator to serve. Within fourteen (14) days either party may challenge the mediator and request a new/different mediator be appointed. Such mediator shall be approved by the Dispute Resolution Chair.

Section 5.3

Prior to accepting an appointment, the prospective mediator selected by the Dispute Resolution Chair or the parties shall disclose any circumstances likely to create the appearance of bias or prevent a prompt meeting with the parties. The Dispute Resolution Chair shall appoint another mediator if the appointed mediator is unable to serve.

Section 5.4

Third parties or witnesses shall be permitted at the mediation session/conference at the mediator's sole discretion. If a party elects to have counsel present. Counsel may review any settlement agreement prior to execution.

Section 5.5

The mediator appointed by the Dispute Resolution Chair or the parties shall fix the date, time and place of the mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine.

Section 5.6

At least ten (10) days prior to the mediation session, each party shall provide the mediator with a mediation brief of not more than five (5) pages setting forth its position with regard to the issues in dispute. The mediator may require any party to supplement such information.

Section 5.7

Once a date for the mediation session has been determined, there shall be no postponement except at the discretion of the mediator. If any party fails to appear, an arbitration hearing shall be scheduled to hear the dispute between the parties as herein outlined. At the mediator's sole discretion, the mediation session may be rescheduled.

Section 5.8

The expenses of any witness for either side to attend a mediation session shall be paid by the party producing such witness.

Section 5.9

The mediation session shall remain confidential pursuant to Evidence Code Sections 703.5 and 1115-1129, unless otherwise agreed to in writing by all parties to the dispute.

Section 5.10

If the parties come to an agreement, they shall execute a written Mediation Settlement Agreement (Form MED-2). If the mediation is successful, the Association will refund 50% of the filing fee.

Section 5.11

If the parties do not settle their dispute at the mediation session, they shall maintain their right to an arbitration hearing under the Bylaws and this Arbitration Manual. The matter will be referred back to the Chief Operating Officer to initiate a formal arbitration process as herein outlined.

Section 5.12

Neither the AIR CRE nor any mediator shall be deemed a necessary party in judicial proceedings relating to the mediation. Neither the AIR CRE nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

Section 6. Arbitration Hearing Process

Section 6.1

The Chief Operating Officer, in consultation with the Dispute Resolution Chair, shall appoint three (3) qualified members as arbitration tribunal members who will hear the dispute. If the parties agree upon three (3) arbitrators and they are willing to serve in such capacity, or the parties agree upon a method of selecting the three (3) arbitrators, then the parties' designation or method of selection shall be followed.

Section 6.2

Any arbitrator selected by the Chief Operating Office or the Dispute Resolution Chair shall comply with the disclosure and other requirements of Division VI of the

Appendix to the California Rules of Court. Additionally, prior to accepting an appointment, the prospective arbitrators selected by the Chief Operating Officer or Dispute Resolution Chair shall disclose any circumstances likely to create the appearance of bias or prevent a prompt meeting with the parties. The Chief Operating Officer or Dispute Resolution Chair shall appoint another arbitrator if an appointed arbitrator is unable to serve promptly.

Section 6.3

The Chief Operating Officer or the Dispute Resolution Chair shall select one (1) of the arbitration tribunal members to be the Presiding Officer, who shall possess the powers of the “neutral arbitrator” within the meaning of Part 3, Title IX, of the California Code of Civil Procedure. (Section 1282, et seq.)

Section 6.4

Except as the parties may agree, and as provided in Section 7.8, no arbitration may proceed without three (3) arbitration tribunal members.

Section 6.5

The Chief Operating Officer or the Dispute Resolution Chair shall give written notice to the parties of the date, time, and place of the hearing established by the arbitration tribunal (Form A-4). Each party shall be given at least twenty-one (21) days prior notice of the hearing, but appearance at the hearing waives the right to such notice. The arbitration tribunal may recess the hearing from time to time as necessary and, on request of a party or upon the tribunal’s own motion, may postpone the hearing for not less than fourteen (14) days nor more than thirty (30) days, unless otherwise agreed to by the parties.

Section 6.6

The Chief Operating Officer or the Dispute Resolution Chair shall send to each party the Outline of Procedure for Arbitration Hearing (Form AH-1) twenty-one (21) days prior to the hearing.

Section 7. Qualification for Tribunal

Section 7.1

Only one person associated with the same firm, business, partnership or corporation may serve on the same tribunal.

Section 7.2

A person shall automatically be disqualified to be a member of a tribunal in any case in which he/she is 1) a party; 2) related by blood or marriage (to the fourth degree) to a party; or 3) an employer, employee, partner or other business associate of any party.

Section 7.3

Before the hearing is convened, each member of the tribunal shall sign a statement (Form AH-3) that they are not disqualified for any of the foregoing reasons and they know of no other reason that might prevent them from rendering an impartial decision.

Section 7.4

Each member of the tribunal shall avoid, so far as possible, discussing the case with any person associated with any party to the arbitration prior to the hearing. If the member does engage in any such discussion prior to the hearing, they must disclose the fact to the parties and to the other members of the tribunal as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any party may challenge that member of the tribunal, and if the tribunal agrees, at the option of the tribunal, that tribunal member shall be dismissed, and a new tribunal member shall be selected unless otherwise agreed to by the parties as described in Section 7.7. A party waives any objection under this section by failure to object prior to the commencement of the hearing.

Section 7.5

All members of a tribunal shall have the affirmative obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal members shall not discuss the tribunal, proceedings and deliberations with any person(s) other than the other members of the tribunal, except as required by the Board of Directors, the Bylaw provisions of the Association, or as may be required by law.

Section 7.6

Any party may file with the Chief Operating Officer or the Dispute Resolution Chair a written request for disqualification of a member of a tribunal stating the grounds for disqualification (Form A-7). A party shall be deemed to have waived any grounds for disqualification of which they have knowledge unless the request is filed not less than ten (10) days prior to the date set for the Hearing. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal find any automatic ground of disqualification to be present under this Section, or find any other facts, which, in their judgment, may prevent the member from rendering an impartial decision or appearing to do so.

Section 7.7

If a member of the tribunal fails to participate in a hearing, or is unable to do so, the remaining members of the tribunal may, at their option, but only with the express consent of all parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent themselves during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all parties do not agree to proceeding

without the full number of the tribunal originally designated, the Presiding Officer of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Presiding Officer cannot at the time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 8. Duty to Give Evidence

Section 8.1

When requested by subpoena in an arbitration hearing, giving not less than ten (10) days' notice or when summoned by the tribunal to do so, it shall be a membership duty of the parties and every member of the Association to appear at the hearing, produce any records or data pertinent to the case as designated by the tribunal, and to testify truthfully. Refusal of a party to appear at an arbitration hearing, to submit himself or herself or his/her records to examination or to comply with a request of the tribunal for relevant information may be deemed an admission of the truth of the claim against him/her/them.

Section 9. Right to Counsel

Section 9.1

Each party may be represented by legal counsel at any hearing. Notice must be given to all parties and the tribunal at least fourteen (14) days before the hearing of intention to have counsel. In the event of a failure to comply with this notice requirement the tribunal shall, at its discretion, take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The tribunal may have counsel present to advise it on issues of procedure and/or seek the advice of counsel on matters of procedure. The cost of the Association's legal counsel shall be borne equally by both parties, or by the party who chooses to bring legal counsel when the other party does not.

Section 10. Conduct of Hearing

Section 10.1

At any hearing every party has the right to present any witnesses, to submit any oral or written evidence pertinent to the case, and to cross-examine witnesses of others. The Tribunal may summon its own witnesses. All witnesses, except the parties to the hearing, will be excused from the hearing room except while testifying. Witnesses giving oral testimony shall be sworn by the Presiding Officer. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue.

Section 10.2

The Association or any party may, at their own expense, have a court reporter present at the hearing, and if a transcript is prepared at the request of any party, such party shall provide and pay for a copy for the Association and all other parties.

Section 10.3

The hearings may be reopened on the initiative of the tribunal, or upon application of a party, at any time before an award is made. In the event hearings are reopened, the tribunal shall have thirty (30) days from the closing of the reopened hearings within which to make an award.

Section 10.4

Any party who proceeds with an arbitration with knowledge that any provision or requirement of these rules has not been complied with and fails to state an objection in writing, shall be deemed to have waived their right to object to such non-compliance.

Section 11. Notices

Section 11.1

Any notice or paper required to be served may be served by personally handing it to the party to be served, by first class mail, Certified, return receipt requested, or by any overnight mail service addressed to the mailing address of the party on the records of the Association. If mailed, notice shall be deemed served when mailed.

Section 11.2

Notice of any hearing shall include the names of the members of the tribunal at the time said notice is served and, except for an adjourned hearing, be served not less than twenty-one (21) days prior to the date of the hearing. Without express agreement of all parties, no hearing shall be set for a time not permitting at least twenty-one (21) days' notice.

Section 12. Interpretation of Bylaws

Section 12.1

If any provision of the Bylaws or Rules or Regulations relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by the tribunal of the Bylaw or Rule or Regulation, including any interpretation of this Manual, shall be conclusive and final.

Section 13. Waiver

Section 13.1

Each member, by virtue of and in consideration of membership, waives and releases any right of personal redress of any type or nature whatsoever, against the Association, Association employees, any member, including, but not limited to,

members of the tribunal or witness. Neither the Association, nor any arbitrator/mediator, shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

Section 14. Communication and Clerical

Section 14.1

All communications shall be directed to the Chief Operating Officer or the Dispute Resolution Chair. The Chief Operating Officer or the Dispute Resolution Chair shall render all necessary assistance to the parties, shall on request furnish required forms, shall receive and file all documents or other papers and shall receive all fees and disburse all monies payable to the Association.

Section 15. Attempts to Influence Tribunal/*Ex Parte* Communication

Section 15.1

All *ex parte* communications by any party or their representative to a member of a tribunal is strictly prohibited. Any attempt, directly or indirectly, to communicate with or to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or by writing submitted to the entire tribunal, is a breach of the duty of membership.

Section 16. Continuance Fees

Section 16.1

Each party shall be entitled to one continuance of a hearing without assessment of a continuance fee unless the continuance is because of failure to adequately notify the Association and opposing party of representation by counsel. If any party requests a second continuance or a continuance because of failure to adequately notify the Association and opposing party in writing of representation by counsel, it shall be in writing, and accompanied by a non-refundable fee of \$2,500. The Board of Directors shall from time to time establish a schedule of continuance fees. Requested continuances shall be granted by the tribunal as the tribunal, in its sole discretion, determines it to be for sufficient cause. If the continuance is not granted, the fee will be returned to the party requesting the continuance.

Section 17. Subpoenas

Section 17.1

A subpoena requires the attendance of witnesses or the production of books, records, documents and other evidence at an arbitration hearing only, and not pre-hearing discovery.

Section 17.2

Subpoenas shall be signed by the Chief Operating Officer or the Dispute Resolution Chair, but otherwise issued in blank to the party requesting them. The party serving the subpoena shall complete the subpoena before service and is responsible for proper service of the subpoenas.

Section 17.3

Parties being served subpoenas by personal service must be given fourteen (14) days' notice for appearance at a hearing. If service is by first class mail, five (5) days must be added. Subpoenas shall be enforced pursuant to California Code of Civil Procedure (Section 1985, et seq).

Section 18. Arbitration Hearing

Section 18.1

At the beginning of the hearing, each party shall sign a statement to the effect that they have received and read the Outline of Procedure and either that they understand them and have no objections or questions concerning them or else specify what objections or questions they have and what changes they desire (Form AH-2). The tribunal shall act upon any such objection or request, as they deem appropriate in their sole discretion.

Section 18.2

The parties to the dispute shall present to the arbitration tribunal in writing such statements and proofs as they desire pertaining to such dispute. Conformity to the [California] Rules of Evidence shall not be necessary. Evidence shall be taken in the presence of all members of the tribunal and all the parties, except when any of the parties is in default or has waived the right to be present. Proofs may be submitted in the form of declarations or otherwise. The tribunal may require that statements (statement) be verified by declaration or that the accuracy or authenticity of any documents or other correspondence submitted be verified by declaration. Such proofs, declarations or otherwise must be submitted to the tribunal no less than five (5) business days prior to the scheduled hearing date. The tribunal shall receive oral testimony if any party to the arbitration requests, or if in the tribunal's opinion it is necessary or desirable. The tribunal may determine what personal appearance should be made by the parties and witnesses, including any witnesses who submitted written statements, and regulate the holding of hearings. The tribunal may receive and consider any evidence it deems material and proper, including evidence of accountants and other experts, the expenses of such experts and witnesses to be charged to the parties in such ratio as determined by the tribunal.

Section 19. Cost of Arbitration

Section 19.1

The award may include costs of the prevailing party including an amount equal to the arbitration fee, witness fees, cost of service of subpoenas and interest at the rate provided by law, unless another rate is specified by a contract between the parties. The award shall designate the date from which interest is to be computed. Where the dispute arises out of a contract which provides for attorney's fees, the award may include attorney's fees. Each party shall complete a statement of costs at the conclusion of the hearing and present it to the arbitrators for consideration should they prevail (Form A-6).

Section 19.2

All postponement requests shall be made not less than two (2) weeks prior to a scheduled hearing date unless a true emergency situation exists, as determined by the Dispute Resolution Chair [Arbitration Tribunal] at its [their] sole discretion. The cost of witnesses (including expert witnesses) incurred as a result of a hearing postponement shall be borne by the party requesting the postponement.

Section 20. Settlement

Section 20.1

The parties to an arbitration proceeding may settle the issue between them by mutual agreement at any time. In such event, upon notification to the Chief Operating Officer or the Dispute Resolution Chair in writing and signed by both parties the arbitration proceedings shall be terminated and termination shall be recorded in the file.

Section 21. The Award

Section 21.1

The Arbitration Award (Form A-5) shall be made as soon as practicable after the close of the Hearing, but not more than thirty (30) days after the close of the Hearing. The Award shall be in writing and signed by the arbitration tribunal or a majority of them and, when so signed and served on each of the parties by Certified mail, return receipt requested, shall be valid and binding, and shall not be subject to review or appeal, except as required in Part 3, Title IX of the California Code of Civil Procedure (commencing with Section 1285). The tribunal may grant any remedy or relief that they deem just and equitable, including, but not limited to, specific performance of a contract. The award may include: (a) interest at such rate and from such date as the tribunal may deem appropriate; and (b) an award of attorneys' fees if all parties have requested such relief, or it is authorized by law, or by agreement. Any party may request, within two (2) business days after receipt of the Arbitration Award, that the tribunal issue a detailed, reasoned, written Award, setting forth the tribunal's analysis of the pertinent issues of fact and law on which

the Award is based, provided, however, that the requesting party shall pay to the Association all costs of rendering such detailed Award, including, but not limited to, reimbursement of any legal fees incurred by the Association for obtaining advice of counsel.

Section 21.2

At the sole discretion of the AIR CRE, the award in any arbitration may be published to the membership via the Association's newsletter and/or website, thirty (30) days after such an award is rendered to the parties. If deemed necessary or appropriate by the Association, fictitious names may be substituted for the parties' real names.

Section 22. Enforcement

Section 22.1

Parties to an arbitration under these rules shall be deemed to have consented to judgment based upon the arbitration award, which may be entered in any federal or state court having jurisdiction thereof.

Section 22.2

The judgment of any court of competent jurisdiction in the State of California may be rendered upon the award. In the event it is necessary for any party to the arbitration to obtain judicial confirmation and enforcement of the arbitration award against any other party, the party failing to abide by the arbitration award shall pay to the party obtaining such confirmation the costs and reasonable attorney's fees incurred in such actions as determined by the court hearing the motion for confirmation and/or enforcement.

Section 22.3

Neither the Association, nor any arbitrator/mediator in a proceeding under these rules, shall be named as a party in judicial proceedings relating to the arbitration or any motion to confirm or enforce any award rendered pursuant to these rules.

345516.4/16711.930

**AIR CRE
MEDIATION CONFIDENTIALITY AGREEMENT**

Case Name:

Case No.:

Date(s) of Mediation Session(s):

The participants in this mediation agree that:

1. The mediation process shall be considered settlement negotiations for purposes of all state and federal rules protecting disclosures made during settlement negotiations.
2. California Evidence Code sections 703.5 and 1115–1129 apply to the mediation process consistent with California Code of Civil Procedure section 1775.10.
3. Consistent with the principle of mediation confidentiality, no written or oral communications made by any party, attorney, mediator, or other participant in any mediation session in this case may be used for any purpose in any pending or future legal proceeding unless all parties, including the mediator, agree.
4. Disclosure of information that is otherwise privileged shall not change the privileged character of that information.
5. The parties shall not subpoena the mediator(s) or any documents submitted to or prepared by the mediator during or in connection with the mediation process. The mediator shall not testify voluntarily on behalf of a party.
6. A written settlement agreement reached as a result of this mediation is admissible in an action to enforce the written settlement agreement.

Dated: _____

Mediator

Mediator Signature

Complainant

Complainant Signature

Complainant's Attorney

Attorney Signature

Respondent

Respondent Signature

Respondent's Attorney

Attorney Signature

**AIR CRE
MEDIATION SETTLEMENT AGREEMENT**

This Agreement is entered into by and between the parties listed below with reference to the following facts:

- A. The names and addresses of the parties to this agreement are as follows (attach separate page if necessary):

_____			_____		
Complainant(s) (Print Name)			Respondent(s) (Print Name)		
_____			_____		
Firm			Firm		
_____			_____		
Address			Address		
_____			_____		
City	State	Zip	City	State	Zip

- B. A dispute arose out of an Industrial or Non-Residential Commercial real estate transaction between the above-named parties.
- C. On _____, 20____, the parties voluntarily attended a mediation session for the purpose of settling any and all claims regarding their dispute.

Now, therefore, in consideration of the mutual promises and conditions set forth herein voluntarily intending to be bound, the parties agree as follows:

1. _____ agrees to pay the total sum of dollars (\$_____) as full and final settlement of their dispute. Payment will be made according to the following schedule:

2. _____ agrees to accept the total sum as indicated in paragraph 1 as the full and final settlement of any and all claim against _____ .
3. The parties agree that this Agreement is admissible in evidence to enforce the full performance of this agreement and the parties also hereby stipulate that this Agreement is a binding agreement and is a stipulated arbitration award and shall be construed as

being arbitration award under Part 3, Title IX of the California Code of Civil Procedure. See 5.10

4. In the event it is necessary for any party to obtain judicial confirmation and enforcement of this Agreement and award, the party obtaining such confirmation shall be entitled to recover costs and reasonable attorney's fees incurred from any party not complying with this Agreement and award.
5. The parties acknowledge that this Agreement is intended to be a full and final settlement of a disputed claim and is not an admission of liability.

Executed this _____ day of _____, 20____ at _____, California

Complainant(s) Signature

Respondent(s) Signature

Complainant(s) Signature

Respondent(s) Signature

The undersigned, as Mediator of the AIR CRE, do attest that I was present during the mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

Date

Mediator (Signature)

Mediator (Print Name)

**AIR CRE
REQUEST FOR DISPUTE RESOLUTION (“REQUEST”)**

1. The undersigned, by becoming and remaining a member of the AIR CRE, has previously consented to dispute resolution through AIR CRE under its Rules and Regulations.
2. I am informed that each person named below is a member in good standing of AIR CRE or was a member of said AIR CRE at the time the facts gave rise to the dispute.
3. A dispute arising out of the Industrial or Non-Residential Commercial real estate business exists between me and (list all persons you wish to name as Respondents):

Name (Principal Broker)

Address

Name

Address

4. The above-named person(s) owe me the sum of \$_____. My claim is predicated upon the statement attached, marked “Exhibit 1” and incorporated by reference into this application.
5. I request and consent to the dispute resolution process through AIR CRE in accordance with its Dispute Resolution Manual. If the parties are proceeding with arbitration it shall be within the meaning of Part 3, Title IX of the California Code of Civil Procedure. I agree on my behalf and on behalf of any firm for which I am designated broker of record to abide by the arbitration to obtain judicial confirmation and enforcement of the arbitration award against me or my firm. My firm and I agree to pay the party obtaining such confirmation the costs and reasonable attorney’s fees incurred in obtaining such confirmation and enforcement.
6. I enclose my check in the sum greater of 5% of the amount of the claim \$_____ or \$3,000.
7. I understand that I may be represented by counsel, provided I give written notice no less than fourteen (14) days before the hearing, of the name, address, and phone number of my attorney to all parties and the Association.
8. I understand that, by virtue of and in consideration of my membership, I waive and release any right of personal redress of any type or nature whatsoever, against the Association, Association employees, any member, including, but not limited to, the mediator, members of the tribunal or witnesses. Neither the Association, nor any arbitrator/mediator, shall be liable for any act or omission in connection with the dispute resolution process as conducted under these rules.

9. I understand that, at the sole discretion of the AIR CRE, the settlement or award may be published to the membership via the Association's newsletter and/or website, thirty (30) days after such settlement is reached in mediation or such award is rendered in arbitration. If deemed necessary or appropriate by the Association, fictitious names may be substituted for the parties' real names.
10. I declare under the penalty and perjury of the laws of the State of California, that this application and the allegations contained herein are true and correct to the best of my knowledge and belief.

Date

Complainant (Print Name)

Complainant (Signature)

Firm

Address

City State Zip

Complainant (Print Name) Managing Broker

Complainant (Signature)

Firm

Address

City State Zip

Complainant (Print Name)

Complainant (Signature)

Firm

Address

City State Zip

Complainant (Print Name) Head of Firm

Complainant (Signature)

Firm

Address

City State Zip

9. I understand that, at the sole discretion of the AIR CRE, the award may be published to the membership via the Association's newsletter and/or website, thirty (30) days after such an award is rendered to the parties. If deemed necessary or appropriate by the Association, fictitious names may be substituted for the parties' real names.

10. I declare under penalty of perjury under the laws of the State of California, that this Dispute Resolution Response and the allegations contained herein are true and correct to the best of my knowledge and belief.

Date

Respondent (Print Name)

Respondent (Print Name)

Respondent (Signature)

Respondent (Signature)

Firm

Firm

Address

Address

City

State

Zip

City

State

Zip

**AIR CRE
AWARD OF ARBITRATORS**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

The undersigned arbitrators, who were duly appointed to hear and determine all differences and controversies existing between

_____ and _____
Complainant(s) Respondent(s)

submitted in accordance with the Rules and Regulation of AIR CRE and the Association Dispute Resolution Manual do hereby certify that on

_____ 20 _____ o'clock ____ .M.
Month Day

in the city of _____, CA

the undersigned proceeded to hear the evidence of the parties to said controversy, each of the parties having been given proper notice of the time and place of the hearing, and of the proposed rules of procedure. Having heard the evidence, proofs, and arguments of the parties, the undersigned hereby find and adjudge that

_____ owes
_____ the sum of
_____ (\$ _____) which shall be paid to
_____ within _____ days from this date.

(Other relief): _____

In addition to the above, and based on the requests submitted by the parties, costs in the amount of:

\$ _____ are awarded to _____

Each party shall bear their own costs.

Date

Presiding Officer

Arbitrator

Arbitrator

**AIR CRE
REASONS FOR CHALLENGING
QUALIFICATION OF ARBITRATOR**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

I (We) as a party to the matter stated above, hereby challenge the qualification of the following named individual(s) as a Hearing Arbitrator(s) for the following reason:

Arbitrator Challenged: _____

Reason: _____

Arbitrator Challenged: _____

Reason: _____

** Use additional pages if required to list additional challenges.*

Date

(Print Name)

(Signature)

APPENDIX B

AIR CRE OUTLINE OF PROCEDURE FOR ARBITRATION HEARING

To the Parties and Their Attorneys, if any:

In accordance with the Dispute Resolution Manual of the Association, a Presiding Officer has been selected for the hearing. In addition to presiding at the hearing, he or she will rule on the admission and exclusion of evidence and questions of hearing procedure.

Subject to objections or suggestions of the parties prior to the commencement of the hearing, and the Presiding Officer ruling thereon, the hearing procedures will be:

1. Each party or their attorney shall be given the opportunity to make an opening statement if he or she so wishes. If the respondent wishes to wait until conclusion of the complainant's evidence, that will be permitted.
2. Prior to the giving of any testimony, all parties and witnesses shall be sworn by the Presiding Officer.
3. The complainant may present such evidence or give such testimony as is deemed applicable to the matter being heard. In this regard, the parties are reminded that no testimony is to be admitted relating to the character or general reputation of anyone unless such testimony has a direct bearing on the matter being heard.
4. At the conclusion of direct examination, the other party may cross-examine the witness.
5. Witnesses will be excused from the hearing room both prior to and after giving testimony.
6. When both parties have concluded their examination or cross-examination of a witness, members of the tribunal may question the witness.
7. Upon completion of all testimony, each party or their attorney may make a closing statement, first the complainant followed by the respondent.

The forgoing is not intended to restrict or limit the parties in their presentation or defense of the dispute. The tribunal is not bound by the rules of evidence applied in a court of law; the primary concern of the tribunal is to hear facts upon which a decision may be made affording all parties a fair hearing.

The outline is intended to provide an orderly, uniform format for hearings and to afford the parties sufficient advance notice thereof as may enable them to be prepared for the hearing.

**AIR CRE
ACKNOWLEDGMENT OF RECEIPT OF OUTLINE OF
PROCEDURES FOR ARBITRATION HEARING**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

I acknowledge having previously received an Outline of Procedures for the above-designated hearing.

_____ I have read the Outline of Procedures for Hearing, understand it and have no objection to it.

_____ I have read the Outline of Procedures for Hearing, understanding and object to it.
I request the following changes or additions:

Date

Complainant (Print Name)

Respondent (Print Name)

Complainant (Signature)

Respondent (Signature)

Complainant (Print Name)

Respondent (Print Name)

Complainant (Signature)

Respondent (Signature)

Attorney for Complainant(s)
(If Applicable)

Attorney for Respondent(s)
(If Applicable)

**AIR CRE
CERTIFICATE OF QUALIFICATION
ARBITRATION**

Case No. _____, _____ vs. _____
Complainant(s) Respondent(s)

The hearing in the above referenced case is for the arbitration of a dispute arising out of the Industrial or Non-Residential Commercial real estate business as set forth in the Association Dispute Resolution Manual.

REASONS FOR DISQUALIFICATION

A member of the hearing tribunal shall be disqualified from hearing this case for any of the following reasons:

- A. More than one arbitrator is affiliated with the same firm, business, partnership or corporation;
- B. An arbitrator is related by blood or marriage to either complainant or respondent;
- C. An arbitrator is an employer, partner, employee, or in any way associated in business with either complainant or respondent;
- D. An arbitrator is a party to the hearing, whether as a witness or otherwise;
- E. An arbitrator has received a gift, bequest, favor or honoraria from any person or entity that is either a party to the arbitration, or affiliated with such party; or
- F. An arbitrator is determined to be a member of an organization that practices invidious discrimination on the basis of sex, religion, national origin, or sexual orientation.

We the undersigned members of the hearing tribunal do hereby certify that:

- (1) We are not disqualified by any reason stated herein from the hearing the above case.
- (2) We know of no other reason that would prevent us from rendering an impartial decision.

Date

Presiding Officer

Arbitrator

Arbitrator

