

## BUYER-BROKER EXCLUSIVE REPRESENTATION AGREEMENT

(California Civil Code Section 1670.50 requires a buyer-broker representation agreement be executed between a broker and a buyer as soon as practicable, but no later than the execution of the buyer's offer to purchase real property.)

### 1. BASIC PROVISIONS.

1.1 Date for reference purposes only: \_\_\_\_\_.

1.2 Buyer: \_\_\_\_\_ ("Buyer"), whose address is \_\_\_\_\_,  
telephone number \_\_\_\_\_, email address \_\_\_\_\_.

1.3 Broker: \_\_\_\_\_ ("Broker"), whose address is \_\_\_\_\_,  
telephone number \_\_\_\_\_, email address \_\_\_\_\_.

1.4 Property Characteristics: real property located at \_\_\_\_\_ and/or with the following characteristics (complete as many as appropriate):

Type:  industrial,  office,  retail,  vacant land,  hospitality,  multi-family residential (5+ units),  multi-family residential (2-4 units),  single family residential (including condominiums and manufactured homes),  ground lease coupled with improvements,  mobile home, or \_\_\_\_\_.

General location: \_\_\_\_\_.

Approximate building size: \_\_\_\_\_.

Approximate land size: \_\_\_\_\_.

Price range: \_\_\_\_\_.

Cash down payment: \_\_\_\_\_.

Financing:  New loan in the approximate amount of \_\_\_\_\_;  Seller financing in the approximate amount of \_\_\_\_\_;  
 assume/subject to existing financing in the approximate amount of \_\_\_\_\_.

Cap rate: \_\_\_\_\_.

Escrow closing date: \_\_\_\_\_.

Vacant or  Leased.

Other: \_\_\_\_\_.

1.5 Excluded Property: \_\_\_\_\_ (identify any property which Buyer desires to exclude, and any property which if purchased by Buyer would entitle anyone else to compensation from Buyer as Buyer's broker, salesperson or representative). **Notice: If Buyer is bound by a valid representation agreement with any other broker and Buyer purchases a Property, then Buyer may owe Compensation to Broker under this Agreement and compensation to such other broker under the other representation agreement, even if such other broker is not involved.**

1.6 Term: Commences on \_\_\_\_\_ and expires at 5:00 p.m. on \_\_\_\_\_ (as extended, "Term"). **Notice: Unless Buyer is a corporation, limited liability company or partnership ("Entity"), California Civil Code Section 1670.50 voids this Agreement if the initial Term is longer than three (3) months or renews automatically.**

1.7 Extension Period: 90 or (applicable only if completed) \_\_\_\_\_ days after end of Term.

1.8 Compensation: (complete as appropriate)  percent ( \_\_\_\_\_ %) of the Property's purchase price;  \_\_\_\_\_; or \_\_\_\_\_ ("Compensation"). **Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between Buyer and Broker.**

1.9 Seller to Pay: (Applicable only if checked)  Broker and Buyer intend seller of a Property ("Seller") to pay 100% or (applicable only if completed) \_\_\_\_\_ % of Broker's Compensation due under Paragraphs 3.1(a) or 4.2(a) below ("Seller's Share"). If the percentage of Seller's Share is less than 100%, then Buyer shall pay the balance of Broker's Compensation.

1.10  Agency Disclosure: Buyer acknowledges receipt of Disclosure Regarding Real Estate Agency Relationship.

### 2. EXCLUSIVE REPRESENTATION.

2.1 By this Buyer-Broker Exclusive Representation Agreement ("Agreement"), Buyer hereby employs Broker as Buyer's exclusive agent to represent Buyer to locate, assist in negotiation of terms for and facilitate Buyer's purchase of real property (other than Excluded Property) which satisfies the material Property Characteristics (or different characteristics hereafter expressed by Buyer) ("Property"). Any Offer (as herein defined) for Buyer to Purchase (as herein defined) a Property and all negotiations for Buyer's Purchase of a Property shall be conducted by Broker on behalf of Buyer. Buyer shall promptly disclose and refer to Broker all written or oral inquiries or contacts Buyer receives from any source regarding a Property. A Property for which Buyer makes an Offer to Purchase shall be deemed to satisfy Property Characteristics, even if such characteristics vary from Property Characteristics stated in this Agreement.

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2.2 Broker shall use reasonably diligent efforts to locate a Property for Buyer's consideration. Buyer acknowledges that Broker is not assuring Buyer that Broker will in fact be able to locate a Property which satisfies material Property Characteristics, that will be acceptable to Buyer or that Buyer will be able to Purchase. Buyer acknowledges that Broker may represent other buyers, sellers, tenants or others regarding a Property or competing properties of interest to Buyer or competitors to Buyer. Buyer agrees to timely and in good faith review, consider and respond to Broker regarding a Property submitted for Buyer's consideration.

2.3 Buyer shall, promptly after Broker's request (but not later than five (5) days), provide to Broker information, documents and materials reasonably necessary for processing and closing Buyer's Purchase of a Property, including, but not limited to, proof of Buyer's funds to Purchase the Property and to pay Broker's Compensation, documents reasonably substantiating preapproval or prequalification by a lender of Buyer's financing desired to Purchase a Property, and if Buyer fails to do so, then Broker shall have the right to terminate this Agreement upon five (5) days' written notice.

2.4 Buyer authorizes Broker on Buyer's behalf to solicit information on listed and unlisted properties, submit and obtain responses to requests for proposals from third parties, transmit information concerning Buyer and any desired Property to brokers, owners, governmental agencies and at Buyer's direction, submit offers and deposits. If Buyer fails to, at the time of providing any communications or information to Broker, in writing advise Broker that such communications or information are confidential, then Broker may disclose the same as Broker may deem necessary or appropriate.

### 3. COMPENSATION.

3.1 Buyer shall pay Broker's Compensation upon earliest of the following events: (a) subject to Paragraph 1.9, whether as a result of the efforts of Broker, Buyer or anyone else, and even if another broker is entitled to compensation for representing Buyer in connection therewith, during the Term of this Agreement Buyer or Buyer's Affiliates (as herein defined) enter into an agreement to Purchase a Property ("**Purchase Contract**") and thereafter (even after end of the Term of this Agreement) such Purchase is consummated; (b) during the Term of this Agreement, Buyer or Buyer's Affiliates enter into a Purchase Contract but such Purchase is not consummated due to breach of such Purchase Contract by Buyer (or Buyer's Affiliate); or (c) Buyer breaches, terminates, cancels, rescinds or repudiates this Agreement.

3.2 Buyer shall have no right, without Broker's written consent, to change the time of, amount of, or the conditions to payment of the Compensation. If Broker also represents Seller, then the amount Seller pays Broker for representing such Seller shall not be credited towards Broker's Compensation due for representing Buyer under this Agreement.

3.3 This Paragraph applies only if Paragraph 1.9 is checked. Buyer shall support and assist Broker to secure Seller's written agreement to pay Seller's Share. Buyer shall include in any Offers and Purchase Contracts a provision for Seller to pay Seller's Share. If Seller does not agree to pay Seller's Share in full, then Broker may thereafter, in Broker's sole discretion, elect to (a) accept the Seller offered amount in lieu of Seller's Share; or (b) refuse to accept the Seller offered amount in which event Buyer shall either (i) in writing agree to pay Broker the difference between the Seller offered amount and Seller's Share, or (ii) until one (1) year after end of the Term of this Agreement, refuse further consideration of such Property, during which time neither Buyer nor any of Buyer's Affiliates shall directly or indirectly Purchase or negotiate to Purchase such Property.

3.4 When Compensation is due under Paragraphs 3.1(a) or 4.2(a) below, then (a) the Compensation shall be paid to Broker upon close of escrow for the Property or, if there is no escrow, then upon recordation of the deed, provided that if the sale of the Property is a land sale contract, then upon execution of such land sale contract; (b) Buyer irrevocably instructs the escrow holder for Buyer's Purchase of a Property ("Escrow Holder") to pay Broker's Compensation at the close of such transaction; (c) Buyer agrees that this Agreement shall be sufficient irrevocable instructions to Escrow Holder to pay Broker's Compensation; (d) except as provided in Paragraph 1.9, Buyer shall deposit with the Escrow Holder sufficient funds to pay Broker's Compensation at the close of the applicable escrow; and (e) a contingency to Purchase by Buyer or Buyer's Affiliates of a Property shall be payment of Broker's Compensation.

3.5 "Offer" shall mean a written offer, letter of intent, letter of interest, proposal, memorandum of terms or term sheet. "**Purchase**" shall mean acquire ownership, acquire any right, option, right of first refusal or right of first offer to acquire ownership (even if as part of a lease or another agreement), or acquire any interest in Seller. "**Affiliate**" of Buyer shall mean any Person (as herein defined) who is a successor or assign of Buyer, is related to, affiliated with or controlled by Buyer, acquires any right, title or interest in the Property for, on behalf of or at the request or direction of Buyer, or in which Buyer has any right, title or interest. "Person" shall mean individual, Entity or any other legal entity.

### 4. INTRODUCED PROPERTY.

4.1 Broker has the right to Compensation under Paragraphs 4.2 and 4.3 only if Broker, within five (5) days after the end of the Term of this Agreement, in writing provides Buyer a list of Properties for which during the Term hereof an Offer was made by Broker on behalf of Buyer or Buyer's Affiliates ("**Introduced Property**").

4.2 If, during the Extension Period, Buyer or Buyer's Affiliates enter into a Purchase Contract for an Introduced Property and (a) such Purchase is consummated (even after end of the Extension Period), then Buyer shall, subject to Paragraph 1.9, pay Broker the Compensation, or (b) such Purchase is not consummated due to breach of the Purchase Contract by Buyer (or Buyer's Affiliate), then Buyer shall pay Broker the Compensation.

4.3 If, during the Extension Period, Buyer enters into an exclusive or non-exclusive representation or agency agreement for any transaction involving an Introduced Property ("**New Listing**") with any other real estate broker ("**New Broker**"), then Buyer shall provide the New Broker with a list of the Introduced Properties and provide in the New Listing that the New Broker shall not be entitled to any of the Compensation payable to Broker under this Agreement for Buyer's Purchase of an Introduced Property the contract for which was entered into during the Extension Period.

### 5. BUYER'S REPRESENTATIONS. Buyer represents and warrants to Broker that:

5.1 Each person executing this Agreement on behalf of Buyer has the full right, power and authority to execute this Agreement as or on behalf of Buyer; Buyer has the full right, power and authority to Purchase a Property as provided herein, and to perform Buyer's obligations hereunder.

5.2 If Buyer is an Entity, then such Entity is duly organized, validly existing, and in good standing, is qualified to conduct business in the state where the Property is located and has the requisite power and authority to enter into this Agreement, to perform all of its obligations hereunder, and to consummate the transactions contemplated hereby.

5.3 The execution, delivery and performance of this Agreement by Buyer and all agreements, instruments, and documents to be executed by Buyer do not violate the organizational documents of Buyer, or any contract, agreement, commitment, order, judgment, or decree to which Buyer is a party, and have been duly authorized by all appropriate and necessary corporate action on the part of Buyer.

5.4 There are no pending, and to the best of Buyer's knowledge, threatened actions, suits, arbitrations, claims or proceedings in which Buyer is or will be a party arising from Buyer's failure to pay any commission, fee or compensation due to a real estate broker or salesperson.

5.5 There are no effective, valid or enforceable exclusive or non-exclusive representation or listing agreements to which Buyer is a party with any other broker, salesperson, finder or others for any Property (other than an Excluded Property), and there are no other restrictions, impediments or limitations on Buyer's right,

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ability and capacity to Purchase a Property or for Broker to be paid the Compensation as provided in this Agreement.

5.6 Buyer is not the subject of a pending or threatened bankruptcy, insolvency, probate or conservatorship proceeding.

**6. BUYER'S ACKNOWLEDGEMENTS.**

6.1 Except to the extent arising from Broker's gross negligence or willful misconduct, or Broker's failure to disclose or perform its obligations under applicable law, Broker shall not be liable to Buyer for any (a) claims for personal injury, property damage, or loss in value of a Property arising from or related to the physical condition of a 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 Seller, or furnished or unfurnished by Seller; (c) agreement entered into by Buyer with respect to a Property; (d) dispute or action concerning or arising from Buyer's decision to consummate or not consummate the Purchase of a Property; (e) claims, disputes or actions or services including, but not limited to, the inspection, financing or Purchase of a Property; and (f) any responsibility for the completion of repairs to a Property, including, but not limited to, structural pest control work.

6.2 Buyer acknowledges that Buyer has been advised by Broker to consult and retain experts to advise and represent Buyer concerning the legal, financial and tax effects of this Agreement and/or purchasing a Property, as well as the condition of a Property and/or the legality of a Property's uses, including, but not limited to, a Property's improvements, equipment, soil, tenancies, title and environmental aspects. Broker shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Buyer and Broker. Buyer further acknowledges that in determining the financial soundness of any prospective Property, Buyer will rely solely upon Buyer's own investigation, notwithstanding Broker's assistance in gathering such information.

**7. MISCELLANEOUS.**

7.1 This Agreement shall not be construed for or against Buyer or Broker, 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. This Agreement may be executed in counterparts.

7.2 All payments by Buyer to Broker shall be made in lawful United States currency. If Broker is not paid 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.

7.3 In the event of litigation or arbitration between Buyer and Broker arising under or relating to this Agreement or a 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.

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

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

7.6 This Agreement shall be governed and construed in accordance with the laws of the state in which the Broker is licensed as a broker or salesperson. Venue for any legal action between the parties under this Agreement shall be the county in which the Property is located.

7.7 Each party shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

7.8 This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by the parties.

7.9 No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

7.10 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

7.11 Capitalized or defined terms used in this Agreement shall the meanings as defined throughout the Agreement. Unless the context indicates otherwise, the singular will include the plural and the plural will include the singular. If text is completed in any of the optional spaces, then such text shall apply and override the pre-printed text, even if the pre-printed text is not stricken.

7.12 All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

7.13 All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph. The addresses noted in this Agreement shall be that party's address for delivery or mailing of notices. Either party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

7.14 If a salesperson or broker-associate enters into this Agreement on Broker's behalf, then Broker shall have the right to terminate this Agreement within the first five (5) days' of the Term of this Agreement upon written notice thereof to Buyer.

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8. **ADDITIONAL PROVISIONS:** Additional provisions of this Agreement may be set forth on the following lines or in an addendum attached hereto (if there are no additional provisions, write "NONE", if an addendum is attached, check this box  ): \_\_\_\_\_

**BUYER**

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**BROKER**

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Broker DRE License #: \_\_\_\_\_

Broker DRE License #: \_\_\_\_\_

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