



## EXCLUSIVE SALE AND/OR LEASE LISTING AGREEMENT

This Agreement is intended to be a binding real estate contract when signed and delivered by the parties.

I. **GRANT.** In consideration of \_\_\_\_\_ (“Owner”) granting to \_\_\_\_\_ (“Agent”) the exclusive right to sell and/or lease the property described below (the “Property”) and Agent’s agreement to use commercially reasonable efforts to effect a sale or lease of the Property, the receipt and sufficiency of such consideration being hereby acknowledged by both parties, Owner and Agent agree as follows:

A. **Term.** The term of this listing shall commence on \_\_\_\_\_ and end at midnight on \_\_\_\_\_ (the “Term”). Provided however, if not terminated on \_\_\_\_\_, then the term of this Agreement shall automatically renew for an additional term of \_\_\_\_\_, subject to Owner’s right to terminate this Agreement on thirty (30) days’ written notice to Agent thereafter.

B. **Property.** The Property is described as the land and improvements thereon located at [common address] \_\_\_\_\_ with tax identification number[s] of \_\_\_\_\_, consisting of \_\_\_\_\_ acres of land (more or less) and improvements described as \_\_\_\_\_, with said improvements consisting of approximately \_\_\_\_\_ square feet and zoned as \_\_\_\_\_. The legal description of the Property is attached hereto as Exhibit A. Reference herein to the Property shall include all or any portion(s) of the Property

C. **Listing Price.** The Property shall be listed for sale at a price of \$ \_\_\_\_\_; and/or for lease at a rent of \$ \_\_\_\_\_ per leaseable square foot on a [CHOOSE ONE: Gross/Net/Modified Gross] basis per year plus \$ \_\_\_\_\_ per square foot for estimated common area expenses such as taxes, insurance, and other expenses which are passed through to the tenant. Owner may sell or lease the Property for such other price or rent and/or terms as Owner may accept.

II. **COMMISSION.** Owner shall pay Agent a commission computed in accordance with Agent’s Schedule of Sale and Lease Commissions, a copy of which is attached hereto marked as Exhibit B and incorporated herein by reference, if during the Term or during the periods described in Section III below: (A) the Property is sold or leased to a prospect procured by Agent, Owner, or anyone else; (B) a prospect is procured by Agent, Owner, or anyone else who is ready, willing, and able to purchase or lease the Property at the price or rent listed above or at any other price and terms acceptable to Owner; (C) any contract for the sale or lease of the Property is executed by Owner during the Term or within the period described in Section III below; (D) the Property is taken, transferred, or sold due to eminent domain or condemnation or as a result of the threat of eminent domain or condemnation; (E) Owner contributes the Property or conveys the Property to a partnership, joint venture, or other entity; (F) Owner conveys the Property as a result of foreclosure or the threat thereof, whether by judicial foreclosure, or by conveyance in lieu of foreclosure; (G) Owner is a partnership, corporation, limited liability company, trust, or other entity (collectively “Entity”) and an interest in such Entity is transferred, by merger, purchase, or otherwise in lieu of a sale or lease of the Property; (H) Owner elects to donate the Property or any interest in the Entity which owns the Property; or (I) Owner grants an option to sell or an option to renew the lease of the Property or to expand the leased premises or to lease other or additional space in the Property and subsequently sells or leases the Property to the optionee, whether pursuant to the terms of such option or otherwise, in which case the commission shall be due and payable upon consummation of the sale or lease of the Property. All of such circumstances may be collectively described as a “Sale” or “Lease”. In the event that Owner elects to withdraw the Property from

the market or terminates this Agreement, Owner shall pay to Agent a reduced commission of \_\_\_\_\_% of the commission which otherwise would have been due Agent if Owner had sold or leased the Property at the Listing Price. If Owner elects to withdraw the Property from the market or revoke Agent's authority to sell or lease the Property, terminates this Agreement prior to expiration of the Term, Owner shall pay to Agent a reduced commission of \_\_\_\_\_% of the commission which otherwise would have been due Broker if Owner had sold or leased the Property at the Listing Price plus reimbursement of all of Agent's actual and reasonable out of pocket expenses incurred herewith. Owner and Agent agree that this reduced commission is: (i) liquidated damages and not a penalty; and (ii) a reasonable estimate of Agent's damages in the event that Owner should terminate this Agreement or revoke Agent's authority to sell or lease the Property, or remove the Property from the market which damages are reasonable in light of the anticipated or actual loss caused by such actions and the uncertainty and difficulties of proof of loss. If Owner thereafter sells, leases, or otherwise conveys the Property in any manner described above in this section prior to the expiration date of the Term stated in Section I or during the period described in Section III below, Owner shall pay Agent the balance of a sale or lease commission computed as \_\_\_\_\_% of the actual sale price or rent due under the lease, less the amount of reduced commission described above which has been paid.

III. POST EXPIRATION PROTECTION. Owner agrees to pay Agent a commission computed in accordance with the terms of Exhibit B if within \_\_\_\_\_ days after the expiration or termination of the Term, Owner sells or leases the Property to, or Owner executes a contract for the sale or lease of the Property with, or negotiations for such transaction either continue, resume, or commence and thereafter continue and lead to a sale or lease of the Property to a Registered Prospect as defined below. A Registered Prospect is any party or entity formed by such a party whose name appears on a list of Registered Prospects provided by Agent to Owner within \_\_\_\_\_ days of expiration of the Term or termination of this Agreement, provided that such Registered Prospect has during the Term either: (A) toured the Property; (B) expressed interest in the Property in writing; or (C) offered to purchase, lease, or otherwise acquire an interest in the Property. If Agent fails to provide Owner a list of Registered Prospects within \_\_\_\_\_ days after the expiration of or termination of the Term, Agent shall have no further right to commission under the terms of this Section.

IV. MINIMUM SERVICES. In addition to any other services to be performed by Agent hereunder, Agent agrees to do the following: (A) accept delivery of and present to Owner offers and counteroffers to buy, sell, or lease Owner's Property; (B) assist Owner in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to the offers and counteroffers until a lease or purchase agreement is signed and all contingencies are satisfied or waived; and (C) answer Owner's questions relating to the offers, counteroffers, notices, and contingencies.

V. PROPERTY CONDITION. Owner agrees to disclose to Agent, and authorizes Agent to disclose to all prospective purchasers and tenants, any and all information which Owner has concerning the condition of the Property, which information shall include, without limitation, present and future zoning, assessed valuation, the structural, mechanical, and soil condition of the Property, the presence of and location of any asbestos, PCB's, or other hazardous or toxic materials in, on, or about the Property.

VI. EARNEST DEPOSITS. Owner authorizes Agent to accept and to timely deposit in Agent's escrow account any earnest money offered by any prospective purchaser or tenant, and to deduct from or apply such earnest money toward Agent's commission, when and if such commission is earned, due, and payable. Owner hereby irrevocably assigns said funds to Agent, to the extent necessary, to pay such commission. IN THE EVENT THAT SUCH EARNEST MONEY IS FORFEITED BY THE PURCHASER OR TENANT, THEN, IN SUCH CASE, IN ADDITION TO ANY OTHER RIGHTS OF AGENT PURSUANT TO THIS AGREEMENT, AGENT SHALL BE ENTITLED TO RECEIVE \_\_\_\_\_% OF THE FORFEITED EARNEST MONEY.

VII. DESIGNATED AGENCY. Owner and Agent hereby designate the individual real estate licensee(s) listed below as the Designated Agent(s) of Owner, to the exclusion of all other licensees of Agent, who shall be referred to individually or collectively as Designated Agent(s). Owner acknowledges that Agent is a real estate brokerage firm and that in some cases, Agent, either through the Designated Agent(s) or through other

licensees affiliated with Agent, may represent prospective purchasers or tenants. Owner specifically requests that the Property be submitted to all prospective purchasers and tenants specifically including, without limitation, those prospective purchasers and tenants represented by Agent and/or Designated Agent(s), and Owner consents to any dual agency which may be created thereby, if such prospective purchasers or tenants are also represented by Designated Agent(s). Agent agrees that it shall not disclose the confidential information of one principal to another.

Designated Agent(s): \_\_\_\_\_

**VIII. DUAL AGENCY REQUIRED TERMINOLOGY:**

**The herein named Designated Agent may undertake a dual representation (represent both the Seller or Landlord and the Buyer or Tenant) for the sale or lease of your Property. Seller(s) acknowledge they were informed of the possibility of this type of representation. Before signing this document, please read the following:**

**Representing more than one party to a transaction presents a conflict of interest since both clients may rely upon licensee's advice and the client's respective interests may be adverse to each other. Licensee will undertake this representation only with the written consent of ALL clients in the transaction.**

**Any agreement between the clients as to a final contract price and other terms is a result of negotiations between the clients acting in their own best interests and on their own behalf. Owner acknowledges that Agent has explained the implications of dual representation, including the risks involved, and understand that Owner has been advised to seek independent advice from advisors or attorneys before signing any documents in this transaction.**

**WHAT A LICENSEE CAN DO FOR CLIENTS WHEN ACTING AS A DUAL AGENT:**

1. Treat all clients honestly.
2. Provide information about the Property to the Buyer or Tenant.
3. Disclose all latent material defects in the Property that is known to licensee.
4. Disclose financial qualification of the buyer or tenant to the seller or landlord.
5. Explain real estate terms.
6. Help the Buyer or Tenant to arrange for Property inspections.
7. Explain closing costs and procedures.
8. Help the Buyer compare financing alternatives.
9. Provide information about comparable properties that have sold so both clients may make educated decisions on what price to accept or offer.

**WHAT A LICENSEE CANNOT DISCLOSE TO CLIENTS WHEN ACTING AS A DUAL AGENT:**

1. Confidential information that licensee may know about the clients, without the client's permission.
2. The price Owner will take other than the listing price without permission of Owner.
3. The price the Buyer or Tenant is willing to pay without permission of the Buyer or Tenant.
4. A recommended or suggested price the Buyer or Tenant should offer.
5. A recommended or suggested price the Owner should counter with or accept.

**If Owner is uncomfortable with this disclosure and dual representation, please let Agent know. Owner is not required to accept this section unless you want to allow Agent to proceed as Dual Agent in this transaction.**

<b>Yes</b>	<b>No</b>	
( _____ )	( _____ )	
<b>Seller's Initials</b>	<b>Seller's Initials</b>	

**By Checking "Yes" and initialing, Owner acknowledges that Owner has read and understands this section and voluntarily consent to Agent acting as a Dual Agent (that is, to represent BOTH the Owner and the Buyer and Tenant) should that become necessary.**

- IX. ARBITRATION. In the event of any dispute between Owner and Agent relating to this Agreement, the Property which is the subject of this Agreement, or the performance of the terms of this Agreement by Owner or Agent, Owner and Agent agree that such dispute shall be resolved by binding arbitration ("Arbitration"). The Arbitration shall be conducted before and pursuant to the commercial rules of the American Arbitration Association. All discovery permitted in judicial proceedings in the State of Illinois shall be permitted in the Arbitration, and judgment on any arbitration award rendered by the arbitrator may be entered in any court of competent jurisdiction. A single arbitrator shall be used and the arbitrator shall be limited to award only compensatory damages and shall not have the authority to award punitive, exemplary, or similar damages. The prevailing party in any arbitration proceeding or litigation shall be entitled to recover its actual out-of-pocket expenses, costs, including the cost of the arbitration, the fees of the arbitrator, and its reasonable attorneys' fees.
- X. MARKETING COSTS. Marketing costs for the Property are estimated to be \$\_\_\_\_\_ of which Owner shall pay \$\_\_\_\_\_ upon execution of this agreement. Accurate records shall be kept of all marketing costs. Should upon the close of the sale of the Property there remain an unused balance of marketing money as provided by Owner, Agent shall promptly refund the unused portion with a detailed list of all funds used to Owner.
- XI. MISCELLANEOUS. Owner agrees: (1) to cooperate with Agent and to refer to Agent any and all inquiries of anyone interested in the Property; (2) to conduct all negotiations for the Property through Agent; (3) in the event of a sale of the Property, to furnish merchantable title to the Property; (4) to provide to Agent copies of all transaction documents including without limitation sale contract, lease(s), closing statement(s), and required disclosures such as may be required by the Foreign Investment in Real Property Tax Act ("FIRPTA"); (5) that unless otherwise stated herein, Owner is not a foreign seller as defined by FIRPTA; (6) that Agent has no responsibility for the management, condition, or repair of the Property; (7) that Agent shall not be responsible for evaluating the credit or creditworthiness of or the ability of any prospective purchaser or tenant to perform the terms of any contract of sale or of any lease (collectively "Creditworthiness"); (8) that Owner and its counsel (and not Agent) shall be responsible for determining the legal sufficiency of any proposal, letter of intent, contract for sale, or lease of the Property; (9) that if the Property should come under the jurisdiction of a bankruptcy court, to immediately provide Agent notice thereof, and to make its best efforts to take all requisite action to obtain the bankruptcy court's approval of this Agreement, unless Agent should elect to terminate this Agreement upon such notice.
- XII. AUTHORITY. Owner warrants to Agent that it is the owner of the Property and agrees to furnish Broker on request a copy of a fully executed resolution of the entity which owns the Property authorizing execution of this Agreement. Each signatory to this Agreement warrants that it has the power and authority to sign this Agreement and to bind the party for whom it executes this Agreement.
- XIII. COMPLIANCE. Agent agrees to offer the Property in compliance with all applicable anti-discrimination laws, statutes, and ordinances. Owner and Agent agree to comply with all applicable federal, state, and local, laws, regulations, codes, ordinances, and administrative orders which pertain to and have jurisdiction over the parties at the Property, including without limitation, the 1964 Civil Rights Act, FIRPTA, the Comprehensive Environmental Response Compensation Act, the Americans with Disabilities Act, and all amendments thereto, as may apply.
- XIV. ENTIRE AGREEMENT. This Agreement shall, when executed, constitute the entire agreement between Owner and Agent and supersedes all (both oral and written) prior discussions, negotiations, and agreements. Each party represents and warrants to the other that in executing this Agreement, it is not relying on any prior or other discussions, negotiations, or agreements, except for the matters and promises explicitly contained in this Agreement. There shall be no valid or binding amendment, alteration, cancellation, or withdrawal of this Agreement unless made in writing and executed by both Owner and Agreement.

XV. **DISCRIMINATION**. IT IS UNDERSTOOD THAT IT IS ILLEGAL FOR EITHER THE SELLER OR A REAL ESTATE BROKER TO REFUSE TO DISPLAY, LEASE, OR SELL PROPERTY TO ANY PERSON BECAUSE OF ONE'S MEMBERSHIP IN A PROTECTED CLASS, E.G. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, MENTAL OR PHYSICAL DISABILITY, FAMILIAL STATUS, ANCESTRY, MARITAL STATUS, PHYSICAL OR MENTAL DISABILITY, ORDER OF PROTECTION STATUS, AGE, OR MILITARY DISCHARGE, OR ANY OTHER CLASS PROTECTED BY ARTICLE 3 OF THE ILLINOIS HUMAN RIGHTS ACT.

XVI. **BINDING NATURE**. This Agreement shall be binding upon and shall benefit each party hereto, including its heirs, successors, and assigns. In the event that any clause or provision or other portion of this Agreement shall be determined to be unenforceable or void based on any applicable law, the remainder of this Agreement shall remain in force and continue in full force and effect.

ACCEPTED:

OWNER: \_\_\_\_\_

AGENT: \_\_\_\_\_

a(n) \_\_\_\_\_

a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Its Authorized Agent

By: \_\_\_\_\_  
Its Authorized Agent

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTICE: THIS DOCUMENT HAS LEGAL CONSEQUENCES. NO REPRESENTATIONS OR RECOMMENDATIONS MADE BY AGENT AS TO THE LEGAL OR TAX CONSEQUENCES OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY OR IN THIS AGREEMENT. THESE ARE QUESTIONS AND ISSUES FOR THE OWNER'S LEGAL FINANCIAL AND OTHER ADVISORS.**

**EXHIBIT A**

Legal Description of Property commonly known as \_\_\_\_\_ and  
PIN(s) of \_\_\_\_\_.

## EXHIBIT B

(Cross out the inapplicable paragraph below.)

Should the Property herein cited be listed for sale, the gross commission due Broker at the time of closing shall be equal to \_\_\_\_\_% of the gross sales price, including any and all encumbrances assumed or taken subject to, and personal property conveyed therewith.

Should the property herein cited be leased, the gross commission due shall be:

- A. **GROSS LEASE** (Leases where Owner or lessor is responsible for paying all or a major portion of the costs of maintaining and operating the property.)
1. \_\_\_\_\_% of the average annual rent based upon an annualized rental before recognition of rent concessions; and
  2. \_\_\_\_\_% of the gross rents for the remaining term of the lease.
- B. **NET LEASE** (Leases where the tenant or lessee is responsible for paying all or a major portion of the costs of maintaining and operating the property.)
1. \_\_\_\_\_% of the average annual rent before recognition of rent concessions; and
  2. \_\_\_\_\_% of the gross rents for the remaining term of the lease.
- C. **FLAT FEE BASED ON SQUARE FEET**
1. \$\_\_\_\_\_ per square foot (based on leaseable area as defined above) per year when the term of the lease is 5 years or less;
  2. \$\_\_\_\_\_ per square foot (based on leaseable area as defined above) per year on all lease terms in excess of 5 years.
- D. **SHORT TERM AND MONTH TO MONTH LEASES**
1. Term of More than 25 Years: If a lease term is in excess of 25 years then the commission shall be calculated only upon the base rental to be paid for the first 25 years of the lease term.
  2. Month to Month Tenancy: The commission shall be fifty percent (50%) of the total rental for the first month and, if the Tenant continues to occupy the premises on a month-to-month basis beyond 12 months, Owner shall pay an additional commission of fifty (50%) of the total rental for the 13th month and for each 12th month thereafter. In the event the month-to-month Tenant subsequently executes a lease (whether procured by Broker, Owner or anyone else) within 12 months from the date of last occupancy of the month-to-month tenancy, then Owner shall pay a leasing commission with respect to such lease in accordance with the provisions of this Schedule.

OR

Month to Month Tenancy: [Alternative Version] The minimum commission for a month to month tenancy, tenancy at will, or any other tenancy which is not reduced to a written lease agreement between a tenant and Owner shall be equal to the first month's base rental of \$\_\_\_\_\_, whichever is greater. The commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Owner, either directly or with the assistance of Broker or anyone else, within 24 months from the date of initial occupancy, then Broker shall receive a leasing commission with respect to such lease in accordance with the provisions of paragraph A or B, above as may apply.



E. **OVERRIDE COMMISSION**

Outside Cooperating Broker: In the event that a lease is executed between Owner and a tenant which is procured by a licensed real estate broker or salesperson other than Owner's Designated Agent(s), then Owner agrees to pay Broker a leasing commission of 150% of the leasing commission described herein.

F. **OPTION(S) OR RIGHT(S) OF FIRST REFUSAL TO RENEW, EXTEND LEASE OR OCCUPY ADDITIONAL SPACE**

If a lease for which a commission is payable hereunder contain: (i) an option(s) or right(s) of first refusal to renew or extend, and a lease term(s) is renewed or extended whether strictly in accordance with the terms of such option(s) or right(s) or otherwise; and/or (iii) an option(s) or right(s) of first refusal to expand, and a tenant occupies additional space whether strictly in accordance with the terms of such option(s) or right(s) or otherwise, then Owner shall pay a leasing commission in accordance with the provisions of this Schedule on the additional base rental to be paid, calculated at the commission rate applicable hereunder to the years of the lease in which the additional base rent is payable. Said commission shall be earned and payable at the time extended term commences or the additional space is occupied, as applicable.

G. **PURCHASE OF PROPERTY BY TENANT**

If a lease for which a commission is payable hereunder contains an option, right of first refusal, or similar right, and a tenant, its successors or assignees, or any agent, officer, employee or shareholder of a tenant purchases the Property, whether strictly in accordance with the terms of such option, right of first refusal, similar right or otherwise during: (a) the term of the lease or any extension thereof; or (b) within \_\_\_\_\_ days after the expiration thereof, then a sales commission shall be calculated at the rate stated in this Schedule; provided however, that there shall be a credit against such sale commission in the amount of lease commission previously paid to Broker relating to that portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sale commission.

H. **AGREEMENT**

The provisions hereof are subject to the terms and provisions of any Exclusive Sales Listing Agreement, Exclusive Leasing Listing Agreement, Exclusive Subleasing Listing Agreement, Exclusive Representation Agreement or other agreement to which this Schedule may be attached and which is executed by the parties hereto.

I. **INTEREST AND ATTORNEYS FEES**

In the event Owner fails to make payments within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the maximum rate permitted in the state in where the Property is located. If Agent is required to institute legal action against Owner relating to this Schedule or any agreement of which it is a part, Agent shall be entitled to reasonable attorneys' fees and costs.

J. **SUCCESSORS**

Owner hereby acknowledges receipt of a copy of this Exhibit B and agrees that it shall be binding upon its heirs, successors and assignees. In the event Owner sells or otherwise disposes of its interest in the Property, Owner shall remain liable for payment of the commissions provided herein, and any agreement of which it is a part, including, without limitation, the commission obligations set forth in paragraphs F and G of this Exhibit, unless the purchaser or transferee assumes all of such obligations in writing. The term "Owner" as used herein shall be deemed to include the owner of the Property, a party under contract to acquire the Property, a tenant under a ground lease and a tenant of the Property wishing to effect a sublease, lease assignment, or lease cancellation. The term "tenant" as used herein shall be deemed to include any subtenant, or assignee of a tenant, and the term "lease" shall be deemed to include a sublease or lease assignment.

**In the event of a sale, commission is due and payable at time of closing, in the event of a lease, commission is due and payable at time of lease execution.**