



AGENCY AGREEMENT FOR COMMERCIAL PROPERTY (EXCLUSIVE CLIENT/TENANT)

AGREEMENT made and entered into effective as of the _____ day of _____, _____ (the "Effective Date") by and between _____ (the "Sponsoring Broker") and _____ (the "Client").

In consideration of the mutual promises hereinafter set forth, Sponsoring Broker and Client **AGREE**:

- 1. **TERM:** This Agreement shall commence on the Effective Date and shall remain in full force and effect through _____ (month/date/year) (the "Expiration Date").
- 2. **CLIENT'S DESIGNATED AGENT.** SPONSORING BROKER designates and Client accepts _____, a sponsored licensee of SPONSORING BROKER, as Client's Designated Agent under this Agreement with SPONSORING BROKER. Client understands and agrees that neither SPONSORING BROKER nor any other sponsored licensees of SPONSORING BROKER will be acting as agent for Client unless otherwise designated from time to time. **SPONSORING BROKER shall have the discretion to appoint a substitute designated agent for Client as SPONSORING BROKER determines necessary, and Client shall be advised within a reasonable time of any such substitution.** Client understands and agrees that SPONSORING BROKER and any of SPONSORING BROKER's other sponsored licensees may enter into agreements with other prospective purchasers, sellers, landlords, and Clients of property as agents of those purchasers, sellers, landlords, and Clients.
- 3. **EXCLUSIVE REPRESENTATION:** Client hereby appoints Sponsoring Broker as Client's exclusive real estate broker during the term of this Agreement for the purpose of assisting Client in the location, negotiation, and closing of a transaction within the scope of agency described in paragraph 3 below. Client agrees to refer to Sponsoring Broker all inquiries received in any form from prospective sellers/landlords and sellers'/landlords' representatives, real estate licensees or any other source, and to conduct related negotiations through Sponsoring Broker during the term this Agreement.
- 4. **SCOPE OF AGENCY:** This Agreement covers any purchase and/or lease transaction with respect to any commercial real estate and/or business opportunity (the "Property"), irrespective of a source of the transaction, including Property which is located or identified by Client that is situated, in

whole or in part, within the geographic area described as

Exceptions and/or additions:

- 5. **CONFLICT OF INTEREST (CLIENTS/TENANTS):** Client acknowledges that Sponsoring Broker may represent other clients desirous of purchasing/leasing property similar to the Property. Client acknowledges and agrees that Sponsoring Broker may show more than one client the same property and may prepare offers on the same property for more than one client. Sponsoring Broker shall preserve any confidential information disclosed by any client and shall not disclose the existence of, or the terms of, any offer prepared on behalf of one client to another client. In the event Sponsoring Broker works for two competing clients in connection with any specific property, Sponsoring Broker will be working equally for both clients and without the full range of fiduciary duties owed by a Client's agent to a Client or a tenant's agent to a tenant. In this situation, the competing clients are giving up their rights to undivided loyalty and will be owed only limited duties of disclosure, obedience and confidentiality.



6. **DUAL AGENCY:** DUAL AGENCY REQUIRED TERMINOLOGY:

The herein named Designated Agent may undertake a dual representation (represent both the Seller or Landlord and the Client 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. Client acknowledges that Sponsoring Broker has explained the implications of dual representation, including the risks involved, and understand that Client 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:

- Treat all clients honestly.
- Provide information about the Property to the buyer or tenant.
- Disclose all latent material defects in the Property that is known to licensee.
- Disclose financial qualification of the buyer or tenant to the seller or landlord.
- Explain real estate terms.
- Help the buyer or tenant to arrange for Property inspections.
- Explain closing costs and procedures.
- Help the buyer compare financing alternatives.
- 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:

- Confidential information that licensee may know about the clients, without the client's permission.
- The price or terms the seller or landlord will take other than the listing price without permission of seller or landlord.
- The price or terms the buyer or tenant is willing to pay without permission of the buyer or tenant.
- A recommended or suggested price the buyer or tenant should offer.
- A recommended or suggested price the seller or landlord should counter with or accept.

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

By Checking "Yes" and initialing, Client acknowledges that Client has read and understands this section and voluntarily consent to Designated Agent

Seller's Initials

Seller's Initials

acting as a Dual Agent (that is, to represent BOTH the seller/landlord and the buyer/tenant) should that become necessary.

7. **CONFIDENTIALITY:** Sponsoring Broker acknowledges that Client may disclose confidential information to Sponsoring Broker in connection with performance of services under this Agreement, and Sponsoring Broker agrees to preserve such information in confidence and not to disclose any such information to the detriment of Client in connection with any transaction described herein. Similarly, Client acknowledges that Sponsoring Broker may have received confidential information in the past from a party on the opposite side of a proposed transaction with Client, and Client agrees that Sponsoring Broker's faithful maintenance of such information in confidence will not be a breach of any duty to Client.

8. **MINIMUM SERVICES:** In addition to any other services to be performed by Sponsoring Broker hereunder, Sponsoring Broker agrees to do the following:

- Accept delivery of and present to Client offers and counteroffers to buy, sell, or lease the property Client seeks to purchase or lease.
- Assist Client 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.
- Answer Client's questions relating to the offers, counteroffers, notices, and contingencies.



9. **NOT INCLUDED:** The following additional professional services are not included under this Agreement. At Client's request, Sponsoring Broker may provide these services for a separate fee pursuant to a separate agreement:

- (a) Solicit for financing or refinancing
- (b) Assist with zoning issues
- (c) Alternative investment analysis/financial analysis
- (d) Debt restructuring
- (e) Portfolio analysis
- (f) Lease analysis and renegotiation of existing lease

Other: _____

10. **PROFESSIONAL ADVICE:** Sponsoring Broker hereby advises Client to consult competent professionals with respect to the following matters: legal, accounting, tax, inspection services of Property components and systems, environmental, marketability of title, and survey, and Client agrees not to seek or rely on advice from Sponsoring Broker or Sponsoring Broker's agents regarding such matters.

11. **AUTHORITY OF THE PARTIES:** Sponsoring Broker has no right or authority to commit or otherwise obligate Client to purchase or lease any Property unless expressly authorized in a separate writing. The undersigned party who has signed this Agreement on behalf of Client represents and warrants that the undersigned is authorized to sign this Agreement on behalf of Client and to bind Client to the requirements of this Agreement.

12. **COST OF SERVICES OF PRODUCTS OBTAINED FROM OUTSIDE SOURCES:** Sponsoring Broker will not obtain or order products or services from outside sources (e.g. surveys, environmental tests, title insurances, inspections, etc.) without the prior written consent of Client, and Client agrees to pay all costs of products or services obtained by Sponsoring Broker on Client's behalf.

13. **NONDISCRIMINATION:** IT IS UNDERSTOOD THAT IT IS ILLEGAL FOR EITHER THE SELLER OR A REAL ESTATE SPONSORING 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.

14. **COMPENSATION TO SPONSORING BROKERS:** Client agrees and acknowledges that Sponsoring Broker commissions are not set by law and are fully negotiable. Client agrees to compensate Sponsoring Broker as follows:

a. COOPERATIVE SALE: Client acknowledges that Sponsoring Brokerages representing owners of Property may offer to cooperate and share compensation with Sponsoring Broker, and any such shared compensation shall be applied shall not be applied to reduce the compensation due from Client to Sponsoring Broker under this Agreement. In addition to other payment obligations covered under this Agreement, Client shall compensate Sponsoring Broker as follows:

i. _____ percent of the purchase price, or \$ _____, whichever is greater.

ii. _____ percent of the aggregate lease payments for _____ years, or \$ _____, whichever is greater; and _____ percent of the aggregate lease payments for each successive _____ year period, or

\$ _____; whichever is greater; and if the Property is purchased, in whole or in part, directly or indirectly, by Client prior to expiration of the lease term, (including renewals, extensions, options or holdovers), the compensation specified in 1.) above shall be due and payable except that the purchase compensation shall be reduced in amount by that portion of the lease compensation paid which is applicable to the portion of the lease term, renewal, extension or holdover not completed by reason of the purchase.

Other: _____



- b. UNLISTED PROPERTY: For unlisted property, Client authorizes Sponsoring Broker to receive and/or negotiate the following compensation to be paid by the Seller/Landlord.

Such compensation shall be applied shall not be applied to reduce the compensation due from Client to Sponsoring Broker under this Agreement. In addition to other payment obligations covered under this Agreement, Client shall compensate Sponsoring Broker as follows:

- i. _____ percent of the purchase price, or \$ _____, whichever is greater.
- ii. _____ percent of the aggregate lease payments for _____ years, or \$ _____, whichever is greater; and _____ percent of the aggregate lease payments for each successive _____ year period, or

\$ _____; whichever is greater; and if the Property is purchased, in whole or in part, directly or indirectly, by Client prior to expiration of the lease term, (including renewals, extensions, options or holdovers), the compensation specified in 1.) above shall be due and payable except that the purchase compensation shall be reduced in amount by that portion of the lease compensation paid which is applicable to the portion of the lease term, renewal, extension or holdover not completed by reason of the purchase.

Other:

15. OTHER COMPENSATION ISSUES:

- a. Any compensation to Sponsoring Broker in excess of Client's commission obligations pursuant to paragraphs 13A and B above shall be disclosed to and approved by Client before it is paid to Sponsoring Broker.
- b. Sponsoring Broker is authorized to divide compensation with other Sponsoring Brokers in any manner acceptable to Sponsoring Broker; however, Sponsoring Broker shall have no obligation to pay any commission or fees.
- c. Sponsoring Broker acknowledges receipt of a nonrefundable retainer fee of \$ _____ which shall shall not be toward any other compensation due to Sponsoring Broker under this Agreement.
- d. In the event Client elects not to lease or purchase Property during the term hereof, Client agrees to pay Sponsoring Broker a fee in the amount of \$ _____, not later than the Expiration Date.

16. PRICE AND TERMS. Client acknowledges that the sale/lease terms may be disclosed by Sponsoring Broker to members of Associations of REALTORS®, multiple listing services and/or commercial property information exchanges.

17. EARNED COMPENSATION/PROTECTION PERIOD: Compensation hereunder shall be deemed to have been earned with respect to any Property as of the time a purchase agreement and/or lease has been executed and the material obligations of the parties are not subject to any contingency, or the Client/tenant is entitled to possession, whichever occurs first. Compensation shall be paid promptly after it is earned, but not later than any applicable closing. In the event Client enters into an agreement within _____ days after the Expiration Date (the "Protection Period"), with respect to a Property that was considered by Client during the term of this Agreement (a "Considered Property"), then compensation shall be due and payable pursuant to the terms of this Agreement to the same extent as if the Agreement was entered into prior to the Expiration Date. In the event Client obtains an option to purchase or lease a Considered Property during the term of this Agreement, or during the Protection Period, then the Protection Period shall be extended for a period equal to the duration of the option.

18. ENTIRE AGREEMENT: This Agreement shall, when executed, constitute the entire agreement between Client and Sponsoring Broker 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 Client and Sponsoring Broker. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties. Client hereby acknowledges receipt of a completed copy of this contract.

19. **ARBITRATION:** In the event of any dispute between Client and Sponsoring Broker relating to this Agreement, the Property which is the subject of this Agreement, or the performance of the terms of this Agreement by Client or Sponsoring Broker, Client and Sponsoring Broker 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. This contract shall be governed by Illinois law.

20. **OTHER:** _____

Date: _____

Date: _____

Sponsoring Broker: _____

Client: _____

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____