

NORTH TEXAS COMMERCIAL ASSOCIATION OF REALTORS®

PROFESSIONAL SERVICES AGREEMENT

EXCLUSIVE TENANT OR BUYER REPRESENTATION

This Professional Services Agreement (the "Agreement") is entered into by and between _____ (the "Principal") and _____ (the "Broker").

In consideration of the services of Broker and the agreements contained herein, Principal and Broker agree as follows:

A. Term. The term of this Agreement commences on its execution and will expire on _____ (the "Expiration Date").

B. Appointment. Principal hereby appoints Broker as Principal's exclusive real estate agent to assist Principal in searching for, locating, and evaluating real properties for lease or purchase, and to assist in the negotiations leading to an agreement to lease and/or purchase a property type generally described as _____ within the market area described as _____ (the "Market Area").

C. Broker's Duties and Authority.

1. Broker will act on Principal's behalf to (i) search for, acquire information about, and evaluate available properties in the Market Area which are suitable for Principal's intended use or purpose, (ii) present to Principal those properties which satisfy Principal's requirements, and (iii) assist Principal in negotiating the terms and conditions for the potential lease or purchase of the property. Broker is hereby granted the sole and exclusive right to search for properties within the Market Area and negotiate on Principal's behalf in connection with the lease or purchase of properties within the Market Area during the term of this Agreement. Principal shall not engage any other brokers to act in that capacity on Principal's behalf within the Market Area during the term of this Agreement. Broker *[check one]* is is not authorized to disclose Principal's identity to owners of properties, real estate brokers and other parties in searching for properties and assisting with negotiations.

2. Broker may enlist the efforts of Broker's sales associates and may solicit and enlist the cooperation of other real estate brokers. Broker may place Principal's requirements in a computer on-line commercial property network in order to obtain the assistance of other brokers and owners. Broker may not, however, assign this Agreement without the written consent of Principal.

3. Broker and Broker's sales associates will devote an amount of time and effort on Principal's behalf as Broker, in Broker's sole discretion, determines necessary to carry out the duties described in this Agreement. Broker and Broker's employees, agents, affiliates, and associates are entitled to engage in other business activities including, but not limited to, representing other principals, listing properties for sale or lease, and presenting the same properties to other prospects.

4. Broker shall not commit Principal to any agreement unless Principal gives Broker written authorization to do so.

D. Principal's Obligations.

1. The undersigned person has the authority and capacity to execute this Agreement and to bind Principal to the obligations set forth in this Agreement, including the obligation to pay the Fee (defined below) to Broker.

2. Principal agrees to conduct its efforts to locate suitable property for Principal's use through Broker and shall not engage any other real estate brokers to conduct negotiations for the lease, purchase or other acquisition of any property in the Market Area during the term of this Agreement and any extensions or renewals of this Agreement. Principal agrees to refer to Broker all inquiries and offers received by Principal with respect to the search for properties within the Market Area, to cooperate fully with Broker in locating properties and in negotiating lease or purchase agreements, and to inform all property owners and their real estate agents of Broker's exclusive representation of Principal as established by this Agreement. During the Protection Period (defined below), Principal shall continue to recognize Broker as Principal's exclusive agent in accordance with the terms of this Agreement with respect to any property which has been submitted by Broker to Principal during the term of this Agreement.

E. Professional Service Fee. If Principal leases or purchases any property within the Market Area, with or without the assistance of Broker, during the term of this Agreement or any extension or renewal of this Agreement, then Principal assures payment to Broker of a professional service fee (the "Fee") in cash at the consummation of the lease or purchase of each property in an amount equal to: (1) \$ _____; or (2) _____.

Broker will seek payment of the Fee from the owner of the property (the "Owner") or the Owner's agents as compensation for Broker's services with respect to a lease or contract of sale executed by Principal. In any lease or contract executed on behalf of Principal or any Related Party (defined below), Principal shall include a provision which assures that Broker will receive payment of

the Fee from the Owner, if (a) the lease or contract covers property located within the Market Area, and (b) either: (i) the lease or contract is executed during the term of this Agreement; or (ii) the property was introduced to Principal by Broker during the term of this Agreement and the lease or contract is executed during the Protection Period. If the above required provision is not included in any such lease or contract, or the Owner does not pay the Fee to Broker for any reason, Principal will pay the Fee to Broker, or the difference between the Fee and the amount actually paid to Broker by the Owner, whichever is less. Any payment to Broker by Owner shall not alter the agency relationship between Principal and Broker as set forth in this Agreement. The Fee will be paid when earned in the county in which the property being leased or purchased is located, without demand, in immediately available funds. The Fee will be fully earned and payable to Broker on the date of consummation of a transaction in which Principal, or any Related Party, leases or purchases property within the Market Area: (i) during the term of this Agreement, or (ii) after the expiration of the term of this Agreement, if earned in accordance with Paragraph 6, Protection Period.

F. Protection Period. As to transactions which close after the Expiration Date, the Fee will be paid to Broker upon the closing and funding of a transaction in which Principal, or any Related Party, leases or purchases property within the Market Area if, within one hundred eighty (180) days after the Expiration Date (the "Protection Period"), Principal or any Related Party: (i) executes a contract of sale or exchange; (ii) executes a lease; or (iii) otherwise agrees to purchase any legal or equitable interest in a property (including a contract for deed or an option to purchase or lease property). However, as to a lease or contract executed during the Protection Period, Broker will only be entitled to collect the Fee if (i) Broker has furnished to Principal, within fifteen (15) days after the Expiration Date, a list of properties introduced to Principal during the term of this Agreement, and (ii) the property which is the subject of the transaction is set forth on that list. A "Related Party" means any assignee of Principal, any family member or relative of Principal, any officer, director or partner of Principal, and any corporation, partnership, joint venture, or other entity owned (in whole or in part) or controlled (in whole or in part) by Principal or any officer, director or partner of Principal.

G. Conflicts of Interest. Notwithstanding anything to the contrary in this Agreement, with respect to any property in which Broker and/or Broker's associates have an interest, or which property is exclusively listed with Broker for sale or lease, Broker will notify Principal of Broker's interest or exclusive listing at or before Broker's introduction of the property to Principal. As to any property in which Broker or Broker's associates have an interest, Broker is relieved from all fiduciary obligations to Principal under this Agreement. If the situation constitutes an intermediary relationship (described below), then Broker's responsibilities will be limited to those inherent as an Intermediary as disclosed below. Notwithstanding any conflict of interest or intermediary relationship, if Principal leases or purchases the property, then Principal will cause the Fee to be paid to Broker as provided in this Agreement.

H. Intermediary Relationship.

1. Principal authorizes Broker to show to Principal properties which Broker has listed for sale or lease. If Principal wishes to purchase or lease any property Broker has listed for sale or lease, Principal authorizes Broker to act as an intermediary between Principal and the owner, to present any offers Principal may wish to make on such properties, and to assist both Principal and the owner in negotiations for the sale or lease of the property. In that event, Broker's compensation may be paid by the owner in accordance with the terms of Broker's listing agreement with the owner, and Broker may also be paid a fee by Principal. **A real estate broker who acts as an intermediary between parties in a transaction:**

- a. may not disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord;
- b. may not disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by the buyer or tenant;
- c. may not disclose any confidential information, or any information a party specifically instructs the real estate broker in writing not to disclose, unless otherwise instructed in a separate writing by the respective party or otherwise required to disclose such information by the Texas Real Estate License Act or a court order, or if the information materially relates to the condition of the property;
- d. shall treat all parties to the transaction honestly; and
- e. shall comply with the Texas Real Estate License Act.

2. **Appointments.** Broker is authorized to appoint, by providing written notice to the parties, one or more licensees associated with Broker to communicate with and carry out instructions of one party, and one or more other licensees associated with Broker to communicate with and carry out instructions of the other party or parties. During negotiations, an appointed licensee may provide opinions and advice to the party to whom the licensee is appointed.

I. Disclaimer. Principal understands that a real estate broker is qualified to advise on matters concerning real estate and is not an expert in matters of law, tax, financing, surveying, hazardous materials, engineering, construction, safety, zoning, land planning or architecture. However, Broker will disclose to Principal any material factual knowledge which Broker may possess about any property introduced to Principal by Broker. Principal acknowledges that Principal has been advised by Broker to seek expert

assistance on such matters. Broker does not investigate a property's compliance with building codes, governmental ordinances, statutes or laws that relate to the use or condition of a property or its construction, or that relate to its acquisition. If Broker provides names of consultants or sources for advice or assistance, Broker does not warrant the services of the advisors or their products and cannot warrant the suitability of property to be acquired or leased. Broker does not warrant that the owner of the property will disclose any or all property defects or other matters pertaining to the property or its condition. Principal hereby agrees to indemnify, defend and hold Broker harmless from and against any and all liabilities, claims, debts, damages, costs, and expenses, including but not limited to reasonable attorneys' fees and court costs, related to or arising out of or in any way connected to representations about any property or matters properly analyzed by experts. In addition, to the extent permitted by applicable law, Broker's liability for Broker's breach of this Agreement, negligence, or otherwise, is limited to the return of the Fee, if any, paid to Broker pursuant to this Agreement.

J. Miscellaneous.

1. Notices. Any notice under this Agreement must be in writing and will be deemed delivered on the earlier of: (i) actual receipt, if delivered in person or by messenger with evidence of delivery; (ii) receipt of an electronic facsimile transmission ("Fax") with confirmation of delivery; or (iii) upon deposit in the U.S. mail, first class postage prepaid, and addressed to the intended recipient at its respective address set forth below, or such other address as may be subsequently designated in writing by the intended recipient.

2. Legal Expenses. The prevailing party in any legal proceeding brought in relation to this Agreement shall be entitled to recover from the other party reasonable attorneys' fees, pre-judgment interest as allowed by law, and all other costs of collection in addition to the Fee and any other compensation payable hereunder.

3. Severability. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, then the invalid provision will be deemed to be deleted from this Agreement, and the remainder of this Agreement will continue to be valid and in full force and effect.

4. Binding Effect. This Agreement is binding on and will inure to the benefit of the parties hereto and their successors, heirs and assigns. However, this Agreement may not be assigned by either party without the written consent of the other party. This Agreement contains the entire agreement and understanding of the parties, and it may not be modified, canceled or terminated except by an agreement in writing executed by both parties. If this Agreement is executed by more than one Principal, it shall constitute the joint and several obligations of each Principal. Principal acknowledges that Principal has read this entire Agreement, understands it fully, and has had an opportunity to review it with an attorney of Principal's choice. Principal and Broker each acknowledge receipt of a fully executed copy of this Agreement.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

6. Exhibits. Any exhibits or attachments to this Agreement are hereby incorporated as a part of this Agreement.

This Agreement is effective on the last date beneath the signatures below.

PRINCIPAL

By [Signature]: _____

Name: _____

Title: _____

Address: _____

Telephone: _____ Fax: _____

Date of Execution: _____

BROKER

By [Signature]: _____

Name: _____

Title: _____

Address: _____

Telephone: _____ Fax: _____

Date of Execution: _____

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