

KLEHR | HARRISON | HARVEY | BRANZBURG LLP

**COMMERCIAL REAL ESTATEBROKERS:
ENGAGING AND DISENGAGING**

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BROKER NOMENCLATURE

A commercial real estate broker, or broker, is a broad term loosely used by clients, but distinguishable as to duties and responsibilities in several ways relating to negotiating transactions, managing, or advising others on real estate matters.¹ At common law, the relationship between a broker and client is principal and agent. It is generally subject to the elevated fiduciary duty of a common law agency, especially as to duties of care, confidentiality, loyalty, obedience, accounting and disclosure.

1. Types

Licensee/Broker/Agent: If a person wants to engage in the business of selling or leasing real estate, it must obtain a license² from the state and become a licensee which usually requires classroom work before sitting for an exam. In some states licensees, are brokers; in other states licensees usually work for brokers. In Pennsylvania “salespersons” work for brokers. (See G-5) Licensees who wish to become brokers take more classroom work and sit for a broker exam. Attorneys may usually sit for the exam without taking other classes, and may act as sales agents without being licensed brokers. (See G-3)

“Dual Agency” can arise if the same licensee, or agent or broker represents both adverse parties in a transaction.³ The dual agent owes the principals a duty of good faith, but not loyalty.⁴

“Listing Broker”: the broker engaged by the principal⁵ to provide broker services.⁶

“Realtor”: is a registered trademark of the National Association of Realtors.

“Transaction Broker”: Some states, like Pennsylvania, have statutorily allowed for elimination of the agency duty by adopting the concept of Transaction Broker. It acts like a

¹ “BROKER.” Any person who, for another and for a fee, commission or other valuable consideration: (1) negotiates with or aids any person in locating or obtaining for purchase, lease or an acquisition of interest in any real estate; (2) negotiates the listing, sale, purchase, exchange, lease, time share and similarly designated interests, financing or option for any real estate; (3) manages any real estate; (4) represents himself to be a real estate consultant, counselor, agent or finder; (5) undertakes to promote the sale, exchange, purchase or rental of real estate: Provided, however, That this provision shall not include any person whose main business is that of advertising, promotion or public relations; (5.1) undertakes to perform a comparative market analysis; or (6) attempts to perform any of the above acts.

² “LICENSEE.” The term includes both a standard license and a reciprocal license.

³ “DUAL AGENT.” A licensee who acts as an agent for the buyer and seller, or lessee and landlord, in the same transaction.

⁴ (b) In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of a dual agent include the following: (1) to take no action that is adverse or detrimental to either party's interest in a transaction; (2) unless otherwise agreed to in writing, to make a continuous and good faith effort to find a buyer for the property, except that a dual agent is not obligated to seek additional offers to purchase the property while it is subject to an existing contract for sale; and (3) unless otherwise agreed to in writing, to make a continuous and good faith effort to find a property for the buyer, except that a dual agent is not obligated to seek additional properties to purchase while the buyer is a party to an existing contract to purchase. (c) A dual agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller. A dual agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer.

⁵ “PRINCIPAL.” A consumer of real estate services who has entered into an agency relationship with a broker.

⁶ “LISTING BROKER.” A broker engaged as a seller's agent, dual agent or transaction licensee to market the property of a seller/landlord for sale or lease pursuant to a written agreement with the seller/landlord.

facilitator with no fiduciary relationship to the seller or buyer.⁷ The transaction licensee must disclose it should not be given confidential information.⁸ This is supposed to circumvent conflicts of interest that otherwise arise in Dual Agency.

2. Listings

Open Listing. An open listing agreement protects the broker if the Client completes a transaction through the broker or a licensee affiliated with the broker. In the event of a transaction to a prospect procured by the Client or any other entity, the broker has not earned a commission. It may be oral, with a follow-up memorandum.⁹

Exclusive Agency Agreement. This agreement provides that only the broker has the right to sell the property. Some believe, no cooperating broker may be used; others that the broker's commission is protected if an agreement with a prospect is procured by any entity except the Client.

Exclusive Right Agreement. Under this agreement the broker's commission is protected if the transaction with a prospect is procured by any entity, including the Client.

3. Contract Requirements

In Pennsylvania, Broker Agreements entitling a broker to a fee must be in writing,¹⁰ except in the case of open listings or licenses as agent not paid by the principal. An exclusive listing agreement

⁷ "TRANSACTION LICENSEE." A licensed broker or salesperson who provides communication or document preparation services or performs acts described under the definition of "broker" or "salesperson" for which a license is required, without being an agent or advocate of the consumer.

⁸ § 455.606f. Duties of transaction licensee In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of a transaction licensee include the following: (1) to advise the consumer to be assisted that the licensee is not acting as an agent or advocate of the consumer and should not be provided with confidential information; and (2) to provide limited confidentiality. A licensee shall not disclose information that the seller will accept a price less than the asking price or listed price, that the buyer will pay a price greater than the price submitted in a written offer or that a seller or buyer will agree to financing terms other than those offered.

⁹ (2) Notwithstanding paragraph (1), an open listing agreement or a nonexclusive agreement for a licensee to act as a buyer/tenant agent may be oral if the seller or buyer is provided with a written memorandum stating the terms of the agreement.

¹⁰ § 455.608a. Written agreement with broker An agreement between a broker and a principal, or any agreement between a broker and a consumer whereby the consumer is or may be committed to pay a fee, commission or other valuable consideration, that is required to be in writing by section 606.1, shall be signed by the consumer and shall identify the services to be provided and the fee to be paid, if any. The agreement shall also contain the following information which shall be disclosed in the manner and method the commission shall establish by regulation: (1) A statement that the broker's fee and the duration of the contract have been determined as a result of negotiations between the broker and the seller/landlord or buyer/tenant. (2) A statement describing the nature and extent of the broker's services to be provided to the seller/landlord or buyer/tenant and the fees that will be charged. (3) A statement identifying any possibility that the broker, or any licensee employed by the broker, may provide services to more than one consumer in a single transaction and if so, an explanation of the duties that may be owed the other party and whether the broker may accept a fee for those services. (4) In an agreement between a broker and seller, a statement of the broker's policies regarding cooperation with subagents and buyer agents, a disclosure that a buyer agent, even if compensated by the broker or seller will represent the interests of the buyer and a disclosure of any potential for the broker to act as a disclosed dual agent. (5) In an agreement between a broker and a buyer, a statement identifying any possibility that the broker's compensation may be based upon a percentage of the purchase price, a disclosure of the broker's policies regarding 28 cooperation with listing brokers willing to pay buyer's brokers, a disclosure that the broker, even if compensated by the listing broker or seller, will represent the interests of the buyer and disclosure of any potential for the buyer broker to act as a disclosed dual agent. (6) A statement describing the purpose of the Real Estate Recovery

may not exceed a term, including extensions of one year; nor authorize the agent to sign on behalf of the principal; nor to allow the broker to confess judgment to effect its commission.

The absence of a statement of the zoning classification makes a sales contract voidable by the buyer.¹¹

Fund established under section 801 and the telephone number of the commission at which the seller can receive further information about the fund. (7) A statement regarding any possible conflicts of interest and informing the consumer of the licensee's continuing duty to timely disclose any conflicts of interest.

¹¹ § 455.608b. Mandatory provisions of sales contract. In a sales agreement or sales contract, a broker shall disclose the following information which shall be disclosed in the manner and method the commission shall establish by regulation: *
* * (3) A statement of the zoning classification of the property, except in cases where the property or each parcel of the property, if subdividable, is zoned solely or primarily to permit single-family dwellings. Failure to comply with this requirement shall render the sales agreement or sales contract voidable at the option of the buyer, and if voided, any deposits tendered by the buyer shall be returned to the buyer without a requirement for court action. (4) A statement that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

QUESTIONNAIRE/INITIAL INFORMATION¹²

¹² § 455.608. Information to be given at initial interview (a) Except as set forth in subsections (b), (c), (d), (e) and (f), the commission shall establish rules or regulations which shall set forth the manner and method of disclosure of information to the prospective buyer/tenant or seller/landlord during the initial interview. For the purposes of this section, the initial interview is the first contact between a licensee and a consumer of real estate-related services where a substantive discussion about real estate needs occurs. Such disclosure shall be provided on a form adopted by the commission by regulation and shall include, but shall not be limited to: (1) A disclosure of the relationships in which the broker may engage with the consumer. The disclosure shall describe the duties that the broker owes in each relationship provided for in this act. (2) A statement informing sellers and buyers of their option to have an agency relationship with a broker, that an agency relationship is not to be presumed and that it will exist only as set forth in a written agreement between the broker and consumer of real estate service acknowledged by the consumer. (3) A statement that a real estate consumer has the right to enter into a negotiated agreement with the broker limiting the activities or practices that the broker will provide for on behalf of the consumer and that the fee and services to be provided are to be determined by negotiations between the consumer and the broker. Page 131 63 P.S. § 455.608 (4) A statement identifying any possibility that the broker may provide services to another consumer who may be party to the transaction and, if so, an explanation of the duties the broker may owe the other party and whether the broker may accept a fee for those services. (5) A statement identifying any possibility that the broker may designate one or more licensees affiliated with the broker to represent the separate interest of the parties to the transaction. (6) A statement of the broker's policies regarding cooperation with other brokers, including the sharing of fees. (7) A statement that a buyer's broker may be paid a fee that is a percentage of the purchase price and the buyer's broker, even if compensated by the listing broker, will represent the interests of the buyer. (8) A statement that the duration of the broker's employment and the broker's fees are negotiable. (9) The purpose of the Real Estate Recovery Fund and the telephone number of the commission at which further information about the fund may be obtained. (10) A statement that the duration of the listing agreement or contract and the broker's commission are negotiable. (11) A statement that any sales agreement must contain the zoning classification of a property except in cases where the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings. (b) The following apply to leases: (1) Subsection (a) shall not apply and disclosure shall be in accordance with paragraph (2) if the licensee is providing information on a property or otherwise dealing with a prospective tenant for the purpose of rental only and if the licensee is: (i) the actual owner/landlord of the real property, including the owner of an equity interest in an actual owner/landlord of the real property; (ii) the direct employee of the owner/landlord of the real property; or (iii) leasing the real property pursuant to a property management agreement or an exclusive leasing agreement with the owner/landlord of the real property. (2) In cases under paragraph (1), the licensee shall provide to the prospective tenant a written statement indicating the capacity in which the licensee is acting. The written statement shall be provided at the time of the initial interview unless a rental application is required by the licensee, in which case the written statement shall be provided at the time the rental application is taken. The written statement shall be provided at the beginning of the rental application and shall be in the following form:

CONSUMER NOTICE

THIS IS NOT A CONTRACT

(licensee) hereby states that with respect to this property, (describe property) , I am acting in the following capacity: (check one) (i) owner/landlord of the property; (ii) a direct employee of the owner/landlord; or (iii) an agent of the owner/landlord pursuant to a property management or exclusive leasing agreement. I acknowledge that I have received this notice:

(consumer) (date) I certify that I have provided this notice:

(licensee) (date)

(3) The licensee shall provide a copy of the written statement under paragraph (2) to the prospective tenant and shall retain a copy signed by the prospective tenant and the licensee for six months. If the prospective tenant refuses to sign the statement, the licensee shall note the refusal on the form and retain it for six months. (c) If an initial interview with a consumer in a situation which is not covered by subsection (b) or (e) does not occur in person, the licensee shall orally advise the consumer of the various business relationships that the licensee may have with the consumer and provide an oral disclosure to the consumer as follows: The Real Estate Law requires that I provide you with a written consumer notice that describes the various business relationship choices that you may have with a real estate licensee. Since we are discussing real estate without you having the benefit of the consumer notice, I have the duty to advise you that any information you give me at this time is not considered to be confidential, and any information you give me will not be considered confidential unless and until you and I enter into a business relationship. At our first meeting I will provide you with a written consumer notice which explains those business relationships and my corresponding duties to you. (d)

- 1 Can you explain to me what distinguishes your services from other brokers that would help bring a higher price sooner for this asset (“Property”)?
- 2 What strengths, weaknesses, and value-add distinguishes you from your competitors?
- 3 If a buyer is represented by your company, how will I get your aggressive and undivided loyalty?
- 4 Please describe your fee structure.
- 5 Will you offer a dual variable commission?
- 6 Would you accept a lower commission if there were no cooperating broker and a [__]% commission if there were a cooperating broker?
- 7 Please identify any costs (other than typical closing costs for transfer tax and prorations) you anticipate the seller will incur that are outside that fee structure, for example, signage or marketing expenses.
- 8 Who would be the responsible party at your company to conduct the engagement and implement the strategic plan?
- 9 What is the structure of your team/business and who will I be dealing with on what issues i.e., do you have an assistant, closing manager, buyer agents, etc.?
- 10 Please briefly describe the marketing strategy you would plan to use for this Property or a property like this and how you would prospect buyers.
- 11 Who do you think is the “typical buyer” for this property?
- 12 Please describe how you would qualify prospective buyers.
- 13 Can you describe your experience with sales of similar properties in this geography?
- 14 How many properties did you list last year?
- 15 What was the average time on the market for your listings of similar properties at similar prices over the past year?
- 16 How many properties are you listing currently?
- 17 How many properties did you sell last year?
- 18 How many properties have you sold over \$[__],000,000 in the last two years?

If an oral disclosure is given as provided in subsection (c), the written disclosure form required by subsection (a) shall be provided to the consumer not later than the earlier of: (1) the first meeting that the licensee has in person with the consumer after the initial interview; or (2) the time a property is first shown to the consumer by the licensee or any person working with the licensee. * * * (f) The disclosures required under subsections (a), (b) and (c) do not apply in commercial property sale or lease transactions unless the prospective buyer/tenant or seller/landlord is an individual.

- 19 Can you provide 5 examples of similar sales for which you have been responsible?
- 20 Can you provide 5 current references of sellers you have represented for sale of similar properties?
- 21 At what percentage of the initial listing price do the majority of your listings sell?
- 22 How many days do you expect the Property to be on the market?
- 23 What is your suggested list price and why?
- 24 What is your projected final sale price and why?
- 25 Do you think there are any special market conditions affecting the Property?
- 26 When would you recommend listing this property and why?

OUTLINE

1. Listing Engagement

- Open Listing
- Exclusive Agency
- Exclusive Right

Business Terms

- Price – Exhibit D
- Payment – Exhibit D
- Asset – Paragraph 1
- Credit quality

2. Agreement Duration

- Effective dates of commencement (signing), expiration (statutory limits), and termination – Paragraph 2
- Survival of representations – Paragraph 16
- Survival of commission rights as to identified prospects – Paragraph 8
- Survival of lease rights upon assignment or sublet – Estoppel

3. Broker Representations – Paragraph 4

- Special agent – limited scope without power to bind or sign
- Not general agent
- Not partner or joint venture
- Duty of loyalty¹³
- Statutory duties: professionalism; honesty and good faith; presentation of offers; proper accounting¹⁴

¹³ § 455.606b. Duties of seller's agent. In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of the broker acting as an agent for the seller include the following: (1) to be loyal to the seller by taking action that is consistent with the seller's interest in a transaction; and (2) to make a continuous and good faith effort to find a buyer for the property, except that a seller's broker is not obligated to seek additional offers to purchase the property while the property is subject to an existing agreement for sale.

§ 455.606c. Duties of buyer's broker In addition to the duties generally required of a licensee as set forth in section 606.1, the duties of the broker acting as an agent of the buyer include the following: (1) to be loyal to the buyer by taking action that is consistent with the buyer's interest in a transaction; (2) to make a continuous and good faith effort to find a property for the buyer, except that a buyer's broker is not obligated to seek additional properties for purchase while the buyer is subject to an existing contract for sale; and (3) to disclose to the listing broker, at first contact, that the broker has been engaged as a buyer's agent. In the absence of a listing broker, this disclosure shall be made to the seller.

¹⁴ § 455.606.a Duties of licensee generally (a) Regardless of whether a licensee is acting within the scope of an agency relationship with a consumer, a licensee owes to all consumers to whom the licensee renders real estate services the following duties, which may not be waived: (1) to exercise reasonable professional skill and care which meets the practice standards required by this act; (2) to deal honestly and in good faith; (3) to present all written offers, written notices and other written communications to and from parties to a real estate transaction in a timely manner, except that the duty of a licensee under this paragraph to present written offers may be waived by a seller of a property that is subject to an existing contract for sale if: (i) the waiver is in writing; and (ii) the waiver is in the manner prescribed by the commission by regulation; (4) to comply with those obligations imposed upon a licensee by the act of July 2, 1996 (P.L. 500, No. 84), known as the "Real Estate Seller Disclosure Act"; (5) to account in a timely manner for all money and property received from or on behalf of any consumer to a transaction consistent with the provisions of section 608.5; (6) to provide the consumer with information at the initial interview pursuant to section 608; (7) to timely disclose to the consumer any

- Statutory qualifications for reputation¹⁵
- Expertise
- Independence – Paragraph 3(c)
- Duly licensed – Paragraph 34
- No limitations by contract or litigation
- No other broker (to knowledge)
- All personnel/the direct responsibility of broker duly licensed and none will be independent of broker
- Carries a special exclusive duty of loyalty and responsibility
- Efficient commercially reasonable and good faith execution and administration
- Independent contractor
- No right to execute real estate contract or applications
- Peer Standard – Paragraph 3(b)

4. Scope of Work

- Canvas market
- Recommend positioning
- Recommend structuring
- Circulate brochure
- Negotiate terms
- Walk prospects through

conflicts of interest; (8) to advise the consumer to seek expert advice on matters relating to the transaction that are beyond the licensee's expertise; (9) to ensure that all services that are to be provided to the consumer are provided in a reasonable, professional and competent manner in accordance with the practice standards of this act; (10) to advise the consumer regarding the status of the transaction; (11) to advise the consumer of tasks that must be completed to satisfy an agreement or condition for settlement, provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions; (12) to present all offers and counter offers in a timely manner, unless a party has directed the licensee otherwise in writing; and (13) to provide disclosure to the consumer regarding any financial interest, including, but not limited to, a referral fee or commission, which a licensee has in any services to be provided to the consumer by any other person, including, but not limited to, financial services, title transfer and preparation services, insurance, construction, repair or inspection services. The licensee shall also provide disclosure regarding any financial interest which an affiliated licensee may have in any services to be provided to the consumer by any other person. The disclosures required by this paragraph shall be made at the time the licensee first recommends that the consumer purchase a service in which the licensee or an affiliated licensee has a financial interest or when the licensee first learns that the consumer will be purchasing a service in which the licensee or an affiliated licensee has a financial interest. * * * (c) A broker may not extend or delegate the broker's agency relationship with a principal to another broker without the written consent of the principal. (d) A broker may compensate another broker who assists in the marketing and sale/lease of a consumer's property. Payment of compensation alone does not create an agency relationship between the consumer and the other broker. (e) The fact that a licensee representing a seller/landlord also presents alternative properties to prospective buyer/tenants does not in itself constitute a breach of a duty or obligation owed by the licensee to the seller/landlord. (f) The fact that a licensee representing a buyer/tenant also presents alternative properties in which that buyer/tenant is interested to other prospective buyer/tenants does not in itself constitute a breach of a duty or obligation owed by the licensee to that buyer/tenant.

¹⁵ 455.501. Reputation; inactive licensee; revoked license (a) Licenses shall be granted only to and renewed only for persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker, salesperson, cemetery broker, cemetery salesperson, campground membership salesperson, time-share salesperson, builder-owner salesperson or rental listing referral agent, in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission as it shall by regulation require.

- Qualify prospects

5. Broker Covenants – Paragraph 3

- Procure prospects
- List prospects
- Further owner's interest
- Qualify prospects: credit and acceptability
- Show property
- Offer property for terms
- Exercise obligations at standard of highest, peer, customary, past practice
- Comply with law
- Carry liability insurance, and errors and omissions
- Trailing prospect lists
- Ownership of materials
- Time of essence
- Confidentiality of owner's materials¹⁶

6. Owner Representations

- No other broker (to knowledge)
- Description of property
- Quality of title
- Authority - Board Approval
- Reliance on expertise
- No consents
- No limitations by contract or litigation

7. Owner Covenants

- Protect removal commission on assignment
- Disclose environmental and hazardous conditions to its knowledge

8. Broker Conditions

- No default by prospect
- Good title, marketable, insurable title by owner
- No change in law
- No change in circumstances of property or parties: casualty/condemnation, violation of law, misrepresentation
- Execution of agreement fully acceptable by owner

¹⁶ (g) A licensee may not knowingly, during or following the termination of an agency relationship reveal confidential information of the principal, or use confidential information of the principal to the advantage of the licensee or a third party, except when: (1) disclosure is made with the consent of the principal; (2) the information is disclosed to another licensee or third party acting solely on the principal's behalf and not for any other party; (3) the information is required to be disclosed under subpoena or court order; (4) it is the intention of the principal to commit a crime and the disclosure of information is believed necessary to prevent the crime; or (5) the information is used to defend the licensee in a legal proceeding against an accusation of wrongful conduct.

9. Defaults

- Broker non-performance or substandard performance – thresholds
- Owner’s non-payment: broker’s lien, money damages
- Statutorily prohibited acts: fraud; flagrant use of misrepresentation or false premises; undisclosed conflicts; omission of termination date; felony; inadequate supervision of salespeople¹⁷

10. Remedies

- Terminate for covenant defaults
- Injunction: confidentiality, agency defaults

¹⁷ § 455.604. Prohibited acts (a) The commission may upon its own motion, and shall promptly upon the verified complaint in writing of any person setting forth a complaint under this section, ascertain the facts and, if warranted, hold a hearing for the suspension or revocation of a license or registration certificate or for the imposition of fines not exceeding \$ 1,000, or both. The commission shall have power to refuse a license or registration certificate for cause or to suspend or revoke a license or registration certificate or to levy fines up to \$ 1,000, or both, where the said license has been obtained by false representation, or by fraudulent act or conduct, or where a licensee or registrant, in performing or attempting to perform any of the acts mentioned herein, is found guilty of: (1) Making any substantial misrepresentation. (2) Making any false promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when he could not or did not intend to keep such promise. (3) Pursuing a continued and flagrant course of misrepresentation or making of false promises through salesperson, associate broker, other persons, or any medium of advertising, or otherwise. (4) Any misleading or untruthful advertising, or using any other trade name or insignia or membership in any real estate association or organization, of which the licensee is not a member. (5) Deleted by 2009, July 6, P.L. 58, No. 14, § 2, effective in 60 days [Sept. 4, 2009]. Page 91 63 P.S. § 455.604 (5.1) Failing to comply with any of the requirements of section 608.5. (6) Failing to preserve for three years following its consummation records relating to any real estate transaction. (7) Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom he acts. (8) Placing a “for sale” or “for rent” sign on or advertising any property without the written consent of the owner, or his authorized agent. (9) Failing to voluntarily furnish a copy of any listing, sale, lease, or other contract relevant to a real estate transaction to all signatories thereof at the time of execution. (10) Failing to specify a definite termination date that is not subject to prior notice, in any listing contract. (11) Inducing any party to a contract, sale or lease to break such contract for the purpose of substitution in lieu thereof of a new contract, where such substitution is motivated by the personal gain of the licensee. (12) Accepting a commission or any valuable consideration by a salesperson or associate broker for the performance of any acts specified in this act, from any person, except the licensed real estate broker with whom he is affiliated. (12.1) Paying of a commission or any valuable consideration by a broker to anyone other than his licensed employees or another real estate broker for the performance of any acts specified in this act. (13) Failing to disclose to an owner in writing his intention or true position if he directly or indirectly through a third party, purchased for himself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with his office to sell or lease. (14) Being convicted in a court of competent jurisdiction in this or any other state, or Federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or any felony or pleading guilty or nolo contendere to any such offense or offenses. (15) Violating any rule or regulation promulgated by the commission in the interest of the public and consistent with the provisions of this act. (15.1) Failing to provide a disclosure required by this act or any other Federal or State law imposing a disclosure obligation on licensees in connection with real estate transactions. (16) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his licensed salespersons or associate brokers within the scope of this act. (17) Failing, within a reasonable time as defined by the commission, to provide information requested by the commission as the result of a formal or informal complaint to the commission, which would indicate a violation of this act. * * * (19) Paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit or expenditures for a principal, or in violation of this act. (20) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency. (21) Performing any act for which an appropriate real estate license is required and is not currently in effect. (22) Violating any provision of the act of October 27, 1955 (P.L. 744, No. 222), known as the “Pennsylvania Human Relations Act,” or any order or consent decree of the Pennsylvania Human Relations Commission issued pursuant to such act if such order or consent decree resulted from a complaint of discrimination in the area of activities authorized by virtue of this act. * * *

- Money damages
- Owner limited liability: interest in real estate
- Broker limited liability: fee, insurance coverage, ceiling/floor

11. Expenses

- Signage
- Advertising
- Prevailing party's fees are paid

12. Regulatory Compliance; Miscellaneous

- Notice
- No assignment by broker
- Venue; choice of law

13. Commission Basis: Defined "Price" and "Rent" – Exhibit D

- Exclude recapture, relocation, pick-up leases and their costs
- Exclude – free rent, tenant allowance, security deposit, renewal after a "coverage" period expires
- Include – termination penalties in lieu of rent
- Options if in lease provisions – no renewal if outside of contract
- Payment which would have been due but for owner's (willful, malicious, negligent) acts or omissions
- Payment which would have been paid but for default in payment – exempts broker from credit risk of prospect; does not need to qualify prospect
- Open – additional rent; essential or discretionary; purchase options; additional space based on outside increases (tax increase, insurance market)
- Sharing security deposits
- Other reimbursement for out-of-pocket expenses: signage, publication, telephone, copy, travel, meals
- Exclude subleasing

14. Payment

- Signing
- Possession
- Rent commencement
- From receipts – "as, if and when" received compared to "ready, willing and able" prospect, subsequent rent defaults
- Discount for up-front payment related to installments
- Define "sale": merger, stock sale, portfolio sale, gift, family limited partnership, trust, admission or withdrawal of members, death or bankruptcy, condemnation, casualty, involuntary
- Define "lease": lease, sublease, assignment, license

15. Renewal, Extension, or Expansion

- Step down in Commission

- Continuousness of leasing

16. Sale

- Commission reduced by earlier attributable lease commission to years following closing
- Continuousness - Six months up to maximum 1 year

FORM AGENCY AGREEMENT

THIS AGENCY AGREEMENT (this “Agreement”) is made as of the [] day of [] (“Effective Date”), by and between [] having an address [] Vice President, (“Client”), and [], Attention: [] (“Broker”).

W I T N E S S E T H:

1. Effective on the Effective Date and subject to the terms and conditions of this Agreement, Client hereby grants to Broker the exclusive right agreement to obtain for Client the transfer by purchase or, if applicable, lease of certain premises located at [] (the “Premises”). It is understood and agreed that the purchase and, if applicable, lease of the Premises will be subject to the negotiated terms and conditions of (i) a purchase agreement (“Purchase Agreement”) between Client, as seller, and a qualified purchaser, as buyer, (a “Third-Party”), or (ii) if applicable, a lease agreement between Client, as landlord, and such Third-Party, as tenant, demising the Premises to the Third-Party. Client shall decide in its sole discretion whether to lease and retain fee title to the Premises or to enter into a Sale Agreement and convey to a Third-Party, or to do neither.

2. The term of this Agreement shall commence on the Effective Date and shall continue in effect until [] (“Expiration Date”), but may be extended for an additional three (3) month term, by Client by written notice no later than thirty (30) days prior to the Expiration Date, as the same may be extended, and thereafter may be extended for additional one (1) month periods, from month to month, provided, however, solely upon at least ten (10) days prior written notice from Client, Client shall have the right to remove its interest in the Premises from the market; should Client return its interest in the Premises to the market before the Expiration Date, Broker shall continue to be the broker under the terms hereof. At any time after the Expiration Date, Client shall have the right to terminate this Agreement for any reason on thirty (30) days prior written notice. In the event that Broker fails to diligently perform its Services, in Client’s reasonable opinion, at any time, or an Event of Default (defined below) otherwise occurs, Client shall have the right to terminate this Agreement promptly on prior written notice.

3. Client is entering into this Agreement in reliance on Broker’s special and unique abilities with respect to performing the Services. Broker accepts the relationship of trust and confidence established between it and Client by this Agreement. Broker covenants that:

(a) Broker will use its best efforts, skill, judgment, and abilities to perform its customary services, including, without limitation, the following (“Services”):

- (i) investigating the local market of the subject property as to properties of similar size, location, finishes, and amenities and with similar kinds of leases,
- (ii) recommending appropriate financial and inducement proposals to compete effectively for a Qualified Prospect (defined below) in the context of the local market,
- (iii) recommending advertising and marketing programs,

(iv) gathering contacts for potential Qualified Prospects and recommending offer recipients,

(v) preparing a written comprehensive Strategic Plan (defined below) with measurable goals for number of Qualified Prospects, Broker shall assemble and produce for the Client review and approval an offering brochure and/or other marketing materials of a type that is customary for similar properties which shall include, as appropriate, property facts, photographs, high-quality graphics, cash flow projections, market competition data, descriptive area and location information, site plan, and other relevant information as available,

(vi) negotiating terms to improve Client's benefits and reduce Client's detriments including, without limitation, [rent holidays, tenant allowances, security deposits, restrictions on increases in basic rent, formulas for increases and restrictions on additional rent],

(vii) identifying, interviewing and qualifying Qualified Prospects, [provided, however, that the Client shall have the ultimate responsibility for determining the financial condition and capabilities of any Qualified Prospect,

(viii) requiring each Qualified Prospect to execute and deliver to Broker a confidentiality agreement in the form attached hereto as Exhibit B,

(ix) making the necessary arrangements with the Client to prospect to physically inspect the Premises,

(x) touring the Premises with Qualified Prospects, and

(xi) maintaining records of the identity and contact information for Qualified Prospects.

(b) Broker has no material obligations, commitments, or impediments of any kind that would adversely affect the performance of its Services.

(c) Broker shall provide the Services, subject to the terms and conditions of this Agreement, in a good and efficient manner, using the standard of care and diligence as is customary for professional providers of like services within the commercial real estate services industry. **OR** All of the Services to be furnished by Broker pursuant to this Agreement, from its inception until the sale of the Premises has been fully consummated, shall be performed at a minimum (i) at a standard and quality that prevails among brokers of high quality knowledge and skill engaged in brokerage practice throughout the United States under the same or similar circumstances involving the sale of a property with the qualities of the Premises, (ii) with efficient business administration and superintendence of its Services (iii) in the most expeditious manner consistent with the interests of Client, (iv)] in accordance with Client's written requirements and procedures that are consistent with the terms of this Agreement and copies of which requirements and procedures shall have been provided to Broker in advance, (v) in accordance with applicable brokerage professional codes, standards, regulations, and canons, and (vi) in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, orders, and with those of any other body having jurisdiction of the Broker, or this Agreement, including anti-corruption laws. The Broker's personnel

will advise Client of any material impact on the Services caused by any changes to these minimums of which Broker is aware.

(d) Broker's standard of conduct shall include, without limitation, to

(i) deal honestly and in good faith

(ii) present all written offers, written notices and other written communication in a timely manner; provided a listing broker does not have to present additional offers subsequent to the seller's acceptance of an offer if:

(A) the waiver is in writing, and

(B) the waiver adheres to manners prescribed by the

Pennsylvania Real Estate Commission via regulation;

(iii) account for all money received from a real estate consumer;

(iv) timely disclose to any conflicts of interest;

(v) to advise the Client to seek expert advice on matters relating to a transaction beyond the Broker's expertise;

(vi) to provide the Client with reasonable, professional and competent service in accord with standards established by law;

(vii) keep the Client informed as to the status of the transaction; and

(viii) to inform the Client of the tasks that must be completed to satisfy an agreement such as compliance with the land and utility company requirements.

(e) Broker will be liable for all its errors in judgment, if any, relative to the Services, [except in the case of errors in judgment with respect to Broker's duty to Client, in which case Broker's liability shall arise only when caused by Broker's negligence or willful misconduct in providing the Services].

(f) Broker will not use or employ any other broker to offer the Premises for sale without Client's written consent.

4. (a) All persons connected with [engaged or employed by] the Broker directly in charge of the brokerage work are duly licensed under the laws of the State in which the Premises is located.

(b) Broker is acting as an independent contractor in its capacity under this Agreement. Nothing contained in this Agreement or in the relationship of Client and Broker shall be deemed to constitute a partnership, joint venture, or any other relationship between Client and Broker except as limited by the terms of this Agreement.

(c) Broker's authority is limited to performing the Services in accordance with the terms in this Agreement, and Broker does not have any authority under this Agreement to

execute any contracts for or on behalf of Client or otherwise bind Client in any manner, nor to engage in any other services on behalf of Client.

5. Broker agrees that, without the prior written consent of Client in each instance, (a) the “Confidential Information” (as hereinafter defined) shall be held confidential and may not be reproduced or disseminated, distributed, circulated or disclosed to, or discussed with, any person, third party or entity, in whole or in part, by Broker or any Informed Representative (as hereinafter defined), (b) the Confidential Information may be disclosed to and discussed among only those officers, directors, partners, members, principals, employees, consultants, accountants, attorneys or other agents or representatives of Broker (each, an “Informed Representative”) who reasonably need to review and understand the Confidential Information in order to enable Broker to perform its obligations hereunder, and (c) the Confidential Information shall be used only in connection with the performance of Broker’s obligations hereunder and may not be used in any manner adverse to Client. Without limiting the foregoing, Broker agrees not to use (a) the name of any “Client Affiliate” (as hereinafter defined) for Broker’s publicity or advertising purposes (whether with respect to transactions consummated or being negotiated by Broker under the terms of this Agreement or otherwise), or (b) any trademark or tradename of any “Client Affiliate”, without the prior written consent of Client in each instance. Broker shall cause each Informed Representative to comply with the provisions of this Section, and, if requested by Client, to execute an agreement containing provisions concerning the Confidential Information comparable to those set forth herein. Upon request by Client at any time, Broker shall either return all of the Confidential Information (including copies thereof) to Client or shall destroy all internal documents and electronic records containing Confidential Information and provide to Client an officer’s certificate confirming such destruction. The provisions of this Paragraph shall survive the expiration or termination of this Agreement.

6. All plans and specifications, drawings, computations, sketches, data, survey results, photographs, renderings, models, and other materials peculiar to the Services prepared by Broker or Broker’s consultants (“Work Material”) are the property of Client and for Client’s exclusive use and re-use at any time without further compensation and without any restrictions, and will be treated by Broker as Confidential Information of Client. [All such Work Material is a “work made for hire” in which all right, title and interest, including ownership of copyright, is owned by Client, except to the extent it incorporates Broker’s Intellectual Capital (as hereinafter defined). If the Work Material is not considered a work made for hire owned by Client by operation of law, Broker hereby unconditionally assigns and transfers to Client all title, ownership and copyright privileges in and relating to such, except to the extent it incorporates Broker’s Intellectual Capital. Promptly following termination of the engagement provided for herein, Broker will deliver to Client all Work Material in connection with Broker’s performance of the Services. Notwithstanding any provision hereof to the contrary, all methodologies, systems, procedures, management tools, workshops, software, concepts, ideas, inventions, know-how and other intellectual capital that Broker has developed, created or acquired prior to performing Services under this Agreement, or develops, creates or acquires during the term hereof or thereafter (“Broker’s Intellectual Capital”) are and will remain the sole and exclusive proprietary property of Broker, and Client will not have or acquire any right, claim, title or interest in or to any of Broker’s Intellectual Capital, except to the extent otherwise agreed by the parties in a separate written agreement signed by authorized representatives of each party. Broker’s Intellectual Capital will be deemed to be the confidential and proprietary information of Broker and shall be held, treated and/or returned to Broker (or, at Broker’s election, destroyed) in the same manner as if it were Confidential Information in accordance with Paragraph 5 above. Furthermore,

Client will receive no ownership of or right to any of Broker's working papers or manuals, such as administrative and quality assurance documentation or internal correspondence.]

7. During the term of this Agreement, Client will refer to Broker all inquiries and offerings received by Client with respect to the Premises, regardless of the source of such inquiries or offerings, other than inquiries and offerings from any Excluded Party (as hereinafter defined).

8. If, upon the Expiration Date or earlier termination of the term of this Agreement, Client shall have neither accepted an offer for the sale of the Client's interest in the Premises nor have entered into a Sale Contract for the Premises, then Broker, upon such Expiration Date, shall submit to Client a list of the parties with whom Broker has had "Active Bona Fide Negotiations" (defined below) for the purchase of the Client's interest in the Premises. Client agrees that if, within three (3) months after the Expiration Date or earlier termination of the term of this Agreement, Client shall execute a Sale Contract and complete the sale to such a prospective buyer then, subject to Paragraph 9(e) hereof, Client shall pay Broker one (1) full commission with respect thereto at the time and in the manner set forth in this Agreement.

(a) If a licensed real estate broker other than Broker is the effective procuring cause of any sale covered by this Agreement, Broker shall have such other broker (i) agree to accept Broker as such other broker's sole source for compensation, reimbursement, or income, and (ii) unconditionally release Client from all liability and obligations to such other broker in a written agreement acceptable to Client [but only for such Losses up to \$200,000; provided however, notwithstanding anything to the contrary in Paragraph 16 below, no such limitation of Broker's liability for Losses shall apply if it is affirmatively confirmed that such claim of having dealt with Broker is true, whether by Broker's admission, settlement, stipulation or finding by a court, authorized arbitrator or similar official tribunal (as memorialized in writing). For the avoidance of doubt, Broker shall indemnify Client, if applicable, in accordance with the terms of Paragraph 13 below, unless Broker shall be obligated to indemnify Client pursuant to the terms of this Paragraph 8.] Broker acknowledges that (i) no dual commission shall accrue or be payable by Client pursuant to this Agreement, (ii) in the event that, as a result of any dual representation, any Broker Affiliate (as hereinafter defined) shall become entitled to any portion of any commission payable hereunder, then Broker shall be responsible for the payment of such portion to such Broker Affiliate, and (iii) such payment to a Broker Affiliate shall not affect the calculation of any Rebate (as hereinafter defined).

(b) Broker is not authorized or empowered to engage any other realtor, broker or agent under or in connection with this Agreement without the prior specific approval of the Client; however, Broker agrees to use commercially reasonable efforts to cooperate with other realtors, brokers or agents in endeavoring to sell the Property. The commission provided for hereunder shall constitute the entire amount which, in the absence of an express written agreement of the Client to the contrary, the Client shall be obligated to pay to Broker and any co-broker, with the division of such commission between Broker and the co-broker to be upon such basis as the Broker and the co-broker mutually agree. The Client shall pay the commission directly to Broker, and Broker shall be responsible to pay to persons engaged by Broker to carry out its obligations hereunder or to cooperating brokers or agents engaged by Broker, all fees, commissions and other payments owing on account of the sale of the Properties. Broker shall indemnify, defend and hold the Client harmless from any sales commissions or fees due to any person or entity which has been

engaged by Broker in connection with the sale of the Property. This indemnity provision shall survive the expiration or sooner termination of this Agreement.

(c) Broker shall not be entitled to reimbursement for any expenses or any other sums Broker incurs related to or involving the performance of the Services.

9. Client and Broker acknowledge and agree that Broker shall be entitled to commissions as follows:

(a) The formula for commission is set forth on Exhibit D. In connection with the acquisition of the Premises, Broker shall be entitled to a commission up to [____]percent (____%) of the Gross Proceeds (as defined below).

(b) [Client and Broker intend to adjust the consideration payable by or to Client in connection with this transaction as a component of the business transaction, separate from Broker procuring a ready, willing and able party to perform the transaction. Broker acknowledges that the Client is not a licensed real estate broker. To the extent required by applicable law, the calculation of the commission and the pricing for the transaction shall be disclosed to any potential landlord, seller or purchaser prior to the consummation of the corresponding portion of the transaction. It is agreed by Client and Broker that such adjustment is in consideration of the business relationship established by this Agreement and not in consideration of any brokerage services rendered or to be rendered by any Client. If appropriate laws and regulations would otherwise prohibit or sanction the payment adjustment set forth in this Paragraph 9, Client and Broker will in good faith endeavor to agree on an alternative adjustment that will afford Client an equivalent economic benefit without violating applicable laws or regulations. Broker's obligation to perform this arrangement, or alternative adjustment shall survive termination or expiration of this Agreement.]

(c) Client will pay the same commission to Broker if, within a period of [three months] after this Agreement expires, Client or any other person leases or conveys all or any portion of the Property or any space therein to anyone with whom Broker negotiated during the term of this Agreement (or any other person controlled by or under common control with such person); provided however, Broker shall not be entitled to such commission unless (i) such person ("Qualified Prospect") had been identified on a list of the persons with whom Broker negotiated by name and contact information of the Qualified Prospect's authorized officer, qualified by Broker as acceptable or unacceptable to Client and so disclosed on such list, and shown the Property by Broker during the Term hereof, with the date of such physical tour so disclosed on such list (ii) that qualified prospect has executed a confidentiality agreement and (iii) that list was provided to Client by Broker, at the address set forth above, within two (2) weeks after the termination of this Agreement.

(d) The commission computed in accordance with the rates set forth in Paragraph 9(c) above shall be based upon the Gross Proceeds, which shall include the principal amount of any mortgages, loans or other obligations of Client which may be assumed by the buyer or which the buyer takes title "subject to" and the principal amount of any purchase money loans or mortgages taken back by Client. Broker's commission shall be paid on terms paralleling the payment and receipt of the purchase price under the Sale Contract; provided, however, that the parties to this Agreement may alter the payment terms by mutual agreement.

(e) In the event a Sale Contract is signed, but title is not transferred for any reason whatsoever, Broker shall receive no commission or other compensation regardless of whether or not Client is entitled to retain any down payment made by the purchaser. Client has no responsibility to pay any fee or compensation to Broker (including reimbursement of any costs incurred by Broker in connection with this Agreement), except as specifically provided in this Agreement.

(f) Notwithstanding anything contained herein to the contrary, no commission shall be due to Broker in connection with any transaction to (a) any party identified on Exhibit A, or any of its affiliates, successors or assigns, (b) any prospect with whom active negotiations were pending on the expiration date or the date of termination of any agency agreement or arrangements (including any oral or implied extension of any such agreement or arrangements) between Client and _____, and/or its successors and assigns (collectively, the "Prior Broker"), and who is identified in a list furnished by the Prior Broker to Client in accordance with the terms of the Prior Sales Agreement, (c) any Client Entity, or (d) any being conducted by Client at the Property (each of the parties referred to in clauses (a) through (d) being referred to herein as an "Excluded Party").

(g) [In order to induce Client to retain Broker for the Services and in consideration of the business relationship established by this Agreement, Broker shall pay to Client a fee (the "Rebate") based on the total commissions (including all bonus commissions or fees) paid to Broker for any and all transactions entered into by Client pursuant to this Agreement, all as more fully described, and on and subject to the terms and conditions set forth, in Exhibit D attached hereto and incorporated herein.]

10. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

11. This Agreement contains the entire understanding of the parties. Broker may not assign this Agreement nor may Broker assign its rights, duties or obligations under this Agreement. This Agreement may not be changed or modified orally but only by written instrument signed by the party to be charged.

12. All notices given hereunder by either party shall be in writing and shall be personally delivered or sent by certified or registered mail, return receipt requested, postage prepaid, to the other party at the following address(es):

To Client: _____

With a copy to: Gregory Gosfield, Esquire
Klehr Harrison Harvey Branzburg LLP
1835 Market Street
Philadelphia, PA 19103

and _____

To Broker:

With a copy (which shall
not constitute notice) to:

Any notice so given shall be deemed effective upon receipt thereof by the party for which the same is intended. Either party may designate, by notice to the other given in accordance with this provision, a different address for the giving of notices pursuant to this Agreement.

13. Notwithstanding anything to the contrary contained in this Agreement, Client shall not be liable or responsible for any accident, loss, injury, or damage attributable to the extent arising out of the negligence of Broker, its partners, agents, employees, successors, and assigns, occurring or accruing on the Premises in performing the Services during the Term of this Agreement or in connection with this Agreement. Broker shall and does fully indemnify, protect, defend, and hold harmless Client, Client's shareholders, venture partners, employees, agents, successors, and assigns from and against all liens, demands, liabilities, causes of action, judgments, costs, claims, damages, suits, losses, and expenses, or any combination thereof, including attorneys' fees or any nature, kind, or description ("Liabilities"), of any person or entity whomsoever or, whatsoever, to the extent arising out of, caused by, or resulting from the negligence [of or violation of the terms of this Agreement by] or [or willful misconduct of] Broker, its partners, agents, employees, successors, and assigns. This indemnity shall not be limited in any way by any limitations on the amount or type of proceeds, damages, compensation, or benefits payable under insurance policies, worker's compensation acts, disability benefit acts, or other employee benefit acts held by Client or Broker. This indemnity shall survive any termination of this Agreement.

14. [Notwithstanding anything to the contrary contained in this Agreement, Broker shall not be liable or responsible for any accident, loss, injury, or damage attributable to the extent arising out of the negligence of Client, its partners, agents, employees, successors. Client shall and does fully indemnify, protect, defend, and hold harmless Broker, Broker's shareholders, venture partners, employees, agents, successors, and assigns from and against all Liabilities of any person or entity whomsoever or, whatsoever, to the extent arising out of, caused by, or resulting from the negligence or willful misconduct of Client, its partners, agents, employees, successors, and assigns.]

15. If any Liabilities referred to in this Agreement arise or are made, asserted, or threatened against any of the parties indemnified in this Agreement, Client shall have the right to withhold from any Commission, due or to become due to Broker, an amount sufficient in its reasonable judgment to protect and indemnify the indemnified parties from and against any such Liabilities. [Notwithstanding anything to the contrary contained in this Agreement, (a) neither Client

nor Broker shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, regardless of the foreseeability or the cause thereof; (b) in no event shall Broker or Client incur liability under this Agreement or otherwise relating to, arising out of, or in connection with the provision of Services above the commissions that are actually paid to Broker in connection with transactions involving the Premises; and (c) Client acknowledges and agrees that Broker shall have no liability with respect to any loss, damage, claim or expense incurred by or asserted against Client arising out of, based upon or resulting from any erroneous data provided by Client or any third party or Client's failure to provide accurate information or complete documentation regarding Premises.]

16. The obligations set forth in Paragraphs 13, 14, and 15 above shall survive expiration of the term of this Agreement or any termination of this Agreement.

17. Broker's failure or refusal to perform or observe any [material] obligation, covenant, or condition of this Agreement and any misrepresentation by Broker in this Agreement or the performance of its Services shall constitute an "Event of Default."

(a) Should an Event of Default occur, [subject to Paragraph 2 above,] Client may, at its option, and in addition to all other rights and remedies given under this Agreement and at law or in equity, terminate this Agreement.

(b) No failure by Client to insist upon the strict performance of any obligation, covenant, agreement, term, or condition of this Agreement, or to exercise any right or remedy available upon a breach or any subsequent breach of such obligation, covenant, agreement, term, or condition, shall act as a waiver of any rights or remedies under this Agreement. No obligation, covenant, agreement, term, or condition of this Agreement, and no breach of this Agreement shall be waived, altered, or modified, except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every obligation, covenant, agreement, term, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach of this Agreement.

18. Broker will spend the necessary time and effort in cooperation with the officers and employees of Client or any Client Affiliate, as well as other professionals designated or retained for the acquisition or lease of the Premises, in order to become reasonably familiar with the Premises and to incorporate into Broker's work all reasonably available information.

19. Each party makes the following ongoing representations and warranties to the other party:

(a) Such party has full power and authority to enter into this Agreement and carry out its obligations under this Agreement;

(b) Such party has full legal rights to grant the licenses and rights granted herein;
and

(c) Such party is not under, and will not assume, any contractual obligation that prevents such party from performing its obligations or conflicts with the rights and licenses granted in this Agreement.

20. Notwithstanding any other provision of this Agreement, neither party, nor any of their respective agents, representatives, Affiliates, officers, shareholders or employees will have any personal obligation or liability for any of the terms, covenants, agreements, undertaking, representations or warranties contained in this Agreement.

21. Any provision of this Agreement which is stated to survive the later of the Expiration Date or termination of this Agreement will be and remain binding upon and for the benefit of the parties hereto until fully performed, kept or observed. The invalidity or unenforceability of any of the provision hereof will not affect the validity or enforceability of the remainder hereof. The provisions of this Agreement will inure to, and be for, the benefit of and may be enforced by both Client and Broker, their respective beneficiary(ies) or the designated representatives of their beneficiary(ies) of their respective successors and permitted assigns.

22. Upon expiration or earlier termination of this Agreement, Broker shall execute a Release in the form attached as Exhibit ____, or otherwise as Broker and Client may agree upon.

23. This Agreement and any Exhibits hereto represent the entire agreement between Client and Broker with respect to the Services and supersede all prior negotiations, representations or agreements. Neither this Agreement, nor any provision hereof may be modified, waived, or terminated orally, but only by an instrument in writing signed by the party to be charged.

24. Broker agrees to execute and deliver to Client, at any time and from time to time upon not less than ten (10) days' prior notice, a statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating whether or not, to Broker's best knowledge, either party is in default in the performance of its obligations under this Agreement, and if so, specifying each such default.

25. Client may, from time to time, prior to termination of this Agreement, request an "in progress" set of electronic files for all or any portion of the Services, and Broker will deliver the same to Client within three (3) business days of such request. Broker also will furnish Client, subject to Paragraph 6 above, with a set of discs containing all Work Materials upon termination of this Agreement.

26. Definitions:

(a) "Active Bona Fide Negotiations" as used in this Agreement, shall mean to negotiate with a Qualified Prospect who made a physical walking tour of the Premises, or who submitted a proposed Sale Contract with purchase price in writing to Broker[, and who closed on the transaction upon substantially the same terms as those obtained by the Broker during the Term.]

(b) "Agreement" is defined in the introductory paragraph.

(c) "Broker" is defined in the introductory paragraph.

(d) “Broker Affiliate” shall mean those persons, corporations and other entities that are affiliated with or that control, are controlled by or are under common control (directly or indirectly) with, or that are subsidiaries of, Broker and any employee, independent contractor or agent of any of the foregoing parties. Broker’s Commission shall be the sole compensation paid to Broker. Broker shall not be entitled to reimbursement for any expenses or any other sums Broker incurs related to or involving the performance of the Services.

(e) “Broker Intellectual Capital” is defined in Paragraph 6.

(f) “Client” shall mean each of Client and those persons, corporations and other entities that are affiliated with or that control, are controlled by or are under common control (directly or indirectly) with, or that are direct or indirect subsidiaries of, Client).

(g) “Client Affiliate” is defined in Paragraph 5.

(h) “Confidential Information” shall mean and refer to all confidential or proprietary information or data (whether written, recorded electronically or oral) of Client or any other “Client Affiliate”, including, without limitation, any research, developmental, zoning, land use, title, engineering, manufacturing, environmental, technical, marketing, sales, financial, operating, performance, cost or other business information or data, know-how, programming or software techniques (whether such confidentiality or proprietary status is indicated orally or in writing or in a context in which Client reasonably communicated, or Broker should reasonably have understood, that the information or data should be treated as confidential, whether the specific words “confidential” or “proprietary” are used and whether any such information or data was obtained or developed by, or disclosed to, Broker or any Informed Representative prior to, on or after the date hereof).

(i) “Effective Date” is defined in the introductory paragraph.

(j) “Event of Default” is defined in Paragraph 17.

(k) “Excluded Party” is defined in Paragraph 9(f).

(l) “Expiration Date” is defined in Recital 2.

(m) “Gross Proceeds,” shall mean the total fair market value of the gross consideration paid in connection with such transaction including, without limitation, cash, notes, securities, property, assumed indebtedness, deferred payments (contingent or otherwise), prepaid expenses, non-customary prorrations in favor of the transferor, and any other form of consideration. Gross Proceeds shall not be reduced by any amount placed in escrow as part of the transaction or any deferred consideration, fees, prorrations or closing expenses.]

(n) “Informed Representative” is defined in Section 5.

(o) “Liabilities” is defined in Paragraph 13.

(p) “Offer the Premises for Sale”, as used in the Agreement, shall mean to present to Qualified Prospect as buyers the terms and conditions upon which the Client is willing to sell and convey the Client’s interest in Premises.

- (q) “Premises” is defined in the Recital 1
- (r) “Premises” is defined in the Recital 1.
- (s) “Purchase Agreement” is defined in the Recital 1
- (t) “Qualified Prospect” shall mean prospects with acceptable characteristics, including, without limitation: proof of net worth or financing of at least _____; not a direct or compete or adversary of Client; not convicted of a felony; not subject to a characteristic that would be adverse to its credit rating.
- (u) “Prior Broker” is defined in Paragraph 9(f).
- (v) “Rebate” is defined in Paragraph 9(g).
- (w) “Sale Contract” means an enforceable agreement to purchase Seller’s interest in the Property.
- (x) “Services” is defined in Paragraph 3(a).
- (y) “Show the Premises”, as used in this Agreement, shall mean presenting the Premises to prospective buyers and shall include the methods utilized in Strategies Plan (defined below). Client shall make its determination whether to approve or disapprove the marketing methods on the basis of Client’s personal taste, the industry norm in marketing similar properties, and the potential effect of the proposed marketing on Client’s other properties, if any.
- (z) “Third Party” is defined in the Recital 1.
- (aa) “Work Material” is defined in Paragraph 6.

27. Signage. Broker will obtain Client’s prior written consent to any advertisement, sales promotion, press release or other publicity relating to the Services or this Agreement, which consents may be given or withheld in Client’s sole discretion. OR During the term of this Agreement, Broker is authorized to display Broker’s sign upon the Property provided it is in compliance with all applicable laws. Client agrees that Broker’s sign will be the only lease sign displayed on the Property. Client will reimburse Broker up to \$_____ for the cost of its signs upon presentation of a supporting third party invoice detailing the time and materials and applicable costs incurred therefor.

28. Advertising. Broker is hereby authorized to incur advertising expenses to lease the Property. Client will reimburse Broker up to \$_____ for advertising expenses upon presentation of a third party invoices therefor.

29. American Rule, or Prevailing party’s fees are paid. Except for reimbursement by Client of Broker’s costs under Section[] of this Agreement, the parties agree that each party shall bear its own expenses in the administration and enforcement of their rights and obligations under this Agreement.

30. In the event of a sale, conveyance or other disposition of any portion of the landlord's interest in the property at which the lease is made, the landlord shall remain responsible to pay Broker the commissions due and which may become due hereunder, and in addition, landlord shall obtain from the grantee of its interest and deliver to Broker an agreement, in form and substance and from a party reasonably acceptable to Broker, whereby the grantee assumes landlord's obligations hereunder.

31. CLIENT AND BROKER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.

[Remainder of page intentionally left blank; next page is signature page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CLIENT:

By: _____
Name:
Title:

By: _____
Name:
Title:

BROKER:

By: _____
Name:
Title:

EXHIBIT A

List of Prospective Purchasers Excepted from Agreement

EXHIBIT B

FORM OF BROKER SUPPORT LETTER

[To be typed on Client Letterhead]

_____, 200_

Re: Brokerage Commission Requirement;
[Insert Address]

To Prospective Landlord and/or Property Owner [Third-Party Buyer]:

This letter will confirm that [_____] has engaged [_____] (“**Broker**”) to act as its sole and exclusive national real estate service provider and more specifically to perform brokerage services, either directly or indirectly through a subagent, with respect to the above referenced project. We require that Broker receive a real estate commission from the [_____] in an amount up to [_____] (____%) of the purchase price, to be payable upon the closing of title under a purchase and sale agreement.

Therefore, it will be necessary for you to complete a written commission agreement with Broker acting on our behalf as soon as possible. Thank you for your cooperation.

Very truly yours,

By: _____
Name: _____
Title: _____

EXHIBIT C
CO-OPERATING BROKER AGREEMENT

THIS CO-OPERATING BROKER AGREEMENT (this "Agreement") is made as of the ____ day of _____, 200__ (the "Effective Date"), by and between _____, a _____ corporation having an address at _____ ("Client"), and _____, a _____ corporation having an address at _____ ("Broker").

W I T N E S S E T H:

1. Effective on the Effective Date and subject to the terms and conditions of this Agreement, Client hereby grants to Broker the non-exclusive right, together solely with [_____] under a separate Agency Agreement ("Agency Agreement"), to sell (but not lease) certain premises consisting of approximately _____ (_____) acres of land, together with the improvements thereon, if any, located at _____, which premises are owned by Client (the "Premises").

2. The term of this Agreement shall commence on the Effective Date and shall continue in effect until [_____], unless otherwise mutually agreed to by Client and Broker (the "Expiration Date"). Client shall, however, at any time, have the right to remove the Premises from the market by giving written notice to Broker. In the event that Broker fails to diligently pursue this assignment, in Client's reasonable opinion, or otherwise is in default under this Agreement, Client shall have the right to terminate this Agreement, at any time, on fifteen (15) days prior notice.

3. Broker agrees that it will use its best efforts to secure a satisfactory purchaser for the Premises, and, if Broker deems it necessary, Broker will also solicit the cooperation of other licensed real estate brokers. Broker represents that it possesses all of the consents, approvals and licenses required to perform the services contemplated by this Agreement.

4. Broker agrees that, without the prior written consent of Client in each instance, (a) the Confidential Information (as hereinafter defined) shall be held confidential and may not be reproduced or disseminated, distributed, circulated or disclosed to, or discussed with, any person, third party or entity, in whole or in part, by Broker or any Informed Representative (as hereinafter defined), (b) the Confidential Information may be disclosed to and discussed among only those officers, directors, partners, members, principals, employees, consultants, accountants, attorneys or other agents or representatives of Broker (each, an "Informed Representative") who reasonably need to review and understand the Confidential Information in order to enable Broker to perform its obligations hereunder, and (c) the Confidential Information shall be used only in connection with the performance of Broker's obligations hereunder and may not be used in any manner adverse to Client. Without limiting the foregoing, Broker agrees not to use (a) the name of any Client Affiliate (as hereinafter defined) for Broker's publicity or advertising purposes (whether with respect to transactions consummated or being negotiated by Broker under the terms of this Agreement or otherwise), or (b) any trademark or tradename of any Client Affiliate, without the prior written consent of Client in each instance. Broker shall cause each Informed Representative to comply with the provisions of this Paragraph, and, if requested by Client, to execute an agreement containing provisions concerning the Confidential Information comparable to those set forth herein. Upon

request by Client at any time, Broker shall either return all of the Confidential Information (including copies thereof) to Client or shall destroy all internal documents and electronic records containing Confidential Information and provide to Client an officer's certificate confirming such destruction. The provisions of this Paragraph shall survive the expiration or termination of this Agreement. As used herein, the term "Confidential Information" shall mean and refer to all confidential or proprietary information or data (whether written, recorded electronically or oral) of Client or any other Client Affiliate, including, without limitation, any research, developmental, zoning, land use, title, engineering, manufacturing, environmental, technical, marketing, sales, financial, operating, performance, cost or other business information or data, know-how, programming or software techniques (whether such confidentiality or proprietary status is indicated orally or in writing or in a context in which Client reasonably communicated, or Broker should reasonably have understood, that the information or data should be treated as confidential, whether the specific words "confidential" or "proprietary" are used and whether any such information or data was obtained or developed by, or disclosed to, Broker or any Informed Representative prior to, on or after the date hereof).

5. Subject to Paragraph 8 hereof, in the event that, at any time during the term of this Agreement, the Premises are sold upon terms acceptable to Client, in its sole and absolute discretion, and Broker was the effective procuring cause of such sale, then Broker acknowledges that any commission to which it may be entitled shall not be the obligation of Client, and Broker releases Client and Agent and waives any claim it may have against Client and Agent for any commission. Notwithstanding anything contained herein to the contrary, no commission shall be due to Broker in connection with any sale or transfer of title to (a) any prospective purchaser with whom active negotiations were pending (including any oral or implied extension of any such agreement or arrangements) under the Agent Agency Agreement, or the Separate Agency Agreement), and who is identified in a list furnished to Client in accordance with the terms of the Agency Agreement and the Separate Agency Agreement, (b) any Client Affiliate, or (c) any purchaser of the business being conducted by Client at the Premises (each of the parties referred to in clauses (a) through (c) being referred to herein as an "Excluded Party"). As used in this Agreement, the term "Client Affiliate" shall mean each of Client and those persons, corporations and other entities that are affiliated with or that control, are controlled by or are under common control (directly or indirectly) with, or that are direct or indirect subsidiaries of Client.

6. If, upon the expiration or earlier termination of the term of this Agreement, Client shall have neither accepted an offer for the sale of the Premises nor have entered into a contract of sale for the Premises, Broker shall submit to Client and Agent a list of the parties with whom Broker has had active negotiations for the sale of the Premises and who have made a written offer to purchase the Premises. Client agrees that if, within three (3) months after the expiration or earlier termination of the term of this Agreement, Client shall execute a contract of sale for the sale of the Premises with any of the parties disclosed in the list referred to in the preceding sentence, subject to Paragraph 8 hereof, Client shall pay Broker one (1) full commission with respect thereto at the time and in the manner set forth in this Agreement.

7. (a) If a licensed real estate broker other than Broker is the effective procuring cause of any sale covered by this Agreement, Broker shall have such other broker (A) agree to accept, as its sole compensation, an equitable portion of the commission payable to Broker pursuant to this Agreement, and (B) unconditionally release Client and Agent from all liability and obligations to such other broker in a written agreement acceptable to Client. Broker shall indemnify, defend and

hold each of Client and Agent harmless from and against any loss, cost, liability and expense (including, without limitation, attorneys' fees and disbursements) incurred in connection with any claim for any commission, fee or other compensation made by any broker, person or entity claiming to have dealt with Broker in connection with the Premises. If a broker engaged by Client under a separate agency agreement is the effective procuring cause of any sale covered by this Agreement, Broker shall be entitled to no commission.

(b) Broker acknowledges that (i) no dual commission shall accrue or be payable by Client or Agent pursuant to this Agreement, and (ii) in the event that, as a result of any dual representation, any Broker Affiliate (as hereinafter defined) shall become entitled to any portion of any commission payable hereunder, then Broker shall be responsible for the payment of such portion to such Broker Affiliate. As used in this Agreement, the term "Broker Affiliate" shall mean those persons, corporations and other entities that are affiliated with or that control, are controlled by or are under common control (directly or indirectly) with, or that are subsidiaries of, Broker and any employee, independent contractor or agent of any of the foregoing parties.

8. The commission shall not be deemed earned until the unconditional transfer of legal and beneficial title to the Premises in accordance with the contract of sale and payment in full of the purchase price provided in the contract of sale, at which time the commission shall be due and payable.

9. This Agreement contains the entire understanding of the parties. Broker may not assign this Agreement nor may Broker assign its rights, duties or obligations under this Agreement. This Agreement may not be changed or modified orally but only by written instrument signed by the party to be charged.

10. In the event a contract of sale is signed, but title is not transferred for any reason whatsoever, Broker shall receive no commission or other compensation, regardless of whether or not Client is entitled to retain any down payment made by the purchaser. Client has no responsibility to pay any fee or compensation to Broker (including reimbursement of any costs incurred by Broker in connection with this Agreement), except as specifically provided in this Agreement.

11. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

12. All notices given hereunder by either party shall be in writing and shall be personally delivered or sent by certified or registered mail, return receipt requested, postage prepaid, to the other party at the following address(es):

To Client:

With a copy to:

and

To Broker:

Attention: _____

With a copy to:

Attention: _____

Any notice so given shall be deemed effective upon receipt thereof by the party for which the same is intended. Either party may designate, by notice to the other given in accordance with this provision, a different address for the giving of notices pursuant to this Agreement.

13. In providing services under this Agreement, Broker shall comply with all applicable laws, rules, regulations, codes, orders and decrees that relate to real estate brokerage services or to any other services provided hereunder. Broker shall indemnify, defend and hold harmless Client from and against any and all claims, actions, demands, liabilities, losses, costs and expenses (including, without limitation, fines and any attorneys' fees and disbursements) arising out of, or relating to, any actual or alleged violation of any such laws, rules, regulations, codes, orders and decrees by Broker, any Broker Affiliate, any co-broker or any of their respective personnel. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

[Remainder of page intentionally left blank; next page is signature page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CLIENT:

By: _____

Name:

Title:

By: _____

Name:

Title:

BROKER:

By: _____

Name:

Title:

EXHIBIT D

“Lease. Payment shall be made by Client as follows: in cash a commission calculated as set forth on the attached Schedule of Commissions, and due and payable as follows:

- (i) 25% of the commission at signing
- (ii) 25% of the commission at tenant occupancy (meaning commencement at the Property of business with third parties) under such term.
- (iii) 25% of the commission with receipt of the first rent payment; and
- (iv) 25% of the commission two months after receipt of the first rent payment for such term

OR

Payment of Commission.

(a) One-half of the Commission for the initial Lease Term shall be deemed earned as of the date the Lease has been fully executed by Client and Tenant. The remaining one-half of the Commission for the initial Lease Term shall be deemed earned as of the date: (i) the term of the Lease has commenced and the Lease is in full force and effect, (ii) Tenant has delivered to Client a lease commencement letter confirming that (A) Tenant has accepted possession of the Premises (except for punchlist items and latent defects), (B) the term of the Lease has commenced and (C) the Lease is in full force and effect and binding on Tenant in accordance with its terms (but such Lease commencement agreements shall only be required if required under the Lease and to the extent required under the Lease), and (iii) Tenant has paid all amounts due under the Lease on or before commencement of the Lease Term (and any other sums then due under the Lease). The installments of the Commission for the initial Lease Term shall be payable within ten (10) business days following the date earned.

(b) The Commission for a renewal of the initial Lease Term shall be deemed earned as of the date (i) the written agreement extending the initial Lease Term has been fully executed by Client and Tenant, (ii) the extension of the initial Lease Term has commenced and (iii) Tenant has paid all amounts due under the Lease on or before commencement of the extension Lease Term. The initial installment of the Commission for an extension of the initial Lease Term shall be payable within ten (10) business days following satisfaction of the above conditions and receipt by Client of an invoice from Tenant Representative for the amount then due.

OR

Commission.

- (a) If during the Term of this Agreement (i) the Property or any portion thereof or space therein shall be “Leased” (meaning, full execution of lease agreement, commencement of rent payment and commencement of

occupancy) by Client to a tenant through the efforts of Broker, Client or any other person, Client shall pay Broker;

OR

- (a) (a) On any sale of the Property for which Broker is entitled to receive a commission hereunder, Broker shall, subject to the terms and conditions of this Agreement, receive a commission equal to ____ percent (____%) of the gross purchase price paid for the Property.
- (b) (Alternative (a)) On any sale of the Property for which Broker is entitled to receive a commission hereunder, Broker shall, subject to the terms and conditions of this Agreement, Client will not object or interfere in any claim by Broker for commission or shared commission due from Client, nor a commission equal to (a) _____ percent (____%) of the gross purchase price paid for the Property if Broker is the sole procuring cause of the sale, and (b) _____ percent (____%) of the gross purchase price paid for the Property if any outside broker is the sole procuring cause of the sale.
- (c) The commission shall not be deemed earned until the following conditions are met: the execution and delivery by Client and Buyer of a Purchase and Sale Contract acceptable to Client, in Client's discretion, in form and substance; Broker shall procure a Buyer satisfactory to Client in Client's sole discretion; the unconditional transfer of legal and beneficial title to the Property in accordance with the contract of sale and payment in full of the purchase price provided in the Sale Contract.
- (d) The commission computed in accordance with the rates set forth in Paragraph (a) above shall be based upon the total sales price, which shall include the principal amount of any mortgages, loans or other obligations of Client which may be assumed by the buyer or which the buyer takes title "subject to" and the principal amount of any purchase money loans or mortgages taken back by Client. Broker's Commission shall be paid on terms paralleling the payment and receipt of the Purchase Price under the Sale Contract; provided, however, that the parties to this Agreement may alter the payment terms by mutual agreement.

In the event a Sale Contract is signed, but title is not transferred for any reason whatsoever, Broker shall receive no commission or other compensation, regardless of whether or not Client is entitled to retain any down payment made by the purchaser. Client has no responsibility to pay any fee or compensation to Broker (including reimbursement of any costs incurred by Broker in connection with this Agreement), except as specifically provided in this Agreement.

OR

COMMISSION SCHEDULE

Lease Year	Commission Percentage
Year 1	6%
Year 2	5%
Year 3	4%
Year 4	3%
Year 5	3%
Year 6	3%
Total Commission	

A. Extension Terms. Tenant Representative shall be entitled to a Commission in the event that Tenant extends the Lease Term. However, in the event Tenant Representative is not the sole and exclusive representative of Tenant at the time Tenant extends the Lease Term (as confirmed by a written statement from Tenant to Client), Tenant Representative shall not be entitled to a Commission. The Commission rate for the aforementioned additional space shall be 3% of the base rent paid for the extended Lease Term, as defined in paragraph C below.

B. Expansion Space. Tenant Representative shall be entitled to a Commission in the event that Tenant leases additional space in the Building. However, in the event Tenant Representative is not the sole and exclusive representative of Tenant at the time Tenant leases additional space in the Building (as confirmed by a written statement from Tenant to Client), Tenant Representative shall not be entitled to a Commission. The Commission rate for the aforementioned additional space shall be 3% of the base rent for the term of the expansion space, as defined in paragraph C below.

C. Computation of Base Rent. The Commission shall be computed on the base rent set forth in the Lease, except that base rent does not include, and no Commission shall be paid with respect to:

- (i) amounts paid by the Tenant under the Lease in reimbursement for operating expenses (including without limitation taxes, insurance, maintenance and other like items);
- (ii) tenant electric charges;
- (iii) late payment charges;
- (iv) sums designated as, or in the nature of, "additional rent" under the Lease; or
- (v) security deposits.

OR

CONDITIONS

1. Cancellation Clauses – (a) Where the landlord has the right to cancel a lease at a time, subsequent to the execution and delivery of the lease and/or (b) where a tenant or the landlord and a tenant have to cancel a lease at a time subsequent to the commencement of the term, but prior to the expiration date set forth in the lease and any cancellation penalty or fee payable by the tenant includes the unamortized commission, then in either such event, Broker shall be paid a commission for the entire lease term as though such right to cancel did not exist. If in the case of (b) above, any such cancellation penalty or fee does not include the unamortized commission, then Broker shall initially be paid a commission based on the sum of (i) the aggregate rental set forth in the lease for the uncancellable portion of the term, and (ii) any cancellation penalty or fee payable by the tenant pursuant to the lease; and; thereafter, if the cancellation does not occur or if the right of cancellation is exercised by the landlord only, Broker shall be paid the balance of the commission based on the aggregate rental for the remaining portion of the lease term less the cancellation penalty or fee. If the cancellation is by mutual agreement not pursuant to a provision contained in the lease, or if the right of cancellation is contingent on the landlord's acts or failure to act or otherwise within the landlord's control, Broker shall be paid a commission for the entire lease term. A lease shall not be deemed cancelled within the meaning of this paragraph unless the tenant vacates the property at which the lease is made. If the tenant remains under a new arrangement, Broker shall not be entitled to a commission for any period greater than the term of the original letting unless, however, Broker participates in the new negotiations.

2. Computation of Commissions – Commissions shall be computed in accordance with the above rates based upon the aggregate rental set forth in the lease. No commission shall be payable for any additional rent payable by the tenant by reason of increases in taxes and/or the costs of maintaining or operating the property at which the lease is made (i.e. escalations). In the event that the lease grants to the tenant any rent concessions or abatements or provides for increase in the rent whether such increases are stated in terms of a fixed amount or are based on a formula, such as, but not limited to, the cost of living index, then the commission shall be calculated on the average annual rental after deducting the amount of such concessions and/or abatements and including the amount of any increase. In the case where the lease provides for increases in the rent based upon a formula, then in initially computing the commission such increases shall not be considered, however, when such increases are determined the commission shall be recomputed and landlord shall promptly pay to Broker the difference between the commission as initially computed and the recomputed commission. If a rental concession is granted in lieu of the landlord performing construction or alteration work and with respect to any other allowances or concessions granted to a tenant whether in the form of a credit against rent, construction, decoration or otherwise, there shall be no deduction from the aggregate rent set forth in the lease.

3. Time of Payment -- The commission for the term of and the space originally demised under a lease shall be earned, upon the execution and delivery of the lease by and between the landlord and the tenant, and payable 50% within 30 days of such execution and delivery and 50% within 30 days of the extension term commencement date.

4. The terms "landlord" and "tenant" shall be deemed to include any affiliates, subsidiaries, successors, nominees or assigns of same.

BROKER ESTOPPEL CERTIFICATE

BUYER: _____

BROKER: _____

PROPERTY: _____
(Building) (City, State)

The undersigned (“Broker”) hereby certifies to Buyer and any of Buyer’s prospective mortgagees of the Property as follows with respect to the Broker’s commissions, fees, compensation, or other charges (“Commissions”) or prospective Commissions for any lease at the Property (“Lease”):

1. Broker has been paid all Commissions earned, or that would be earned with the passage of time, or that can potentially be earned as of the date hereof relating to any Lease.
2. Broker is not entitled to any Commissions from Buyer, or has been paid all Commissions related to any Lease in place as of the date hereof including all Commissions for Lease renewals.
3. Broker waives any and all claims and any rights at law or equity for any Commissions as of the date hereof, against Buyer and Buyer’s heirs, successors, and assigns including the right to file any liens pursuant to 68 P.S. §1051 et seq.
4. Broker hereby agrees to defend, protect, hold harmless, and indemnify Buyer from any claims for Commissions, fees or other charges by Broker’s agents, co-brokers or subcontractors with respect to any Lease (“Derivative Claims”), and agrees to pay any Derivative Claims.
5. The undersigned representative of Broker is duly authorized and fully qualified to execute this instrument on behalf of Broker thereby binding Broker, its successors and assigns.

This certificate is made for the benefit of Buyer and its successors and assigns and any prospective mortgagee of the Property and shall bind the Broker, and its successors and assigns. Broker acknowledges that Buyer is relying on this Certificate in acquiring and financing the Property.

Dated as of the ____ day of _____, 201[_].

(Broker)

By: _____

TERMINATION AND RELEASE

STATE OF _____ :
: SS.
COUNTY OF _____ :

Broker: _____

Property: _____, _____, Township, State

Landlord: _____

Tenant: _____

Date: _____

In consideration of a payment in the amount of \$_____ (the "Payment"), the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Broker, on its own behalf, and on behalf of each of its agents, affiliates, representatives and administrators, and each of their respective officers, directors, partners, contractors, employees, successors and assigns, does hereby (a) fully, finally and forever waive and release, and agree to indemnify, protect, hold harmless and defend, Landlord, Tenant and each of their respective direct and indirect officers, directors, owners, partners, lenders, contractors, employees, successors and assigns (collectively, the "Landlord Parties"), of, from and against, any and all fees, commissions, claims for commission, actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, liens, claims, liability, and demands whatsoever, in law or in equity, which it, or anyone claiming by, through or under Broker, ever had, now has, or which it or any of them hereinafter can, shall or may have, in connection with, as a result of or relating to, the sale, leasing, licensing, occupancy, possession, or transfer of the Property (or any part thereof) by Landlord or any other party (including, without limitation any lien or claim or right of lien pursuant to 68 P.S. §1051 *et seq.* or any applicable law, rule, regulation, ordinance, statute, or legal principle (collectively referred to as "Laws") or otherwise, including any which may permit Broker or anyone claiming by, through or under Broker to impose a lien on the Property, any portion thereof, any improvements thereon or any interest therein, including, without limitation, pursuant to that letter from _____, dated _____, as the same may have been amended or modified ("Letter"), except for any future commission that may become due to Broker pursuant to a future written agreement executed by Landlord after the date hereof; (b) agree to execute and deliver to Landlord and/or Tenant any and all documents, instruments, certificates, affidavits or other further assurances (including, without limitation, waivers of lien pursuant to the Laws or otherwise) as may be requested by Landlord and/or Tenant to evidence or confirm the intent of this Release and Termination; (c) agree and acknowledge that the Letter is hereby terminated and of no further force or effect; and (d) agree to execute concurrently with this Release and Termination, the Affidavit and Waiver of Broker Lien in the form attached as Exhibit A.

IN WITNESS WHEREOF, intending to be legally bound hereby, Broker has caused this Release and Termination to be executed by its duly authorized representatives the day and year first above written. This Release and Termination is made for the benefit of each of the Landlord Parties, and Broker acknowledges Landlord and Tenant are relying on it in connection with entering into an amendment of their lease with respect to the Property.

Broker:

By: _____

Name: _____

Title: _____

Signed and sworn to before me this ____
day of _____

Notary Public

AFFIDAVIT AND WAIVER OF BROKER LIEN

To be indexed against:

(1)

_____,
as plaintiff for index purposes

v.

as defendant for index purposes

and

(2)

as plaintiff for index purposes

v.

as defendant for index purposes

This Affidavit and Waiver of Broker Lien (“Affidavit and Waiver”) is executed as of the [____] day of [____], _____, (“Effective Date”) by _____ (“Broker”) for the benefit of _____ (“Owner”).

1. The signatory for the Broker is the President of _____, a licensed real estate broker in the Commonwealth of Pennsylvania whose real estate license number is [____], and as such is duly authorized and empowered to make and does make this affidavit in his representative capacity on behalf of said Broker and its licensed sales associates and agents, as well as in his individual capacity.

2. This Affidavit and Waiver is made in connection with the real property known as _____ (the “Property”).

3. The above named broker has been fully compensated for its services and the services of its licensed associates and agents through the date hereof. For purposes of this statement, the term “services” shall mean and refer to the acts and omissions of broker and its licensed associates and agents acting under a listing or any other agreement regarding (or as the procuring cause of) the sale, lease, transfer, disposition or occupancy of any interest in the Property.

4. The Broker specifically waives any and all rights and claims it has or may have through the Effective Date to lien or cause the placement of a lien against the Property pursuant to any law or statute, including, without limiting the foregoing, any lien rights under the “Real Estate Broker Lien Act” (P.S.C.A., 68 Tit. § 1501, et. seq.).

5. The Broker makes this Affidavit and Waiver knowing the same will be relied upon by certain lenders, attorneys and title insurance companies interested in title to the Property. Without limiting the foregoing, the Broker specifically acknowledges that Owner has required this Affidavit and Waiver in connection with the acceptance of Broker’s execution and delivery of a Release and Termination concurrently with this Affidavit and Waiver in settlement, release and termination of all current claims by Broker related to the leasing and occupancy of portions of the Property.

6. A copy of this Affidavit and Waiver shall be filed in the office of the _____.

[REMAINDER OF THIS PAGE BLANK]

IN WITNESS WHEREOF, the undersigned, acting for and on behalf of the Broker and all of its agents, successors and assigns has executed this Instrument as of the day and year first above written.

Broker:

By: _____

Name: _____

Title: _____

COMMONWEALTH OF [_____] :

: ss

COUNTY OF [_____] :

On this [____] day of [_____], 201[____], a Notary Public in and for the State of [_____], personally appeared [_____] who acknowledge himself to be the President of [_____] and that as such officer, being authorized to do so, executed the foregoing Affidavit and Waiver for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

BROKER LIEN FILING

_____, 20__

Via Certified Mail, Return Receipt Requested

[INSERT NAME & ADDRESS OF OWNER]

Via Certified Mail, Return Receipt Requested

[INSERT NAME & ADDRESS OF BUYER]

Re: _____, Pennsylvania (the "Commercial Property") –
**NOTICE OF INTENTION TO FILE COMMERCIAL REAL ESTATE
BROKER LIEN**

Gentlemen:

Please be advised that this law firm represents _____ ("Broker") in connection with that certain written _____ agreement between Broker and _____ [{"Owner"}] [{"Buyer"}] dated _____, 20__ (the "**Commission Agreement**").

We are hereby notifying you that Broker: (1) is entitled to compensation under the terms set forth in the Commission Agreement as a result of Owner and [_____ ("Tenant")] [_____] ("Buyer[") having executed that certain _____ dated _____, 20__ with respect to the Commercial Property (the "[Agreement of Sale] [Lease]"), and (2) intends to claim a lien against the Commercial Property pursuant to the Pennsylvania Commercial Real Estate Broker Lien Act, 68 P.S. §1051 et seq. (the "Act") if Broker is not paid the compensation that it is due under the Commission Agreement. A copy of the notice of lien that Broker intends to file with the Prothonotary of _____ County, Pennsylvania at least three (3) days after your receipt of this notice is enclosed for your review.

[DELETE IF NOT APPLICABLE - Although we have no reason to believe that the Commercial Property is now under agreement to be sold, if the Commercial Property is presently subject to an agreement of sale, please immediately notify the undersigned of the name and address of the buyer so that a copy of this notice may be delivered to the buyer as well.]

Pursuant to §1060 of the Act, whenever a claim for lien has been filed with the Prothonotary that would prevent the closing of the transaction or conveyance, an escrow account shall be established from the proceeds from the transaction or conveyance in an amount sufficient to release the claim for lien. The requirement to establish an escrow account shall not be a cause for any party to refuse to close the transaction. These moneys shall be held in escrow until the parties' rights to the escrowed moneys have been determined by written agreement of the parties, a court of law or other process as may be agreed by the parties. Upon funds in the amount of the claimed lien being escrowed, a release of the claim for lien shall be provided by Broker. However, the parties are not

required to follow this escrow procedure if alternative procedures which would allow the transaction to close are available and are acceptable to Broker.

This letter does not purport to reflect all defaults that may have occurred under the Commission Agreement. Broker reserves any and all rights it may have in connection with any such additional defaults.

Very truly yours,

Enclosure

cc: [INSERT]

KLEHR HARRISON HARVEY BRANZBURG LLP

By: _____

Identification No(s): _____

1835 Market Street, Suite 1400
Philadelphia, PA 19103 (215) 568-6060

Attorneys for Claimant

In Re: Claim for Lien Against

_____, Pennsylvania

:
:
: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
:
: _____ DIVISION
:
: _____ TERM 20____
:
: No. _____
:
:

**PRAECIPE TO RECORD NOTICE OF CLAIM FOR BROKER LIEN
PURSUANT TO 68 P.S. §1051 *ET SEQ.***

TO THE PROTHONOTARY:

Kindly record this Notice of Claim for Broker Lien Pursuant to 68 P.S. §1051 *et seq.* against the property located at _____, as provided in 68 P.S. §1056[(a)(2)] [(b)] [(c)] [(d)]. The claim for lien is as follows:.

KLEHR HARRISON HARVEY
BRANZBURG LLP

By: _____

1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
(215) 568-6060

Attorneys for Claimant

Dated: _____

VERIFICATION

I, _____, hereby state that I am the _____ of the Claimant identified in this notice pursuant to 68 P.S. §1051 *et seq.* The statements made in the foregoing notice are true and correct to the best of my knowledge or information and belief. I understand that false statements contained therein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: _____, 20[] _____

Commercial Real Estate Broker Lien Act
Act 34 of 1998
68 P.S. §§ 1051 – 1063

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§ 1051. Short title

This act shall be known and may be cited as the Commercial Real Estate Broker Lien Act.

§ 1052. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Broker." A person who is licensed under the laws of this Commonwealth to act as a real estate broker.

"Commercial real estate." Any real estate other than:

(1) Real estate containing one to four residential units.

(2) Real estate that is zoned for agricultural purposes and that is not subject to an agreement of sale contingent upon the rezoning of all or any portion of the real estate to provide for nonagricultural uses.

The term does not include single family residential units or building lots such as condominiums, townhouses or homes in a subdivision when sold, leased or otherwise conveyed on a unit-by-unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

§ 1053. Right to lien

Each broker, unless employed by another broker, shall have a lien in the amount of the compensation agreed upon by and between the broker and the broker's client upon commercial real estate or any interest in that commercial real estate:

(1) listed with the broker under the terms of a written agreement for the purposes of selling, leasing or otherwise conveying any interest in the commercial real estate that is signed by the owner or the owner's agent and as to which the broker or broker's employees or independent contractors have provided licensed services that result during the term of the written agreement in the procurement of a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate or any interest in the commercial real estate upon terms that are provided in a written agreement that is signed by the owner or the owner's agent or which are otherwise acceptable to the owner or the owner's agent as evidenced by a written agreement that is signed by the owner or the owner's agent; or

(2) when a broker, pursuant to a written agreement with a prospective buyer to represent the buyer as to the purchase or other conveyance to the buyer of commercial real estate, becomes entitled to compensation. In the case of a tenant represented by a broker or other representative where the fee or commission is to be paid by the current owner, the right to file a lien shall be conditioned upon the owner agreeing in writing to pay the fee or commission of the broker or other representative of the tenant.

§ 1054. Excessive curtilage

Where a party objects that a lien has been claimed against more commercial real estate than should justly be included therein, the court upon petition may, after hearing by deposition or otherwise, limit the boundaries of commercial real estate subject to the lien. Failure to raise this objection shall not be a waiver of the right to plead the same as a defense thereafter.

§ 1055. Lien not allowed in certain cases

No lien shall be allowed in favor of any person other than a broker as defined herein even though such person furnishes labor or materials which result in the procurement of a person or entity who is ready, willing and able to purchase, lease or accept a conveyance of the commercial real estate or any interest in the commercial real estate.

§ 1056. Attachment of lien

(A) TIME AND MANNER OF ATTACHMENT.-- A lien under section 3 shall attach to the commercial real estate or any interest in the commercial real estate upon:

(1) the broker procuring a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate upon the terms set forth in the written agreement with the owner or that is otherwise acceptable to the owner or the owner's agent or the broker being otherwise entitled to a fee or commission under a written agreement that is signed by the owner or the owner's agent; and

(2) except as provided in subsection (b), (c) or (d), the broker recording a notice of lien in the office of the prothonotary in the county in which the real property or any interest in the real property is located prior to the actual conveyance or transfer of the commercial real estate against which the broker is claiming a lien.

(B) LEASES.-- In the case of a lease, the notice of lien shall be recorded within 90 days of a default by the owner or successors in interest under the terms of the compensation agreement.

(C) WRITTEN AGREEMENTS.-- If a broker has a written agreement with a prospective buyer as provided in section 3(2), the lien shall attach upon the recording of a notice of lien by the broker in the office of the prothonotary of the county in which the real property or any interest in the real property is located within 90 days after the purchase or other conveyance or transfer to the buyer.

(D) COMMERCIAL REAL ESTATE IN MORE THAN ONE COUNTY.-- Where the commercial real estate is located in more than one county, the lien may be filed in any one or more of the said counties but shall be effective only as to the part of the commercial real estate in the county in which it has been filed.

(E) OWNER NOTIFICATION.-- The broker shall mail a copy of the notice of lien to the owner of the commercial real estate by certified mail.

(F) RECORDING.-- A broker shall not be entitled to record a notice of or claim for lien unless, not later than three days prior to the date of conveyance, he gives written notice of the claim for lien to the owner and the prospective buyer that he is entitled to compensation under the terms set forth in the written contract and intends to claim a lien on the commercial real property. The notice shall be served upon the owner and prospective buyer by registered or certified mail. When there are two or more owners or two or more prospective buyers, the notice shall be served upon each owner and each prospective buyer. The notice shall include a statement of the buyer's right to deposit funds in escrow under section 10.

(G) LIEN UNENFORCEABLE.-- The broker's lien shall be void and unenforceable if recording does not occur at the time and in the manner required by this section.

(H) SATISFACTION OF THE LIEN.-- In the event a lien is recorded upon the procurement of a person or entity that is ready, willing and able to purchase, lease or otherwise accept a conveyance of commercial property and the conveyance fails to occur through no fault or condition of the owner, the lien recorded by the broker pursuant to this section shall be satisfied of record by the broker, whereupon the property shall be freed and discharged from such lien. If the broker does not voluntarily satisfy the lien, the owner may demand the filing of a complaint pursuant to section 8(f) or commence an action against the broker seeking as relief the satisfaction or striking of the lien. Upon finding that the lien was recorded in bad faith or the refusal to satisfy the lien was in bad faith, a court shall award the owner the amount of the reasonable expenses, including attorney fees and court costs, incurred by the owner as a result of the recording of the lien or refusal to satisfy the lien.

§ 1057. Notice of lien

The notice of lien shall state the name of the claimant, the name of the owner, a description of the property upon which the lien is being claimed, the amount for which the lien is claimed and the real estate license number of the broker and shall be signed and verified by the broker or by a person who is authorized to sign on behalf of the broker and shall be verified.

§ 1058. Enforcement of lien

(A) COMMENCEMENT OF PROCEEDINGS.-- A broker may bring suit to enforce the lien in the court of common pleas in the county where the lien is filed by filing a complaint as set forth under subsection (e).

(B) COMMERCIAL REAL ESTATE IN MORE THAN ONE COUNTY.-- Where a claim has been filed in more than one county as provided by section 6(d), proceedings to obtain judgment upon all the claims may be commenced in any of the counties, and the judgment shall be res adjudicata as to the merits of the claims properly filed in other counties. The judgment may be transferred to such other county by filing of record a certified copy of the docket entries in the action and a certification of the judgment and amount, if any. The prothonotary of the court to which the judgment has been transferred shall forthwith index it upon the judgment index.

(C) TIME LIMITATIONS.-- The broker claiming a lien shall, except as set forth under subsection (d), within two years after recording the lien, commence proceedings to enforce the lien. Failure to commence proceedings within two years after recording the lien shall extinguish the lien.

(D) LIEN BASED ON OPTION TO PURCHASE.-- A broker claiming a lien based upon an option to purchase shall, within six months after the transfer or conveyance of the commercial real estate pursuant to the exercise of the option to purchase, commence proceedings to enforce the lien. Failure to commence proceedings within this time shall extinguish the lien.

(E) COMPLAINT AND DEFENDANTS TO THE ACTION.-- A complaint under this section shall contain a brief statement of the contract or agreement on which the lien is founded, the date when the contract or agreement was made, a description of the services performed, the amount due and unpaid and a description of the property that is subject to the lien. The plaintiff shall make all interested parties, of whose interest he is notified or has knowledge, defendants to the action. The practice and procedure shall be governed by the Pennsylvania Rules of Civil Procedure and all other rules and procedures relating to civil actions except to the extent inconsistent with the provisions of this section.

(F) PRAECIPE OF THE OWNER.-- The prothonotary, upon praecipe of the owner, shall enter a rule upon the person claiming the lien to file a complaint. If a complaint is not filed within 20 days after service of the rule, upon praecipe of the owner of the property the lien shall be extinguished.

(G) SATISFACTION OR RELEASE.-- Whenever a claim for lien which has been filed with the prothonotary is paid, the claimant shall mark the docket satisfied within 30 days of receipt of payment.

(H) COSTS.-- The cost of proceedings, including reasonable attorney fees and prejudgment interest due to the prevailing party, shall be borne by the nonprevailing party or parties. If more than one party is responsible for the costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

§ 1059. Priority

The priority of a broker's lien shall be as set forth under 42 Pa.C.S. § 8141 (relating to time from which liens have priority), except that mortgages, mechanics liens and defeasible deeds in the nature of a mortgage shall have priority over a broker's lien, regardless of the date recorded.

§ 1060. Escrow of disputed amounts

Except as otherwise provided in this section, whenever a claim for lien has been filed with the prothonotary that would prevent the closing of a transaction or conveyance, an escrow account shall be established from the proceeds from the transaction or conveyance in an amount that is sufficient to release the claim for lien. The requirement to establish an escrow account shall not be cause for any party to refuse to close the transaction. These moneys shall be held in escrow until the parties' rights to the escrowed moneys have been determined by written agreement of the parties, a court of law or other process as may be agreed to by the parties. Upon funds in the amount of the claimed lien being escrowed, a release of the claim for lien shall be provided by the broker who is claiming the lien. The parties are not required to follow this escrow procedure if alternative procedures which would allow the transaction to close are available and are acceptable to the broker in the transaction.

§ 1061. Waiver prohibited

(A) GENERAL RULE.-- Except as provided in subsection (b), an agreement to waive the right to a lien under this act made contemporaneously with the signing of the listing agreement, whether dated on the date of the listing agreement or thereafter, shall be void and unenforceable.

(B) DISCHARGE OF LIEN.-- Any lien filed hereunder shall, upon petition of the party subject to the broker's lien or any party in interest, be discharged as a lien against the commercial real estate whenever a sum equal to the amount of the putative lien against the commercial real estate shall have been deposited with the court in said proceedings for application to the payment of the amount finally determined to be due.

(C) REFUND OF ACCESS.-- Any excess of funds paid into court as aforesaid over the amount of the claim determined to be paid therefrom shall be refunded to the party depositing same upon application for a refund.

(D) SECURITY IN LIEU OF CASH.-- In lieu of the deposit of any sum or sums, approved security may be entered in such proceedings in double the amount of the required deposit or in such lesser amount as the court shall approve which, however, shall in no event be less than the full amount of such required deposit, and the entry of such security shall entitle a party to have the broker's lien discharged to the same effect as though the required sums had been deposited in the court aforesaid.

(E) AUTHORITY OF COURT.-- The court, upon petition filed by any party and after notice and hearing, may upon cause shown:

- (1) require the increase or decrease of any deposit or security;
- (2) strike off security improperly filed; and
- (3) permit the substitution of security and enter an exoneration of security already given.

§ 1062. Revival of judgment

Judgment upon a claim shall be revived within each recurring five-year period. The practice and procedures to revive judgment shall be governed by 42 Pa.C.S. § 5526 (relating to five year limitation) and the Pennsylvania Rules of Civil Procedure.

§ 1063. Severability

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.