



COMMERCIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SUBLEASE

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1. PARTIES: The parties to this agreement (this Listing) are:

Tenant: _____

Address: _____

City, State, Zip: _____

Phone: _____ Mobile: _____ Fax or E-Mail: _____

Broker: _____

Address: _____

City, State, Zip: _____

Phone: _____ Mobile: _____ Fax or E-Mail: _____

Tenant appoints Broker as Tenant’s sole and exclusive real estate agent and grants to Broker the exclusive right to sublease the Property.

2. DEFINITIONS:

A. “Property” means the following real property in Texas along with all its improvements:

Building or Complex: _____ Suite(s): _____

Address: _____

City: _____ County: _____ Zip: _____

Legal Description of land on which Property lies (*Identify exhibit if described on attachment*): _____

The Property contains approximately _____ square feet of rentable area as shown on the attached _____ (*Identify exhibit, floor plan, or schematic*).

The rentable area of the Property may not equal the actual useable area within the Property and may include an allocation of common areas in the building or complex.

(If the Property is a condominium, attach Condominium Addendum to Listing (TXR-1401).)

B. “Master Lease” means the written lease under which Tenant leases the Property from _____ (Landlord).

The Master Lease expires on _____ including not including renewal options.

C. “Sublease” means: (1) a lease from Tenant to another person(s) for all or part of the Property for a term that expires on or before the date the Master Lease ends; or (2) an assignment of all or part of Tenant’s interest in the Master Lease.

D. “Sublessee” means: (1) another person who receives by lease all or part of the Property from Tenant; or (2) an assignee of all or part of Tenant’s interest in the Master Lease.

3. LISTING PRICE:

A. Tenant lists the Property for sublease at a base rental rate of \$ _____

B. At the rent stated in 3A, Broker is to market the Property under terms where a sublessee is to pay:

(1) Expense Reimbursements as follows: _____

(2) Percentage Rent equal to _____% multiplied by sublessee's gross sales that exceed _____

(3) Parking Rental calculated as follows: _____

(4) Rent Increases in the base rent calculated as follows: _____

(5) _____

C. Tenant will sublease the Property for a term that expires on or before the date that the Master Lease ends and on terms, in all other respects, identical to the Master Lease except as follows and as otherwise stated in this Listing: _____

4. TERM: This Listing begins on _____ and ends at 11:59 p.m. on _____.
Tenant may terminate this Listing on notice to Broker any time after _____.

5. BROKER'S FEE:

A. Fee: When earned and payable, Tenant will pay Broker a fee of:

(1) _____% of all base rents to be paid over the term of the sublease and the same percentage of the following items to be paid over the term of the sublease: expense reimbursements, and _____

(2) _____

B. Earned: Broker's fee is earned when any one of the following occurs during this Listing:
(1) Tenant subleases or agrees to sublease all or part of the Property to anyone on any terms;
(2) Broker, individually or in cooperation with another broker, procures a sublessee ready, willing, and able to sublease all or part of the Property on the terms stated in Paragraph 3 or on any other terms acceptable to Tenant;
(3) Tenant grants or agrees to grant to another person an option to sublease all or part of the Property on any terms; or
(4) Tenant breaches this Listing.

C. Payable:

(1) Once earned, Broker's fee is payable according to the following schedule: *(Check one box only.)*

- (a) in one payment upon _____
- (b) one-half of Broker's fee at the time Tenant and a sublessee execute a sublease and the remainder on the date the sublease commences.
- (c) _____

(2) If Tenant breaches this Listing or refuses to sublease the Property to a prospective sublessee after Broker's fees have been earned, Broker's fees are immediately payable in full.

(3) Broker's fee is not payable if Landlord's prior consent to Tenant subleasing the Property is not obtained.

D. Other Fees:

(1) Renewal Fees: If, during this Listing or after it ends, Tenant extends, renews, or expands a sublease with a sublessee procured by Broker, either individually or in cooperation with another broker, Tenant will pay Broker an additional fee of:

- (a) _____% of all base rents to be paid over the term of the renewal or extension and the same percentage of the following items to be paid over the same term: expense reimbursements based on initial amounts _____;
- (b) _____% of all base rents to be paid over the term of the expansion and the same percentage of the following items to be paid over the same term: expense reimbursements based on initial amounts _____; or
- (c) _____

In addition to their ordinary meanings, "extensions," "renewals," and "expansions" include new subleases for more, less, or different space in the Property. The fees under this Paragraph 5D(1) are earned and payable at the time the extension, renewal, or expansion commences.

(2) Master Lease Termination: If Tenant and Landlord agree to terminate the Master Lease, Tenant will pay Broker a fee of:

- (a) _____% of all base rents that Tenant would have paid over the term of the Master Lease and the same percentage of the following items that Tenant would have paid over the term of the Master Lease: expense reimbursements _____
- (b) _____

The fees under this Paragraph 5D(2) are earned and payable at the time Tenant and Landlord agree to terminate the Master Lease.

(3) Service Providers: If Broker refers Tenant or a prospective sublessee to a service provider (e.g., mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(3) is in addition to any other compensation Broker may receive under this Listing.

(4) Other Fees and/or Reimbursable Expenses: _____

_____.

E. Protection Period:

(1) "Protection period" means that time starting the day after this Listing ends and continuing for _____ days.

(2) Not later than 10 days after this Listing ends Broker may send Tenant written notice specifying the names of persons whose attention Broker has called to the Property during this Listing. If Tenant agrees to sublease all or part of the Property during the protection period to a person named in the notice or to a relative or a business associate of a person named in the notice, Tenant will pay Broker, upon the execution of the sublease, the amount Broker would have been entitled to receive if this Listing were still in effect.

(3) "Person" means any person in any capacity whether an individual or entity.

(4) This Paragraph 5E survives termination of this Listing.

F. County: All amounts payable to Broker are to be paid in cash in _____ County, Texas.

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against Tenant's interest in the Property to secure payment of an earned commission.

6. EXCLUSIONS:

A. Under a prior listing agreement Tenant is obligated to pay another Texas licensed broker a fee if Tenant subleases all or part of the Property before _____ to any of the following persons: _____

_____ (named exclusions).

B. If Tenant enters into a sublease for all or part of the Property to a named exclusion before the date specified in 6A, Tenant will not be obligated to pay Broker the fees under Paragraph 5 of this Listing, but Tenant will pay Broker, upon execution of the sublease, a fee equal to:

(1) _____% of all base rents to be paid over the term of the sublease and the same percentage of the following items to be paid over the term of the sublease: expense reimbursements, and _____; or

(2) _____.

C. If Tenant desires to sublease all or part of the Property to a named exclusion, Broker will will not assist Tenant in negotiating the sublease to the named exclusion.

7. ACCESS TO THE PROPERTY: Authorizing access to the Property means giving permission to another person to enter the Property, disclosing any security codes necessary to enter the Property to such person and lending a key to the Property to such person. To facilitate the efficient showing and sublease of the

Property, Tenant instructs Broker and Broker's associates to: (i) access the Property at reasonable times; (ii) authorize other brokers, inspectors, appraisers, lenders, surveyors, engineers, and repair persons to enter the Property at reasonable times; and (iii) duplicate keys to facilitate convenient and efficient showings.

8. COOPERATION WITH OTHER BROKERS: Broker will allow other brokers to show the Property to prospective sublessees. If the other broker procures a sublessee who subleases the Property, Broker will offer to pay the other broker a portion of Broker's fee under Paragraph 5.

9. INTERMEDIARY: *(Check A or B only.)*

A. Intermediary Status: Broker may show the Property to interested prospective sublessees who Broker represents. If a prospect who Broker represents offers to sublease the Property, Tenant authorizes Broker to act as an intermediary and Broker will notify Tenant that Broker will service the parties in accordance with one of the following alternatives.

(1) If a prospect who Broker represents is serviced by an associate other than the associate servicing Tenant under this Listing, Broker may notify Tenant that Broker will: (a) appoint the associate then servicing Tenant to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Tenant; and (b) appoint the associate then servicing the prospect to the prospect for the same purpose.

(2) If a prospect who Broker represents is serviced by the same associate who is servicing Tenant, Broker may notify Tenant that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospect; and (b) appoint the associate servicing Tenant under this Listing to Tenant for the same purpose.

(3) Broker may notify Tenant that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.

B. No Intermediary Status: Tenant agrees that Broker will not show the Property to prospects who Broker represents.

Notice: **If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:**

- ♦ may not disclose to the prospect that Tenant will accept a price less than the asking price unless otherwise instructed in a separate writing by Tenant;
- ♦ may not disclose to Tenant that the prospect will pay a price greater than the price submitted in a written offer to Tenant unless otherwise instructed in a separate writing by the prospect;
- ♦ may not disclose any confidential information or any information Tenant or the prospect specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
- ♦ may not treat a party to the transaction dishonestly; and
- ♦ may not violate the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Tenant except as authorized by Tenant or required by law. Broker may not disclose to Tenant any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sublease, procure a sublessee, and negotiate the sublease of the Property.
- B. In addition to other authority granted by this Listing, Broker may:
- (1) advertise the Property by means and methods as Broker determines is appropriate in any media, including but not limited to:
 - (a) placing a "For Lease" sign or similar marketing sign on the Property if permitted under the Master Lease or by Landlord; and
 - (b) creating and placing information about the Property (including interior and exterior photographs and videos):
 - (i) on the Internet on Broker's website and on other websites as Broker determines;
 - (ii) in any advertisements whether in print or electronic media; and
 - (iii) into listing services that may publicize the information on the Internet or by other means;
 - (2) reproduce, display, and distribute information about the Property, including the information described under Paragraph 11B(1), for the purposes of marketing the Property;
 - (3) furnish comparative marketing and lease information about other properties to prospects;
 - (4) disseminate information about the Property to other brokers and prospects, including applicable disclosures, notices, or other information that Tenant is required to make under law or a contract;
 - (5) accept security deposits and other funds in trust in accordance with the terms of a sublease for all or part of the Property;
 - (6) disclose the terms of the sublease to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property is placed;
 - (7) place information about this Listing and a transaction for the Property on an electronic platform (an electronic platform is typically an Internet-based system where professionals related to the transaction, such as title companies and lenders, may receive, view, and input information); and
 - (8) advertise that Broker subleased the Property after the execution of a sublease of the Property in which Broker was involved; and
 - (9) obtain any documents concerning the Property from Landlord and any sublessee, including subleases, master lease terminations, and assignments. Landlord and all sublessees are hereby authorized to deliver such documents.

NOTICE: Any submission of information to a listing service must be made in accordance with the listing service's rules.

- C. Broker is not authorized to execute any document in the name of or on behalf of Tenant concerning the Property.
- D. Photographs, videos, and compilations of information submitted to a listing service are the property of the listing service for all purposes.

12. REPRESENTATIONS:

- A. Except as provided otherwise in this Listing, Tenant represents that:
- (1) Tenant has peaceable possession of the Property and all its improvements and fixtures thereon, unless subleased, and the legal capacity to sublease the Property;
 - (2) Tenant is not bound by a listing agreement with another broker for the sublease of all or part of the Property that is or will be in effect during this Listing;
 - (3) no person or entity has any right to sublease the Property by an option, right of refusal, or other agreement;
 - (4) Tenant is not in breach of the Master Lease;
 - (5) the Property is not subject to the jurisdiction of any court;

- (6) Tenant owns sufficient intellectual property rights in any materials which Tenant provides to Broker related to the Property (for example, brochures, photographs, drawings, or articles) to permit Broker to reproduce and distribute such materials for the purposes of marketing the Property or for other purposes related to this agreement; and
- (7) all information relating to the Property Tenant provides to Broker is true and correct to the best of Tenant's knowledge.

B. Tenant and Broker must disclose any known condition on the Property that would materially affect the health or safety of an ordinary subtenant. *(Check (1) or (2) only.)*

- (1) Tenant is not aware of any condition on the Property that would materially affect the health or safety of an ordinary sublessee, except as stated in the attached Commercial Property Condition Statement (TXR-1408). Tenant authorizes Broker to furnish prospective sublessees and other brokers with a copy of the Commercial Property Condition Statement (TXR-1408).
- (2) Except as otherwise provided in this Listing, Tenant is not aware of:
 - (a) any subsurface: structures, pits, wastes, springs, or improvements;
 - (b) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (c) any environmental hazards or conditions that materially affect the Property;
 - (d) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (e) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
 - (f) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (g) any threatened or endangered species or their habitat on the Property;
 - (h) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (i) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (j) any condition on the Property that violates any law or ordinance; and
 - (k) any condition on the Property that would affect the health or safety of an ordinary tenant.

(List any exceptions to (a)-(k) in Special Provisions or an addendum.)

13. TENANT'S ADDITIONAL PROMISES: Tenant agrees to:

- A. cooperate with Broker to facilitate the showing and marketing of the Property;
- B. not negotiate with any prospective sublessee who may contact Tenant directly, but refer all prospective sublessees to Broker;
- C. not enter into a listing agreement with another broker for the sublease of all or part of the Property to become effective during this Listing;
- D. provide Broker with relevant information about the Property that Broker may request during this Listing;
- E. advise Broker of any sublessees moving in or out of the Property;
- F. complete any disclosures or notices required by law or a contract to sublease the Property;
- G. amend any applicable notices and disclosures if any material change occurs during this Listing;
- H. at Tenant's expense, remove from the Property all "For Lease," "For Information," or similarly worded signs other than Broker's signs;
- I. at Tenant's expense, remove all of Tenant's signs on or before the date a sublease commences; and
- J. involve Broker in all negotiations to terminate, assign, or modify the terms of the Master Lease.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Tenant must notify Tenant's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.

- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker, including but not limited to injuries or losses caused by:
 - (1) other brokers, inspectors, appraisers, lenders, contractors, surveyors, engineers, and other persons who are authorized to access the Property;
 - (2) acts of third parties (for example, vandalism and theft);
 - (3) freezing or broken water pipes;
 - (4) a dangerous condition on the Property; and
 - (5) the Property's non-compliance with any law or ordinance.

- C. Tenant agrees to indemnify and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, and expenses:
 - (1) that arise from Tenant's failure to disclose any material information about the Property;
 - (2) that are caused by Tenant giving incorrect information to Broker, other brokers, or prospects;
 - (3) that arise from any claim for misuse of intellectual property in any materials or information that Tenant provided to Broker related to the Property or this agreement; or
 - (4) that are otherwise caused by Tenant or Tenant's negligence.

15. SPECIAL PROVISIONS:

16. DEFAULT: If Tenant breaches this Listing, Tenant is in default and will be liable to Broker for the amount of the Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing; Broker may also terminate this Listing and exercise any other remedy at law. If a rental rate is not determinable in the event of a breach, the Listing Price will be the rental rate for the purpose of calculating Broker's fee. If Broker breaches this Listing, Broker is in default and Tenant may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the costs of mediation equally.

18. ATTORNEY'S FEES: If Tenant or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party may recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA: Addenda or information that are part of this Listing are:

- A. Information About Brokerage Services (TXR-2501)
- B. Property Description Exhibit identified in Paragraph 2
- C. Master Lease
- D. Condominium Addendum to Listing (TXR-1401)
- E. Commercial Property Condition Statement (TXR-1408)
- F. Information About On-Site Sewer Facility (TXR-1407)
- G. Information about Special Flood Hazard Areas (TXR-1414)
- H. _____

20. AGREEMENT OF THE PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.

- B. **Assignment:** Neither party may assign this Listing without the written consent of the other party.
- C. **Binding Effect:** Tenant's obligations to pay Broker an earned fee is binding upon Tenant and Tenant's heirs, administrators, executors, successors, and permitted assigns.
- D. **Joint and Several:** All Tenants executing this Listing are jointly and severally liable for the performance of all its terms.
- E. **Governing Law:** Texas law governs the interpretation, validity, performance, and enforcement of this Listing.
- F. **Severability:** If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. **Partial Leases:** If Tenant subleases part of the Property before the date this Listing ends, this Listing will continue for the remaining part of the Property through the term of this Listing.
- H. **Notices:** Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by Texas REALTORS®, its local affiliates, or any listing service. Broker's fees are negotiable.**
- B. **The Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances and the National Association of REALTORS® Code of Ethics may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**
- C. **Under §91.005, Property Code, a tenant may not sublease a leasehold without the prior consent of the landlord. Consent may be obtained in the master lease or by a separate consent.**
- D. **Broker cannot give legal advice. This is a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

Tenant: _____

By: _____

By (signature): _____
Printed Name: _____
Title: _____ Date: _____

By: _____

By (signature): _____
Printed Name: _____
Title: _____ Date: _____

Broker:
Broker / Company Name: _____

License No. _____

By (signature): _____
Printed Name: _____
Title: _____ License No. _____

Date: _____