

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (ETC59-8-13) (Mandatory 1-14)

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE LANDLORD AGENCY, TENANT AGENCY, SELLER AGENCY, BUYER AGENCY OR TRANSACTION-BROKERAGE.

EXCLUSIVE TENANT LISTING CONTRACT

☐ TENANT AGENCY ☐ TRANSACTION-BROKERAGE

Date:

**1. AGREEMENT.** Tenant and Brokerage Firm enter into this exclusive, irrevocable contract (Tenant Listing Contract) and agree to its provisions. Broker, on behalf of Brokerage Firm, agrees to provide brokerage services to Tenant. Brokerage Firm will receive compensation as set forth in this Tenant Listing Contract.

**2. BROKER AND BROKERAGE FIRM.**

☐ **2.1. Multiple-Person Firm.** If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Tenant and to perform the services for Tenant required by this Tenant Listing Contract is called Broker. If more than one individual is so designated, then references in this Tenant Listing Contract to Broker includes all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

☐ **2.2. One-Person Firm.** If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this Tenant Listing Contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm, who serve as the broker of Tenant and perform the services for Tenant required by this Tenant Listing Contract.

**3. DEFINED TERMS.**

**3.1. Tenant:**

and any other person or entity on whose behalf the named party acts, directly or indirectly, to Lease the Premises.

**3.2. Brokerage Firm:**

**3.3. Broker:**

**3.4. Premises.** Premises means real estate which substantially meets the following requirements or similar real estate acceptable to Tenant:

**3.5. Lease; Purchase.**

**3.5.1.** Lease of the Premises or Lease means any agreement between a landlord and the Tenant to create a tenancy or leasehold interest in the Premises.

☐ **3.5.2.** If this box is checked, Tenant authorizes Broker to negotiate a purchase of the Premises.

Purchase of the Premises or Purchase means the acquisition of any interest in the Premises or the creation of the right to acquire any interest in the Premises, including a contract or lease. It also includes an agreement to acquire any ownership interest in an entity that owns the Premises.

**3.6. Listing Period.** The Listing Period of this Tenant Listing Contract begins on , and continues through the earlier of (1) completion of the Lease of the Premises or Purchase of the Premises or (2) , and any written extensions (Listing Period). Broker will continue to assist in the completion of any Lease or Purchase for which compensation is payable to Brokerage Firm under § 7 of this Tenant Listing Contract.

**3.7. Applicability of Terms.** A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the date upon which both parties have signed this Tenant Listing Contract. For purposes of this agreement, "landlord" includes sublandlord and "tenant" includes subtenant.

### **3.8. Day; Computation of Period of Days, Deadline.**

**3.8.1. Day.** As used in this Tenant Listing Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

**3.8.2. Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☐ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

## **4. BROKERAGE RELATIONSHIP.**

**4.1.** If the Tenant Agency box at the top of page 1 is checked, Broker represents Tenant as Tenant's limited agent (Tenant's Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker acts as a Transaction-Broker.

**4.2. In-Company Transaction – Different Brokers.** When the landlord and Tenant in a transaction are working with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Tenant acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a landlord.

**4.3. In-Company Transaction – One Broker.** If the landlord and Tenant are both working with the same broker, Broker will function as:

**4.3.1. Tenant's Agent.** If the Tenant Agency box at the top of page 1 is checked, the parties agree the following applies:

**4.3.1.1. Tenant Agency Only.** Unless the box in § 4.3.1.2 (**Tenant Agency Unless Brokerage Relationship with Both**) is checked, Broker represents Tenant as Tenant's Agent and must treat the landlord as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker must disclose to such customer Broker's relationship with Tenant.

☐ **4.3.1.2. Tenant Agency Unless Brokerage Relationship with Both.** If this box is checked, Broker represents Tenant as Tenant's Agent and must treat the landlord as a customer, unless Broker currently has or enters into an agency or Transaction-Brokerage relationship with the landlord, in which case Broker must act as a Transaction-Broker.

**4.3.2. Transaction-Broker.** If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker must work with Tenant as a Transaction-Broker. A Transaction-Broker must perform the duties described in § 5 and facilitate lease transactions without being an advocate or agent for either party. If the landlord and Tenant are working with the same broker, Broker must continue to function as a Transaction-Broker.

**5. BROKERAGE DUTIES.** Brokerage Firm, acting through Broker as either a Transaction-Broker or a Tenant's Agent, must perform the following **Uniform Duties** when working with Tenant:

**5.1.** Broker must exercise reasonable skill and care for Tenant, including but not limited to the following:

**5.1.1.** Performing the terms of any written or oral agreement with Tenant;

**5.1.2.** Presenting all offers to and from Tenant in a timely manner regardless of whether Tenant is already a party to a written agreement to Lease the Premises;

**5.1.3.** Disclosing to Tenant adverse material facts actually known by Broker;

5.1.4. Advising Tenant regarding the transaction and advising Tenant to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;

5.1.5. Accounting in a timely manner for all money and property received; and

5.1.6. Keeping Tenant fully informed regarding the transaction.

5.2. Broker must not disclose the following information without the informed consent of Tenant:

5.2.1. That Tenant is willing to pay more than the offered lease rate for the Premises;

5.2.2. What Tenant's motivating factors are;

5.2.3. That Tenant will agree to Lease terms other than those offered; or

5.2.4. Any material information about Tenant unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing.

5.3. Tenant consents to Broker's disclosure of Tenant's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee does not further disclose such information without consent of Tenant, or use such information to the detriment of Tenant.

5.4. Broker may show premises in which Tenant is interested to other prospective tenants without breaching any duty or obligation to Tenant. Broker is not prohibited from showing competing tenants the same premises and from assisting competing tenants in attempting to lease a particular premises.

5.5. Broker is not obligated to seek other premises while Tenant is already a party to a lease.

5.6. Broker has no duty to conduct an independent inspection of the Premises for the benefit of Tenant and has no duty to independently verify the accuracy or completeness of statements made by a landlord or independent inspectors. Broker has no duty to conduct an independent investigation of Tenant's financial condition or to verify the accuracy or completeness of any statement made by Tenant.

5.7. Broker must disclose to any prospective landlord all adverse material facts actually known by Broker, including but not limited to adverse material facts concerning Tenant's financial ability to perform the terms of the transaction.

5.8. Tenant understands that Tenant is not liable for Broker's acts or omissions that have not been approved, directed, or ratified by Tenant.

6. **ADDITIONAL DUTIES OF TENANT'S AGENT.** If the Tenant Agency box at the top of page 1 is checked, Broker is Tenant's Agent, with the following additional duties:

6.1. Promoting the interests of Tenant with the utmost good faith, loyalty and fidelity;

6.2. Seeking lease rates and terms that are acceptable to Tenant; and

6.3. Counseling Tenant as to any material benefits or risks of a transaction that are actually known by Broker.

7. **COMPENSATION TO BROKERAGE FIRM.** In consideration of the services to be performed by Broker, Brokerage Firm will be paid as set forth in this section, with no discount or allowance for any efforts made by Tenant or any other person. Brokerage Firm is entitled to receive additional compensation, bonuses, and incentives paid by listing brokerage firm or landlord. Broker will inform Tenant of the fee to be paid to Brokerage Firm and, if there is a written agreement, Broker will supply a copy to Tenant, upon written request of Tenant.

7.1. **Brokerage Firm's Fee - Lease.**

**Check Compensation Arrangement:**

☐ 7.1.1. **Success Fee.** Brokerage Firm will be paid as follows:

7.1.1.1. **Amount.** \$  per square foot per  or  , except as provided in § 7.1.1.2.

7.1.1.2. **Adjusted Amount.** ? ☐ See § 19 (Additional Provisions) or ☐ Other

**7.1.1.3. When Earned; When Payable – Lease.** The Success Fee is earned by Brokerage Firm upon the mutual execution of the Lease. One-half of this fee is payable upon mutual execution of the Lease and one-half upon possession of the Premises by Tenant or as follows: .

☐ **7.1.2. Hourly Fee.** Brokerage Firm will be paid \$  per hour for time spent by Broker pursuant to this Tenant Listing Contract, up to a maximum total fee of \$ . This hourly fee is payable to Brokerage Firm upon receipt of an invoice from Brokerage Firm.

☐ **7.1.3. Retainer Fee.** Tenant will pay Brokerage Firm a nonrefundable retainer fee of \$  due and payable upon signing of this Tenant Listing Contract. This amount ☐ **Will** ☐ **Will Not** be credited against other fees payable to Brokerage Firm under this section.

☐ **7.1.4. Other Compensation.**

**7.1.5. Fee for Extension, Renewal or Expansion.** If the Lease, executed after the date of this Tenant Listing Contract, contains an option to extend or renew, or if Tenant expands into additional space within the building or complex where the Premises is located, Brokerage Firm ☐ **Will** ☐ **Will Not** be paid a fee upon exercise of such extension or renewal option or expansion. If Brokerage Firm is to be paid a fee for such extension, renewal or expansion, the amount of such fee and its payment are as follows:

**7.2. Brokerage Firm's Fee - Purchase.** If the box in § 3.5.2 is checked, Brokerage Firm will be paid a fee equal to the greater of \$  or  % of the purchase price for the Premises, less any amounts paid by the listing brokerage firm or seller.

**7.2.1. When Earned; When Payable - Purchase.** This Purchase fee is earned upon the Purchase of the Premises and is payable upon delivery of deed.

### **7.3. Who Will Pay Brokerage Firm's Fee.**

☐ **7.3.1. Listing Brokerage Firm, Landlord or Sublandlord May Pay.** Tenant IS Obligated to Pay. Broker is authorized and instructed to request payment of Brokerage Firm's fee from the listing brokerage firm, landlord or sublandlord. Tenant is obligated to pay any portion of Brokerage Firm's fee which is not paid by the listing brokerage firm, landlord or sublandlord. This section applies to ☐ **New Premises** ☐ **Tenant's Existing Premises** ☐ **Both**.

☐ **7.3.2 Tenant Will Pay.** Tenant is obligated to pay Brokerage Firm's fee.

☐ **7.3.3. Listing Brokerage Firm, Landlord or Sublandlord May Pay. Tenant is NOT Obligated to Pay.** Broker is authorized to obtain payment of Brokerage Firm's fee from the listing brokerage firm, landlord or sublandlord. Provided Tenant has fulfilled Tenant's obligations in this Tenant Listing Contract, Tenant is not obligated to pay Brokerage Firm's fee. This section applies to ☐ **New Premises** ☐ **Tenant's Existing Premises** ☐ **Both**.

If no box is checked above, then § 7.3.3 (**Tenant is NOT Obligated to Pay**) will apply.

**7.4. Holdover Period.** Brokerage Firm's fee applies to Premises leased (or purchased if § 3.5.2 is checked) during the Term of this Tenant Listing Contract or any extensions and also applies to Premises leased or purchased within  calendar days after the Listing Period expires (Holdover Period) (1) if the Premises is one on which Broker negotiated and (2) if Broker submitted its address or other description in writing to Tenant during the Listing Period, (Submitted Premises). Provided, however, Tenant ☐ **Will** ☐ **Will Not** owe the compensation under §§ 7.1, 7.2, 7.3.1 and 7.3.2 as indicated, if a commission is earned by another real estate brokerage firm acting pursuant to an exclusive agreement with Tenant entered into during the Holdover Period, and a Lease or Sale of the Submitted Premises is consummated. If no box is checked in this § 7.4, then Tenant does not owe the commission to Brokerage Firm.

**8. LIMITATION ON THIRD-PARTY COMPENSATION.** Neither Broker nor Brokerage Firm, except as set forth in § 7, will accept compensation from any other person or entity in connection with the Premises without the written consent of Tenant. Additionally, neither Broker nor Brokerage Firm is permitted to assess and receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Tenant signs a separate written consent for such services.

**9. TENANT'S OBLIGATIONS TO BROKER.** Tenant agrees to conduct all negotiations for the Premises only through Broker and to refer to Broker all communications received in any form from real estate brokers, prospective landlords, owners, or any other source during the Term of this Tenant Listing Contract. Tenant represents that Tenant ☐ **Is** ☐ **Is Not** currently a party to any agreement with any other broker to represent or assist Tenant in the location or Lease of the Premises.

10. RIGHT OF PARTIES TO CANCEL.

**10.1. Right of Tenant to Cancel.** In the event Broker defaults under this Tenant Listing Contract, Tenant has the right to cancel this Tenant Listing Contract, including all rights of Brokerage Firm to any compensation if the Tenant Agency box at the top of page 1 is checked. Examples of a Broker default include, but are not limited to (1) abandonment of Tenant, (2) failure to fulfill all material obligations of Broker and (3) failure to fulfill all material Uniform Duties (§ 5) or, if the Tenant Agency box at the top of page 1 is checked, the failure to fulfill all material Additional Duties Of Tenant's Agent (§ 6). Any rights of Tenant that accrued prior to cancellation will survive such cancellation.

**10.2. Right of Broker to Cancel.** Brokerage Firm may cancel this Tenant Listing Contract upon written notice to Tenant if Tenant fails to reasonably cooperate with Broker or Tenant defaults under this Tenant Listing Contract. Any rights of Brokerage Firm that accrued prior to cancellation will survive such cancellation.

**11. COST OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES.** Broker will not obtain or order products or services from outside sources unless Tenant has agreed to pay for them promptly when due (e.g., space planning, drawings, surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Neither Broker nor Brokerage Firm is obligated to advance funds for Tenant. Tenant must reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Tenant.

12. BROKERAGE SERVICES; SHOWING PREMISES.

**12.1. Brokerage Services.** The following additional tasks will be performed by Broker:

**12.2. Showing Premises.** Tenant acknowledges that Broker has explained the possible methods used by listing brokers, landlords and sublandlords to show premises, and the limitations (if any) on Tenant and Broker being able to access premises due to such methods. Broker's limitations on accessing premises are as follows:

 Broker, through Brokerage Firm, has access to the following multiple listing services and property information services: .

**13. DISCLOSURE OF TENANT'S IDENTITY.** Broker ☐ **Does** ☐ **Does Not** have Tenant's permission to disclose Tenant's identity to third parties without prior written consent of Tenant.

**14. DISCLOSURE OF SETTLEMENT SERVICE COSTS.** Tenant acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

**15. NONDISCRIMINATION.** The parties agree not to discriminate unlawfully against any prospective landlord because of the race, creed, color, sex, sexual orientation, marital status, familial status, physical or mental disability, handicap, religion, national origin or ancestry of such person.

**16. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this document, Tenant acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this Tenant Listing Contract.

**17. MEDIATION.** If a dispute arises relating to this Tenant Listing Contract, prior to or after possession of the Premises, and is not resolved, the parties must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the other party's last known address.

**18. ATTORNEY FEES.** In the event of arbitration or litigation relating to this Tenant Listing Contract, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

**19. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

**20. ATTACHMENTS.** The following are a part of this Tenant Listing Contract:

**21. NOTICE, DELIVERY AND CHOICE OF LAW.**

**21.1. Physical Delivery.** All notices must be in writing, except as provided in § 21.2. Any document, including a signed document or notice, delivered to the other party to this Tenant Listing Contract, is effective upon physical receipt. Delivery to Tenant is effective when physically received by Tenant, any signator on behalf of Tenant, any named individual of Tenant or representative of Tenant.

**21.2. Electronic Delivery.** As an alternative to physical delivery, any document, including a signed document or written notice may be delivered in electronic form only by the following indicated methods: ☐ **Facsimile** ☐ **Email** ☐ **Internet**. If no box is checked, this § 21.2 is not applicable and § 21.1 governs notice and delivery. Documents with original signatures will be provided upon request of any party.

**21.3. Choice of Law.** This Tenant Listing Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

**22. MODIFICATION OF THIS CONTRACT.** No subsequent modification of any of the terms of this Tenant Listing Contract is valid, binding upon the parties, or enforceable unless in writing and signed by the parties.

**23. COUNTERPARTS.** This Tenant Listing Contract may be executed by each of the parties, separately, and when so executed by all the parties, such copies taken together are deemed to be a full and complete contract between the parties.

**24. ENTIRE AGREEMENT.** This agreement constitutes the entire contract between the parties and any prior agreements, whether oral or written, have been merged and integrated into this Tenant Listing Contract.

**25. COPY OF CONTRACT.** Tenant acknowledges receipt of a copy of this Tenant Listing Contract signed by Broker, including all attachments.

Brokerage Firm authorizes Broker to execute this Tenant Listing Contract on behalf of Brokerage Firm.

Tenant's Name:

Tenant's Signature

Date:

Address:

Phone No:

Fax No:

Electronic Address:

Brokerage Firm's :

Name:

Address:

Phone No:

Fax No:

Electronic Address:

Broker's Name:

Broker's Signature:

Date:

Address:

Phone No:

Fax No:

Electronic Address: