

4. COMMISSION. BROKER SHALL BE ENTITLED TO A LEASING COMMISSION IF: (A) BROKER PROCURES A TENANT, FOR ANY PORTION OF THE PROPERTY, A WRITTEN OFFER HAS BEEN SUBMITTED TO OWNER, A LEASE HAS BEEN FULLY EXECUTED WITH ANY AND ALL CONTINGENCIES FULLY SATISFIED OR WAIVED AND TENANT HAS COMMENCED PAYING THE MINIMUM MONTHLY RENT DUE AFTER THE EXPIRATION OF ANY PERIOD WHERE THE MINIMUM MONTHLY RENT HAS BEEN WAIVED ("**MINIMUM MONTHLY RENT**"); (B) DURING THE TERM OF THIS AGREEMENT OWNER LEASES ANY PORTION OF THE PROPERTY DIRECTLY OR INDIRECTLY OR THROUGH ANY PERSON OR ENTITY OTHER THAN BROKER; OR (C) WITHIN SIX MONTHS AFTER THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT, OWNER LEASES ANY PORTION OF THE PROPERTY TO A PERSON OR ENTITY THAT SUBMITTED A WRITTEN OFFER TO BROKER OR OWNER (AND OWNER RECEIVED SUCH OFFER) TO LEASE A PORTION OF THE PROPERTY DURING THE TERM OF THIS AGREEMENT OR A PERSON OR ENTITY THAT PROPERLY APPEARS ON A TIMELY SUBMITTED REGISTRATION LIST, AS HEREINAFTER DEFINED, PROVIDED BY BROKER PURSUANT TO THIS AGREEMENT, OR AN AFFILIATE, AS HEREINAFTER DEFINED, OF SUCH A PERSON OR ENTITY THAT SUBMITTED SUCH A WRITTEN OFFER OR THAT APPEARS ON SUCH REGISTRATION LIST.

LEASING COMMISSIONS SHALL BE CALCULATED AND PAID AS FOLLOWS:

(A) **LAND LEASES AND BUILDING LEASED PREMISES OF 20,000 SQUARE FEET AND LESS.** THE COMMISSION SHALL BE EQUAL TO 3% OF THE MINIMUM MONTHLY RENT PAYABLE TO OWNER DURING THE FIRST 5 YEARS OF OCCUPANCY OF THE INITIAL TERM OF THE LEASE ("**INITIAL TERM**") AND 1.5% OF THE MINIMUM MONTHLY RENT PAYABLE DURING THE SECOND 5 YEARS OF OCCUPANCY OF THE INITIAL TERM (EXCEPT THAT IF THE INITIAL TERM OF A LAND LEASE EXCEEDS 15 YEARS THE COMMISSION RATE DURING THE SECOND 5 YEARS SHALL BE 3% INSTEAD OF 1.5%).

CAP ON COMMISSION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED UNDER THIS SECTION (4A): (1) NO COMMISSION SHALL BE DUE OR PAID ON THE MINIMUM MONTHLY RENT FOR ANY PERIOD OF THE INITIAL TERM OR ANY EXTENDED TERM BEYOND THE INITIAL TEN YEARS OF TENANT'S OCCUPANCY; AND (2) **NO COMMISSION FOR THE INITIAL TERM AND ANY EXTENDED TERM SHALL CUMULATIVELY EXCEED \$37,500.**

(B) BUILDING LEASED PREMISES OF MORE THAN 20,000 SQUARE FEET.

1. BUILDING LEASED PREMISES OF GREATER THAN 20,000 SQUARE FEET AND LESS THAN 50,000 SQUARE FEET. FOR BUILDING LEASES WHERE THE SQUARE FOOTAGE OF THE GROUND FLOOR AREA OF THE SPACE LEASED IN THE BUILDING IS GREATER THAN 20,000 SQUARE FEET AND LESS THAN 50,000 SQUARE FEET, THE COMMISSION SHALL BE EQUAL TO THE LESSER OF (I) 3% OF THE MINIMUM MONTHLY RENT PAYABLE TO OWNER DURING THE FIRST 5 YEARS OF OCCUPANCY OF THE INITIAL TERM AND 1.5% OF THE MINIMUM MONTHLY RENT PAYABLE DURING THE SECOND 5 YEARS OF OCCUPANCY OF THE INITIAL TERM; AND (II) \$1.50 PER SQUARE FOOT OF THE GROUND FLOOR AREA OF THE SPACE IN THE BUILDING LEASED.

2. BUILDING LEASED PREMISES GREATER THAN 50,000 SQUARE FEET. THE COMMISSION SHALL BE EQUAL TO THE LESSER OF (I) TO 3% OF THE MINIMUM MONTHLY RENT PAYABLE TO OWNER DURING THE FIRST 5 YEARS OF OCCUPANCY OF THE INITIAL TERM AND 1.5% OF THE MINIMUM MONTHLY RENT PAYABLE TO OWNER DURING THE SECOND 5 YEARS OF OCCUPANCY OF THE INITIAL TERM; AND (II) \$0.75 PER SQUARE FOOT OF THE GROUND FLOOR AREA OF THE SPACE IN THE BUILDING LEASED.

(C) **SQUARE FOOTAGE.** AS USED HEREIN FOR THE PURPOSE OF DETERMINING WHETHER TO USE SUBSECTION (A) OR (B) ABOVE FOR THE CALCULATION OF COMMISSIONS, “**SQUARE FEET**” OF A SPACE LEASED IN A BUILDING ON THE PROPERTY SHALL ONLY INCLUDE THE GROUND FLOOR ARE EXCLUSIVE OF ANY MEZZANINES, LOADING DOCKS AND OUTDOOR SALES AREAS.

(D) **POOR CREDIT.** NOTWITHSTANDING THE FOREGOING UNDER SUBSECTION (A) AND (B) ABOVE, OWNER MAY (AFTER RECEIVING A CREDIT REPORT ON THE TENANT OR BY ANY SUCH OTHER INFORMATION, DETERMINE, IN OWNER’S SOLE DISCRETION, THAT THE TENANT DOES NOT HAVE STRONG CREDIT) ELECT TO CALCULATE THE LEASING COMMISSION FOR ANY SUCH TRANSACTION AT 3.0% OF THE MINIMUM MONTHLY RENT FOR THE FIRST 12 MONTHS OF THE LEASE. PROVIDED SUCH A TENANT IS NOT IN BREACH OF THE LEASE AGREEMENT BEYOND THE APPLICABLE CURE PERIOD, ON EACH ANNIVERSARY AFTER TENANT HAS COMMENCED TO PAY THE MINIMUM MONTHLY RENT, OWNER SHALL PAY BROKER THE 3% LEASING COMMISSION FOR THE NEXT FOLLOWING 12 MONTH PERIOD.

(E) **PAYMENT OF LEASING COMMISSIONS.** SUBJECT TO THE OTHER PROVISIONS UNDER THIS SECTION 4, LEASING COMMISSIONS FOR EACH LEASE TRANSACTION DUE HEREUNDER SHALL BE PAYABLE FROM THE SECURITY DEPOSIT, IF ANY, AND ALL OF THE MINIMUM MONTHLY RENT PAYABLE AND RECEIVED BY OWNER UNDER EACH SUCH LEASE UNTIL PAID IN FULL. NOTWITHSTANDING THE FOREGOING UNDER THIS SECTION 4 TO THE CONTRARY, IF A TENANT, UNDER A LEASE FOR WHICH BROKER IS RECEIVING A LEASING COMMISSION, BREACHES ITS LEASE AND VACATES THE PREMISES UNDER SUCH LEASE AND DESPITE THE EXERCISE OF OWNER’S REASONABLE BEST EFFORTS (NOT INCLUDING LITIGATION) OWNER IS UNABLE TO COLLECT THE MINIMUM MONTHLY RENT, THEN UNDER SUCH CIRCUMSTANCES ALL LEASING COMMISSIONS COLLECTED BY BROKER TO THAT POINT SHALL BE DEEMED EARNED AND OWNER SHALL HAVE NO FURTHER OBLIGATION TO PAY BROKER THE LEASING COMMISSION FOR THAT TENANT ON THAT INDIVIDUAL SPACE ON THAT PROPERTY.

5. ATTORNEY’S FEES. IN THE EVENT EITHER PARTY EMPLOYS AN ATTORNEY TO ENFORCE ANY TERMS OF THIS AGREEMENT AND IS SUCCESSFUL, THE OTHER PARTY AGREES TO PAY A REASONABLE ATTORNEY’S FEE AND REASONABLE COSTS. IN THE EVENT OF A TRIAL, THE AMOUNT OF THE ATTORNEY’S FEE AND COSTS SHALL BE AS FIXED BY THE COURT.

6. ADDITIONAL TERMS. BROKER SHALL SUBMIT A REGISTRATION LIST (THE “**REGISTRATION LIST**”) TO OWNER WITHIN 15 DAYS AFTER THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT AND SHALL ONLY INCLUDE ON THE REGISTRATION LIST PERSONS OR ENTITIES TO WHOSE ATTENTION THE PROPERTY WAS BROUGHT THROUGH THE SIGNS, ADVERTISING OR OTHER ACTION OF BROKER, OR WHO RECEIVED INFORMATION SECURED DIRECTLY OR INDIRECTLY FROM OR THROUGH BROKER DURING THE TERM OF THIS AGREEMENT. IN ADDITION FOR A NAME TO APPEAR ON THE REGISTRATION LIST SUCH PERSON OR ENTITY MUST NOT BE REPRESENTED BY ANOTHER BROKER AND BROKER MUST HAVE MADE PHYSICAL CONTACT WITH SUCH PERSON OR ENTITY AND HAVE EVIDENCE OF DELIVERY OF THE PAMPHLET “LAW OF REAL ESTATE AGENCY” IN COMMUNICATIONS REGARDING A SPECIFIC PROPERTY LISTED ON **EXHIBIT A.** THE OWNER SHALL PROVIDE THE REGISTRATION LIST TO ANY OTHER BROKERS THAT ASSIST OWNER WITH THE PROPERTY FOR THE NEXT SIX MONTHS FOLLOWING THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT. “**AFFILIATE**” MEANS, WITH RESPECT TO ANY PERSON OR ENTITY THAT SUBMITTED AN OFFER DURING THE TERM OF THIS AGREEMENT AND THAT APPEARS ON THE REGISTRATION LIST, A PERSON OR ENTITY WHICH HAS MORE THAN A 10% OWNERSHIP OR VOTING INTEREST IN SUCH AN ENTITY OR ANY ENTITY IN WHICH MORE THAN 10% OF THE OWNERSHIP OR VOTING INTERESTS ARE OWNED OR CONTROLLED BY SUCH A PERSON OR ENTITY.