

**EXCLUSIVE LISTING AGREEMENT - LEASE  
OFFICE AND/OR INDUSTRIAL**

**READ CAREFULLY, THIS AGREEMENT AFFECTS YOUR LEGAL RIGHTS**

In consideration of the listing for lease by **Colliers International AZ, LLC, a Delaware limited liability company** (hereinafter referred to as "Company"), of the real property located at 15953 N. Greenway-Hayden Loop, City of Scottsdale, County of Maricopa, State of Arizona (the "Property") and Company's promise to attempt with reasonable diligence to locate a tenant for the Property, the undersigned Owner hereby grants to Company the sole exclusive right to negotiate a lease or leases of the Property for the period commencing February 6, 2018 and terminating at midnight August 5, 2018 (the "Listing Period"). The price and terms of the lease(s) shall be as follows: \$1.10 per SF triple net per month.

Owner agrees to pay to Company a commission in accordance with Company's SCHEDULE OF COMMISSIONS (the "Schedule") hereinafter set forth. Said commission shall be earned by and paid to Company if any one of the following events occurs: (a) the Property or any portion thereof is leased to a tenant by or through Company, Owner or any third party during the Listing Period or any extension thereof; (b) a tenant is procured by or through Company, Owner or any third party who agrees to lease the Property or any portion thereof on the terms above stated or other terms reasonably acceptable to Owner during the Listing Period or any extension thereof; (c) title to all or part of the Property is transferred by Owner during the Listing Period or any extension thereof; or (d) within one hundred eighty (180) days after expiration of the Listing Period or any extension thereof, the Property or any portion thereof is leased on any terms (even if different than those offered during the Listing Period) to any person or entity (a "Disclosed Prospect") with whom Company has negotiated or to whom Company has submitted the Property or any portion thereof prior to such expiration for the purpose of leasing the same and whose name appears on any list of such persons or entities which Company shall have mailed to Owner at the address below stated at any time during the Listing Period or within thirty (30) days following such expiration provided that if Company has submitted a written offer to lease, it shall not be necessary to include the offeror's name on such list.

If negotiations involving the leasing of the Property have commenced and are continuing as of the scheduled expiration date of the Listing Period, the Listing Period shall be extended with respect to any transaction which is the subject of such negotiations for a period through the mutual abandonment of such negotiations or the consummation of such transaction.

Owner agrees to cooperate with Company in effecting a lease of the Property and to immediately furnish to Company complete information concerning any party interested in leasing or purchasing the Property. Company is authorized to advertise the Property and shall have the exclusive right to place a sign or signs on the Property if, in Company's opinion, such actions would facilitate the leasing of the Property. Owner acknowledges that Company may represent both Owner and a tenant or buyer in the same transaction, and Owner waives any potential conflict of interest that Company may have by representing both parties at the same time, provided that Company will not, without written authorization, (a) disclose to a tenant or buyer that Owner will accept a price or terms other than stated in this listing agreement; and (b) disclose to a tenant or buyer any confidential information. Owner understands and agrees that Company may list other properties during the Listing Period that may compete with the Property for potential tenants.

In the event no commission is earned pursuant to the foregoing provisions, but Owner sells or exchanges, or enters into any contract to sell or exchange, all or any part of the Property, or any interest therein, or an option to purchase the Property (a) during the Listing Period or any extension thereof or (b) during the one hundred eighty (180) days subsequent to the Listing Period or any extension thereof, in which the transferee is a Disclosed Prospect, then upon the closing of such sale or exchange or execution of such other agreement, Owner shall pay to Company a commission in accordance with the provisions of the Schedule.

It is understood that it is illegal for either Owner or Company to refuse to present or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

Owner represents and warrants to Company: (a) Owner is the owner of record of the Property or has the legal authority to execute this Agreement; (b) the person(s) executing this Agreement on behalf of Owner is duly authorized to do so and thereby bind Owner hereto; (c) no person or entity has any right to lease, purchase, or sell the Property or any portion thereof by virtue of any lease, occupancy agreement, option, right of first refusal or other agreement; (d) during the Listing Period there will be no other leasing listing agreements affecting the Property; (e) there are no delinquencies or defaults under any deed of trust or other encumbrance on the Property; (f) the Property is not subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding; (g) Owner has been advised by Company to consult with Owner's legal and tax advisors and that neither Company nor any of its salespeople is authorized or qualified to give legal or tax advice; (h) Owner has consulted with, and will consult with, such legal or tax advisors as Owner deems necessary or appropriate; (i) except as otherwise disclosed to Company in writing and the Company has acknowledged receipt thereof in writing, Owner has no knowledge of any hazardous materials or substances on the Property or any portion thereof; (j) the representations contained in this Agreement are true as of the date hereof and shall be true as of the date the Lease is executed; (k) NEITHER COMPANY NOR ANY SALESPERSON AFFILIATED WITH COMPANY HAS MADE ANY PROMISES OR REPRESENTATIONS TO OR AGREEMENTS WITH OWNER NOT CONTAINED HEREIN WHICH IN ANY MANNER AFFECT THE RIGHTS AND OBLIGATIONS OF OWNER AND/OR COMPANY UNDER THIS AGREEMENT; and (l) Owner has disclosed to Company all defects and any adverse information concerning the Property known to Owner. Owner acknowledges that Company is entering into this Agreement on the condition that Owner's representations and warranties contained in this Agreement are materially accurate, current and complete at all times during the Listing Period or any extension thereof. If any of the representations and warranties of Owner contained in this Agreement cease to be materially accurate, current and complete during the Listing Period, or any extension thereof, Owner shall immediately inform Company thereof and hereby covenants to take all action necessary to make them accurate, current and complete.

Owner agrees to indemnify, defend (with counsel reasonably acceptable to the Company), and hold Company, its shareholders, officers, directors, employees and agents harmless from any claims, lawsuits, losses, costs, liabilities or damages (including, without limitation, attorneys' fees, arbitrators' fees, costs and related expenses) incurred by Company relating to, arising out of, or in connection with (i) any breach of this Agreement by Owner, including but not limited to the breach of Owner's representations and warranties contained herein, (ii) any incorrect information regarding the Property supplied by Owner or the failure of Owner to supply information regarding all or any portion of the Property, (iii) the use of, or access to, the Property by any person pursuant to this Agreement, and (iv) Company's good faith performance of its obligations under this Agreement. Notwithstanding anything to the contrary, Owner shall not be obligated to defend, indemnify or hold Company harmless with respect to the gross negligence or intentional misconduct of Company.

If either party shall bring legal proceedings to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs, expenses and fees incurred in connection with the exercise



by the prevailing party of its rights and remedies with respect to this Agreement. Such costs, expenses and fees shall include, but not be limited to, attorneys' fees, paralegal fees, expert witness fees, costs of tests and analyses, trial and accommodation expenses, deposition and trial transcript copies and costs of court. For purposes of this paragraph, the term "prevailing party" shall mean (a) with respect to the claimant, one who is successful in obtaining substantially all of the relief sought, and (b) with respect to the defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant.

All amounts owed to Company hereunder shall bear interest from the due date until paid in full at the prime rate of Bank One, Arizona, NA, or any successor thereof (the "Bank"), which rate shall be the rate charged by the Bank on ninety (90) day unsecured loans at its main office, plus five percent (5%) per annum; or in the event the Bank does not then publish a prime rate as described above, interest may be computed hereunder upon the announced prime rate of any other bank doing business in Arizona, as selected by Company, plus five percent (5%) per annum.

## **SCHEDULE OF COMMISSIONS**

**A. LEASES:** As to a Lease of the Property, the commission shall be paid to Company on the date on which the lease has been executed by Owner and tenant. The commission shall be calculated as follows:

1. **Term:** If the lease is for a term of five (5) years or less, then the lease commission shall be six percent (6%) of the total rental payable for the term of the lease if there is a co-broker in the transaction, and five percent (5%) if Colliers is the sole broker in the transaction.

If the term of the lease is more than five (5) years, then the lease commission shall be five percent (5%) of the total rental payable for the first five (5) years of the lease term, three percent (3%) of the total rental payable for the sixth (6th) through tenth (10th) years of the lease term, and one and one-half percent (1½%) of the total rental payable for the remainder of the term of the lease.

2. **Month-to-Month Tenancy:** As to a month-to-month tenancy, the lease commission shall be one hundred percent (100%) of the first month's rent but in no event less than Five Hundred Dollars (\$500.00). In the event a month-to-month tenant subsequently executes a lease either directly with Owner or through Company within twenty-four (24) months from the date of occupancy of the month-to-month tenancy, then Company shall receive a lease commission in accordance with the provisions of the schedule set forth in paragraph B(1).

3. **Extension of Lease or Additional Space Taken:** Should the term of the Lease be extended or renewed, a lease commission shall be paid when said term is extended or renewed. The lease commission shall be computed in accordance with the provisions of paragraph B(1) and by using the rates applicable as if the initial term of the lease had included said extension or renewal period and shall be paid on the first day of the term as extended or renewed as the case may be, and thereafter should the lease be further extended or renewed on the first day of such extended or renewed term. Should the tenant occupy additional space, then a lease commission shall be paid when said additional space is occupied. The lease commission applicable to the additional space shall be computed in accordance with the provisions of paragraph B(1) and by using the rates applicable as if the premises initially demised had included said additional space.

~~4. **Purchase of Premises Demised by Tenant:** Should tenant, its successors in interest, or assigns, purchase all or part of the Property during the term of the lease or any extensions thereof or within one hundred eighty (180) days after the expiration thereof, then a sales commission shall be paid to Company when the Property is purchased. Said sales commission shall be six percent (6%) of the gross sales price of the Property so purchased; provided, however, that should the purchase be consummated during the term of the Lease, then the sales commission shall be reduced by the amount of any previously paid lease commissions related to that portion of the lease term extending beyond the date of closing of the sale and purchase.~~

5. **Broker Lien:** Owner's failure to pay Company the agreed upon leasing commissions as provided herein may give rise to a commercial real estate broker lien against the Property pursuant to Arizona Revised Statutes § 33-1071 *et seq.*

**B. ADDITIONAL TERMS REGARDING COMMISSIONS:** The term "Owner" when used herein shall be deemed to be the Owner of the Property or a tenant under a lease desiring to assign its interest in the lease or to enter into a sublease. Owner agrees that Company is authorized to cooperate with other brokers, and Company may divide with other brokers the above commissions in any manner acceptable to Company.


**C. MISCELLANEOUS:** Neither this Agreement nor any amendments or modifications of this Agreement shall be valid or binding unless made in writing and signed by both Owner and the Designated Broker of the Company. Owner hereby acknowledges that salespersons affiliated with Company are not authorized to: (i) make or approve any additions to, deletions from or alterations of the printed provisions of this Agreement; or (ii) make any amendments to or modifications of this Agreement. Owner shall not distribute a copy of this Listing Agreement to third parties without Company's prior written approval. This Agreement is governed by, and construed in accordance with, the laws of the State of Arizona. Any disputes arising out of this Agreement shall be decided by the Superior Court of the State of Arizona in and for Maricopa County, and the parties hereby expressly consent to the exclusive jurisdiction of such court and waive any rights of removal or transfer. This Agreement may be assigned by Colliers International AZ, LLC to any entity controlled by Colliers International AZ, LLC its parent, or an entity into which Colliers International AZ, LLC is merged, converted or consolidated, or which acquires substantially all of Colliers International AZ, LLC's assets, without Client's/Other Party's consent. This Agreement is binding on the successors, assigns, personal representatives and heirs of the parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. In the event any provision of this Agreement should be determined to be unenforceable, the remainder of this Agreement shall remain in force to the fullest extent permitted by law. Notwithstanding any other provision in this Agreement, in the event of a dispute involving Owner and Company arising in connection with this Agreement or the services provided by Company hereunder, Company's liability to Owner shall be limited to the amount of the commission(s) paid to Company under this Agreement. Time is of the essence with respect to each provision of this Agreement. This Agreement and each of the terms and provisions hereof have been negotiated between the parties and the language in all parts of this Agreement shall, in all cases, be construed according to its plain meaning and not strictly for or against either party. The undersigned Owner acknowledges receipt of a copy of this Agreement.




ACCEPTED: COLLIERS INTERNATIONAL AZ, LLC

OWNER: BCO, LLC

By: \_\_\_\_\_  
Mike Kane  
Its: Senior Vice President  
Address: 2390 East Camelback Road, Suite 100  
Phoenix, AZ 85016  
Telephone: (602) 222-5000  
Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
CRAIG G. Lynn D. Babcock Living Trust, Member  
CRAIG G. Lynn D. Babcock, Trustee  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Dated: \_\_\_\_\_

ACCEPTED: COLLIERS INTERNATIONAL AZ, LLC

By:  \_\_\_\_\_  
~~Robert J. Mulhern~~  
Its: ~~Designated Broker~~  
Dated: \_\_\_\_\_

  
Ramiro Perez  
Temporary Designated Broker