

[Letterhead of Landlord]

OFFICE EXCLUSIVE RIGHT TO LEASE Version

[Date of agreement]

[Name and address of broker]

Re: [Insert address of subject space, including floor(s) if applicable]

Gentlemen and Ladies:

This letter will constitute and confirm our agreement with respect to your efforts as a broker ("Broker" or "You") with the exclusive right to lease the office space located at _____ ("Premises") to bring about a proposed lease of the Premises between [Insert name of Landlord] ("Landlord"), as landlord, and a prospective tenant ("PT").

To induce Landlord to enter into negotiations with a PT regarding a lease, You hereby agree, notwithstanding any express or implied agreement, rule of law, or custom to the contrary, as follows:

1. You are hereby appointed, for a period of _____ months from the date hereof (the "Term"), to act as the exclusive broker authorized to find a tenant or tenants for the Premises willing to enter into a lease with a minimum annual fixed rent of \$_____ per rentable square foot (unless Landlord otherwise agrees), and including such other terms as may be mutually agreed upon by Landlord and PT.

2. (a) You shall use your best efforts to secure a PT satisfactory to Landlord. You shall promptly develop and implement a marketing plan. _____ [and _____] shall be the principal broker[s].

Comment: The cost of marketing is a negotiable item, with some types of marketing paid by the broker and other types of marketing paid by the Landlord. The individual brokers working on the assignment can be named.

(b) Broker shall prepare [insert frequency of status updates; for example: weekly, bi-weekly or monthly] updates and status reports of all current negotiations, prospects, tenants in the market and leasing activity at competitive buildings, and shall advise Landlord of its strategy for leasing the Premises.

3. During the Term of this Agreement, Landlord shall advise _____ [name of individual at Broker's office] in writing, which may be by e-mail, of any inquiries, proposals and offers by any PT or any other broker. Notwithstanding anything to the contrary in this Agreement, within ten (10) days after entering into this agreement, Landlord shall provide You with a list of prospects with whom the former listing agent has dealt and which are excluded from any transactions You may conclude [until _____].

[Comment: This section applies to any prospects handled by Landlord's prior broker and/or Landlord. It should conform to the prior listing agent's exclusive period. Not excluding prospects with whom the former listing agent was dealing could place Landlord in a position of being responsible for the payment of double commissions. If Landlord has been negotiating any

deals with a PT on a direct basis, Landlord should consider either completing negotiations with its prospect prior to entering this agreement or completely turn-over all negotiations to Broker. Otherwise, Broker may not be able to perform their duties until Landlord's deal is done or gone.]

4. (a) In the event a lease for all or a portion of the Premises is executed by the parties thereto, and the tenant has met all the conditions precedent for the lease to be in full force and effect, Landlord shall pay and Broker shall earn and hereby agrees to accept, as compensation in full for its services rendered in connection with the initial term of such Lease, one (1) full commission computed upon the rental amount set forth in the lease at the rates and in accordance with the terms set forth on Exhibit A, attached hereto and made a part hereof. *[See Comment at end of section 4.]*
- (b) In the event a lease for all or a portion of the Premises is executed by the parties thereto, and the tenant has met all the conditions precedent for the lease to be in full force and effect, whereby tenant is represented by a broker unaffiliated with Broker ("Outside Broker") and such Outside Broker is the procuring cause, then, Landlord agrees to pay Broker a commission in an amount equal to _____ % of one full commission computed in accordance with the terms and rates as set forth in Exhibit A. Landlord shall pay the Outside Broker one (1) full commission pursuant to a separate agreement entered into between Landlord and the Outside Broker, or at Landlord's option, Landlord shall pay Broker a commission in an amount equal to _____% of one full commission computed in accordance with the terms and rates as set forth in Exhibit A. In the event that Landlord opts to have Broker compensate the Outside Broker, Outside Broker shall be entitled to one (1) full commission if the Outside Broker is the procuring cause of the original Lease, and Broker shall be entitled to _____ % of such commission (for a total of _____ % of one (1) full commission).

[Comment: Parties sometimes agree to pay more than a single "full commission" when brokers from different firms are involved; i.e., the Landlord's broker and the tenant's broker (also known as the "Outside Broker"). Some brokerage firms may want to include themselves in the definition of Outside Broker when they are representing both the building and the tenant. Whether a brokerage firm may include itself in the definition of Outside Broker when they are representing both the building and the tenant, and the percentages payable, are all negotiable.]

- (c) If at any time during the Term of this Agreement, an existing tenant or any other tenant procured during the term of this Agreement, or such tenant's successors or assigns, extends or renews its lease or leases additional space, whether pursuant to an option or right contained in the respective Lease or otherwise, Landlord shall pay Broker _____ % commission for a renewal or extension of Lease and _____% for the leasing of additional space calculated in accordance with the rates as set forth in Exhibit A.

[Comment: The amount of commission paid, if any, for a renewal or extension, and expansion or taking additional space, is subject to negotiation; commissions for a renewal or extension, and expansion or taking additional space, are not necessarily the same percentage.]

- (d) All commissions due with respect to Section 4 shall be paid to Broker [Insert date of payment, or condition of payment or method of installment payments]. Commission payments for renewals, extensions and expansions and shall be calculated as if they

were _____ . *[Comment: For commission purposes, a lease renewal/extension can be treated as a new transaction or a continuation of the existing lease whereas a lease of additional space by an existing tenant can be treated as a new transaction, which means that the commission rates would be different for a renewal and expansion. This is negotiable.]*

[Comment: Payment of a commission to a Broker under this section 4 can either be in installments over a period of time or full payment upon lease execution. The payment methods vary depending on the credit of the tenant, the amount of security deposit paid by the tenant (if any) and market conditions which could include the size of the deal, whether the tenant's broker has brought the building other deals and how other landlords are paying commissions. Agreements will sometimes address a different commission structure when the Outside Broker and landlord agent work at the same brokerage. For example, in such cases, Landlord could pay one full commission (instead of, for example, 150% where the Outside Broker gets paid 100% of a full commission and the Landlord's agent gets paid 50% of a full commission) to the brokerage firm, and the Outside Broker and agency team would work out their split internally. This is negotiable, and Landlord and Landlord's broker will need to determine how this affects the marketing of the premises.]

(e) Broker shall defend, indemnify and hold the Landlord harmless against any loss, damage, claim or expense (including, but not limited to, reasonable attorneys fees) in connection with any claim by any other real estate broker for any commission with respect to a transaction contemplated by or related to this Agreement arising or accruing during the term of this Agreement when such claim is based upon the acts or negligence of Broker, provided that Broker's maximum liability hereunder shall be limited to the amount of any commission actually paid to Broker in connection with such transaction.

In the event of a claim or suit to which the foregoing indemnification and hold harmless applies, Landlord shall:

- (i) Give Broker prompt written notice thereof;
- (ii) Permit Broker to defend such claim or suit with counsel of Broker's choice provided that the Landlord shall have the right to approve such choice, which approvals shall not be unreasonably withheld or delayed;
- (iii) Not settle such claim or suit without Broker's prior written consent, which consent shall not be unreasonably withheld or delayed; and
- (iv) Cooperate with Broker in the defense of such claim or suit.

Broker agrees not to settle any such claim or suit without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed.

[Comment: Landlord may desire that Broker indemnify it against multiple brokers claiming they represented the PT in the transaction. It is common for a tenant broker to indemnify Landlord and Broker against multiple brokers claiming to represent the PT in the transaction in the commission agreement with the tenant broker. It is also typical for a lease to require PT to indemnify Landlord against multiple brokers claiming to have represented the PT in the transaction. Landlord must take into account market conditions and custom and practice when deciding on whether to require its exclusive Broker to indemnify it against multiple brokers claiming to represent the PT in the transaction.]

[Comment: Landlord and Broker may disagree as to whether Broker has earned the full commission if the tenant is in material default under the lease before the full commission is paid. This should should be negotiated before the commission agreement is executed.]

5. You will not be entitled to, nor will You claim, any commission, fee, reimbursement for services, costs, disbursements, or any other compensation with respect to the lease, except as provided in this Agreement.

6. You will be an independent contractor and will not be considered Landlord's agent or employee for any purpose. Without limiting the generality of the foregoing, You are not granted any right or authority to undertake or otherwise create any obligation, liability, make any representation, warranty, or agreement (express or implied) on Landlord's behalf or to bind Landlord in any manner whatsoever.

7. You shall not make any public announcement or arrange any other publicity with respect to the leasing or proposed leasing without Landlord's prior written approval. You shall hold all information received with respect to the Premises and the building in which it is located in confidence unless otherwise authorized by Landlord.

8. Within ten (10) days after the termination or expiration of this Agreement, You shall furnish Landlord a list of PTs that: 1) made offers to lease the Premises, including a copy of the document containing the respective offer; and 2) were introduced to the Premises by You and/or your co-brokers, including a description of any material You gave them about the Premises, and the dates on which You spoke to them about the Premises and/or showed the Premises to them. In the event that Landlord shall enter a lease of the Premises with any of the PTs on the list within ____ months after the expiration of the Term and provided that the lease term commences, You shall be entitled to the commission that You would have earned if the lease had been executed during the Term.

9. Landlord reserves the right, in its sole and absolute discretion, to terminate this Agreement and the Term at any time after the date that is ____ days after the date of this letter, by written notice sent by ____ [overnight courier service or by-hand delivery] to Broker. [The following depends on whether Broker was responsible for the costs of marketing, which is subject to custom and practice: If Landlord exercises its right to terminate this Agreement, You shall promptly submit to Landlord receipts for marketing and advertising expenses incurred by You pursuant to Section 2 of this Agreement, and Landlord shall reimburse You an amount equal to the aggregate of your receipts, net of any contribution previously paid by Landlord, multiplied by a fraction, the numerator of which is the number of days remaining in the Term after such early termination and the denominator of which is _____[the original number of days in the Term].]

10. This Agreement, your obligations, and any payments due or that may become due to You pursuant to this Agreement may not be assigned. Furthermore, no security interest is granted with respect to any such matters, without Landlord's prior written consent.

11. In the event the building in which the Premises is located is sold or otherwise transferred, Landlord shall cause the transferee to assume the remaining obligations of all leasing commissions due hereunder, in writing, at closing in a form reasonably acceptable to You, and shall deliver such form to You, whereupon Landlord shall be released hereunder. Landlord agrees to provide You with the name and address of the intended transferee within thirty (30) days of the execution of a purchase and sale agreement pertaining to the building.

[Comment: Without this provision the seller of the building who entered into the sales agreement would remain liable for payment of the commissions even after the building is sold because these agreements do not generally run with the land.]

12. You waive trial by jury in any action or other proceeding (and all claims therein) arising out of or otherwise concerning this Agreement or the transaction to which it relates.

13. You represent and warrant to Landlord that You are a duly licensed real estate broker in good standing in the state in which the Premises is located, that the person signing this Agreement on your behalf has the authority to execute this Agreement and that upon execution, this Agreement will be binding upon You and all of your employees and officers.

14. This Agreement and accompanying Exhibit contain a complete statement of all the arrangements between each of You and Landlord with respect to the subject matter hereof, and entirely supersedes any prior agreements or understandings. There are no representations, agreements, other arrangements or understandings, oral or written, between You and Landlord relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

15. This Agreement (a) will be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part thereof to be drafted, (b) cannot be changed orally or in any manner other than by a written agreement executed by both parties, (c) will be governed by New York law, and (d) may be signed in multiple, separate counterparts, each of which shall constitute an original, and all of which shall evidence a single agreement.

Please acknowledge your agreement to the foregoing by signing this letter in the space provided below. Thank you.

Very truly yours,

Landlord's authorized signatory

Agreed and accepted by:

[Name of Brokerage Firm]

By: _____
Signature

Print Name

Title

EXHIBIT A

NOTE: All terms in this Exhibit A are negotiable. Any amounts are for illustrative purposes only and not suggested terms.

OFFICE LEASES

On the rental for all or any fraction of:

Lease year %
Lease year %

[Comment: Commission rates for office leases in the boroughs outside of Manhattan are generally higher than commission rates for office leases in Manhattan and may follow a different lease year schedule. This is negotiable.]

SPECIAL CONDITIONS

1. All commissions payable hereunder shall be computed upon the base or fixed annual rent including fixed increases ("Base Rent") payable by the tenant under the lease (and upon real estate taxes and operating expenses paid by a net lessee under a net lease) and in no event shall the following be included in calculating Broker's commission: (a) electric charges, (b) any escalation payments made by the tenant pursuant to future increases in real estate taxes, fuel, operating expenses, labor or any substitution therefor.

If a lease provides an allowance in the form of a rental concession ("Rent Abatement") the commission shall be calculated on the net rental for the term and the rental not payable by reason of Rent Abatement shall be ratably spread over the entire term of the lease; provided however, a rental concession given by Landlord in lieu of an allowance for work, construction, decoration, etc. shall not be considered Rent Abatement for purposes of this Section and therefore shall not be deducted from Base Rent in connection with the commission calculation.

[Comment: Concerning section 1. (b), in a gross lease where base years are used, the commission may be calculated by including the base year amounts, but excluding future increases. In the event base year expenses are not yet known, an estimated or negotiated amount may be substituted. All the foregoing is negotiable.]

2. Notwithstanding the commission rates herein, in the event that the term of any Lease shall be two (2) years or less, the commission shall be 10% of the aggregate rental.

[Comment: Whether a minimum commission rate is payable for leases of 2 years or less is negotiable.]

3. If the lease provides that the tenant has an option to cancel, Broker shall be paid a commission calculated and paid in accordance with the terms and rates as set forth herein for the term of the lease not subject to such option and the remainder of the commission shall be paid to Broker in the event the option to cancel is not exercised or waived. Notwithstanding the foregoing, in the event that the option to cancel by the tenant contains a cancellation penalty which includes an amount sufficient to cover the unamortized portion of Broker's commission, Broker shall be paid a commission based on the entire term of the Lease payable in accordance

with this Agreement, disregarding any term which may be cancellable pursuant to said option or right, as if such option did not exist. The Lease shall be deemed to be canceled only if the tenant vacates the premises. If the cancellation is by mutual agreement not contained in the lease as originally executed, if the cancellation is pursuant to Landlord's option or if the lease gives the tenant the right or option to cancel by reason of the Landlord's act or omission to act, then Broker shall be paid a full commission as if the option did not exist.