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**REAL ESTATE INVESTMENT TRUSTS AND
DEVELOPER EMPLOYMENT ISSUES**

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REAL ESTATE INVESTMENT TRUSTS AND DEVELOPER EMPLOYMENT ISSUES

I. Introduction.

Developers are always on the alert for ways to derive additional compensation from transactions, and in addition to receiving partnership units (whether in an Upreit or Downreit) for the sale of properties to a real estate investment trust (a “**REIT**”), there are opportunities for the developer to receive other forms of compensation, ranging from classic employment or property management arrangements to more sophisticated structures designed to afford a REIT exclusive rights to acquire a developer’s projects in a given area and affording the developer (at least when times are flush) a more or less certain source of capital to finance new projects. This paper generally examines some of these additional compensation arrangements in the REIT context.

II. Some Special REIT Concerns.

A. REITS are Limited in their Ability to Capture Profits in Some Traditional Real Estate Areas. This paper is not designed to be a detailed tax examination (far from it), but since REITS are a creature of the U.S. Internal Revenue Code (the “**Code**”) it is necessary to have some understanding of certain of the limitations on a REIT’s ability to provide traditional real estate services in order to ascertain what opportunities may be available to a developer to do so. First,

75 percent of a REIT's gross income must be derived from what may generally be considered to be real estate sources—for example, rents, interest from mortgages, gain on the sale of non-dealer property, dividends from investments in other REITS, property tax refunds, commitment fees, and income from property that has been foreclosed upon (Code Section 856(c)(3)). Supplementing the 75 percent test, 95 percent of a REIT's gross income must be derived from the real estate sources described above plus dividends, interest, or the sale of non-dealers securities (Code Section 856(c)(2)). In addition to the two income tests described above, at least 75 percent of the value of a REIT's total assets must be represented by real estate assets and cash items (Code Section 856(c)(4)). For this purpose, real estate assets means real property including interests therein and interests in mortgages thereon, shares in other qualifying REITS, and, under certain circumstances, stock and debt instruments attributable to the temporary investment of new capital (Code Section 856(c)(5)(B)). The reciprocal of the 75 percent ownership test is that not more than 25 percent of the value of a REIT's total assets may be represented by securities not described in the definition of real estate assets, but such other securities may not include: (i) securities of any one issuer having a value greater than five percent of the value of the total assets of the REIT or (ii) more than 10 percent of the outstanding voting securities of any one issuer (Code Section 856(c)(4)(B)). To complete the picture on a REIT's ability to hold ownership interests in other entities, it should also be noted that a wholly-owned subsidiary of a REIT is, for practical purposes, ignored as a separate entity for these purposes, and all of its tax attributes are passed through to the REIT; accordingly any

wholly-owned subsidiary would have to meet the tests applicable to the REIT for qualification as such (Code section 856(i)).

The interplay between the 75 percent and 95 percent income tests and the 75 percent and 25 percent ownership tests have allowed REITS to capture some of the traditional income of the real estate industry. In a typical structure, a REIT owns the lion's share of the equity of a subsidiary by means of nonvoting preferred or common stock with the voting common stock being held by persons "affiliated" in some fashion with the REIT (typically members of senior management). The REIT then enters into contractual service arrangements with the subsidiary and may also provide capital by way of loans to the subsidiary to fund its operations. Through the use of terminable contracts, the REIT can effectively control the business of the subsidiary and through the use of debt, can manage income at the subsidiary level so as to minimize taxation.

B. A Brief Note on the Treasury Proposal of February 1999. At the time this paper was written the Department of Treasury had circulated its "General Explanations of the Administration's Revenue Proposals" Department of the Treasury, February 1999 (the "**Treasury Proposal**"). At page 140 of the Treasury Proposal is the section containing the proposed modifications to the Code to deal with businesses "indirectly" conducted by REITS. The Treasury notes that many of the businesses performed by REIT subsidiaries are a natural outgrowth of its traditional real estate operations, and further that the prohibitions on performing such services can

put REITS at competitive disadvantage in relation to others in the industry. Under the Treasury Proposal, the 10 percent portion of the 25 percent ownership test (Code Section 856(c)(4)(B)) would be changed to a “vote or value test” (as opposed to voting only), thus closing the loophole allowing a substantial portion of the equity of a subsidiary to be captured through nonvoting securities. In return, the proposal postulates an exception to the five percent and 10 percent asset tests by allowing REITS to have “taxable REIT subsidiaries”—accordingly, subject to the limits discussed below, under the proposal a REIT could form subsidiaries to conduct certain businesses that are now prohibited, albeit at the price of paying normal tax on the profits of the activity.

The Treasury Proposal envisions two types of taxable REIT subsidiaries, a “qualified independent contractor subsidiary” and a “qualified business subsidiary.” (Id.) A qualified business subsidiary would be allowed to undertake nontenant related activities such as third party management and development, while a qualified independent contractor subsidiary would be allowed to perform noncustomary and prohibited services with regard to tenants of REITS, as well as conducting the activities that could be performed by qualified business subsidiaries. (In this regard note that the provision of “non-traditional” services to tenants by a REIT can result in disqualifying otherwise “good” income and thus cause the REIT to fail the 75 percent income test. (*See* Treasury Regulations Section 1.856-4(b)).

As with anything coming from the Treasury, the proposed new entitlements would come with new restrictions. The value of all taxable REIT subsidiaries owned by a REIT could not represent more than 15 percent of the REIT's total assets, and within that 15 percent limitation no more than five percent of the total value of a REIT's assets could consist of qualified independent contractor subsidiaries. (*Id.*) Additionally a taxable REIT subsidiary would not be entitled to deduct any interest incurred on debt funded directly or indirectly by the REIT. (*See* Treasury Proposal p. 141). Finally, a 100 percent excise tax would be imposed on "excess payments" (to be defined) to ensure arm's length pricing for services.

At the time of writing this paper, it is not possible to predict whether the Treasury Proposal will be enacted into law. It has the general support of the National Association of Real Estate Investment Trusts (with some reservations) and hopefully by the time this paper is delivered there will be more definitive information on the ability of REITS to use subsidiaries to engage in traditional real estate business.

C. Summary. In general, then, REITS are limited in their ability to engage in certain areas of traditional real estate businesses. Current law permits (with some imagination) the creation of subsidiaries to provide some level of traditional service activities, and if the Treasury Proposal is adopted there will be a clear safe harbor to do so; however, there will still be restrictions on

REITS' ability to engage in management, leasing and development activities, leaving the opportunity for traditional developers to provide services in these arenas.

III. Obtaining Additional Compensation from REITS.

A. Employment and Consulting Agreements. One method for a development entity or an individual to obtain additional compensation from a REIT transaction would be to enter into a traditional employment or consulting arrangement. A sample employment agreement is attached to this paper as Appendix A. In short, however, there is nothing particularly unique about a REIT in connection with these types of traditional real estate agreements. In general, income to the employee/consultant will be ordinary income subject to tax and will be a deduction to the REIT as with any other entity. Under proper circumstances, obviously, these types of arrangements can be an opportunity for a developer to “sweeten” a transaction by arranging to provide long-term consulting or employment services.

B. Earn Out Agreements. This is another traditional real estate arrangement that can be utilized in the REIT transaction context. In this case, however, instead of receiving additional cash consideration upon achieving some agreed upon goal (as for example, fully leasing a property conveyed to a REIT), the developer would receive operating units in an Upreit or Downreit partnership (with conversion rights)—accordingly, all of the matters applicable to the initial issuance

of operating units in conjunction with the acquisition of property by a REIT discussed elsewhere in this program would be fully applicable to the earn out scenario. A form of Earn Out Agreement for a Downreit-structure transaction is attached as Appendix B.

C. Management and Leasing Activities. Given the limitations on what REITS may do through their operating subsidiaries as discussed above, the provision of traditional management, leasing and brokerage services are areas where the developer may seek to derive additional compensation by contracting to provide such services to the REIT. As discussed above, there is nothing legally different in dealing with a REIT in this area as compared to dealing with other types of entities. Attached as Appendix C is a form of real estate services agreement for the provisions of these types of services. This particular form provides for property management, leasing, and development (tenant-finish) services, and contains specific provisions dealing with locating and representing a REIT in the acquisition of properties.

D. Development Agreements. Another traditional area where a developer can provide services to a REIT is in the provision of services in connection with the development of new projects. Again, there is nothing particularly unique about dealing with a REIT in contracting to provide these services, other than, perhaps, the greater potential to obtain an exclusive arrangement in a given region as discussed in greater detail in Section III.E below. Attached to this paper as Appendix D is a form of Development and Property Management and Leasing Agreement which

covers the provision of development services in addition to traditional property management and leasing services. That particular form also provides for a developer incentive fee based upon the owner achieving certain targeted returns on its investment following development, allowing the developer to share in the upside value created by the developer's ability to timely develop the project and then successfully lease and manage it.

E. Exclusive Development Arrangements. Another possibility, perhaps somewhat unique to the REIT industry (although not necessitated by the REIT structure itself), is the potential for a developer and a REIT to enter into long-term exclusive arrangements whereby the developer agrees to make available to the REIT all product it develops within a given area or region and the REIT agrees to take that product. Such agreements can be very difficult to document in a definitive manner, as no potential owner can (or at least it should not) agree to bind itself to acquire to any project a developer provides, and no developer wants to be tied down to any particular set of investment guidelines, given how quickly markets can change. Attached as Appendix E is a form of Development Rights Agreement for a Downreit structured transaction which is based upon mutual rights of first refusal concepts that within a given region binds the developer and the REIT to grant each other a "first bite at the apple" as to investment opportunities. There are many variants in the way that this type of transaction could be structured, but this type of arrangement could provide a valuable source of capital to a developer and provide to a REIT a steady stream of the type of product it would like for its investment portfolio, while precluding its competition from access thereto.

F. Loan Transactions. Another potential area for compensation is the ability of a developer to obtain mortgage financing of one kind or another from a REIT. Since interest on a mortgage debt qualifies for the income tests, discussed above, the REIT may, given other factors, be a viable source of development capital through mortgage loans. It is not suggested here that a loan would be on other than market terms, but the availability of loans from a familiar (and unregulated) lender and the establishment of a relationship such that transactions can be closed reliably, quickly, and efficiently may be of great value to a developer in conducting its activities.

IV. Summary.

In addition to obtaining operating units for conveying property to a REIT, there exists ample opportunity for developers to establish relationships with REITS to provide traditional real estate services and be compensated at market rates. Given the restraints placed by the Code on REIT operational activities, the market currently provides a opportunities for developers to establish long-term relationships with entities who may be able to not only supply capital and acquire product upon completion, but also retain the developer for provision of regular ongoing real estate services both during and after the development process.

APPENDIX A

EMPLOYMENT AGREEMENT

This Employment Agreement (the “**Agreement**”) is entered into as of _____, _____, by _____, a _____ corporation (together with its successors and assigns permitted hereunder, the “**Company**”), and _____ (the “**Employee**”).

RECITALS

A. The Board of Directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to employ the Employee on the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the respective agreements and covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Employment Period.** Subject to Section 3, the Company agrees to employ the Employee, and the Employee agrees to be employed by the Company in accordance with the terms and provisions of this Agreement, for a period (the “**Employment Period**”) commencing on the date hereof and ending on the third anniversary of such date. Thereafter, the Employment Period shall be renewed for successive periods of ____ months each, commencing on each successive anniversary date of this Agreement, unless either party hereto elects to terminate this Agreement by giving the other party written notice thereof not later than ____ days prior to the then-effective end of the Employment Period. Neither party is under any obligation to extend or renew this Agreement.

2. **Terms of Employment.**

(a) **Position and Duties.**

(1) During the term of the Employee’s employment, the Employee shall serve as _____ of the Company, and, in so doing, shall perform the normal duties associated with such position, subject to the general direction, approval and control of the Board.

(2) During the term of the Employee’s employment, and excluding any periods of vacation and other leave to which the Employee is entitled, the Employee agrees to devote his full business time to the business and affairs of the Company and to use the

Employee's best efforts to perform faithfully, effectively and efficiently his duties and responsibilities.

(3) During the term of the Employee's employment it shall not be a violation of this Agreement for the Employee to serve on corporate, civic or charitable boards or committees, deliver lectures or fulfill speaking engagements and manage personal investments, so long as such activities do not interfere with the performance of the Employee's duties and responsibilities as an employee of the Company.

(4) Employee agrees to observe and comply with the Company's rules and policies as adopted by the Company from time to time.

(b) **Compensation.**

(1) **Base Salary.** During the term of the Employee's employment, the Employee shall receive an annual base salary ("**Annual Base Salary**"), which shall be paid in accordance with the customary payroll practices of the Company, in an amount equal to \$_____. The Board, in its discretion, may at any time increase (but not decrease) the amount of the Annual Base Salary to such greater amount as it may deem appropriate, and the term Annual Base Salary, as used in this Agreement, shall refer to the Annual Base Salary as it may be so increased.

(2) **Incentive Bonus**. Subject to the other terms and conditions of this Agreement and as further compensation for the performance of his services hereunder, during the term of his employment under this Agreement, the Employee shall be eligible to receive an annual incentive bonus (the “**Incentive Bonus**”) as provided in this Section 2.(b)(2). The Incentive Bonus shall be payable in the Board’s sole discretion if Employee has, in the Board’s opinion, been successful in implementing the directions of the Board and in achieving the Company’s business plan for the year in question. The Incentive Bonus shall be in an amount equal to ____ percent (____%) of Employee’s Annual Base Salary, and, if determined to be payable by the Board, shall be payable in December of each year, not later than December 15th. The Employee and the Board may agree upon a different structure for determining the Incentive Bonus by amendment to this Agreement.

(3) **Incentive, Savings, Stock Option and Retirement Plans**. During the term of the Employee’s employment, the Employee shall be entitled to participate in all incentive, savings, stock option and retirement plans, practices, policies and programs applicable generally to other employees of the Company (“**Investment Plans**”), as amended from time to time.

(4) **Welfare Benefit Plans**. During the term of the Employee’s employment, the Employee and/or the Employee’s family, as the case may be, shall be eligible for participation in and shall receive all benefits under the welfare benefit plans, practices, policies and programs (“**Welfare Plans**”) provided by the Company (including

medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs), as amended from time to time, to the extent applicable generally to other employees of the Company.

(5) **Perquisites.** During the term of the Employee's employment, the Employee shall be entitled to receive (in addition to the benefits described above) such perquisites and fringe benefits appertaining to his position in accordance with any policies, practices and procedures established by the Board, as amended from time to time.

(6) **Expenses.** During the term of the Employee's employment, the Employee shall be entitled to receive prompt reimbursement for all reasonable employment expenses incurred by the Employee in accordance with the Company's policies, practices and procedures, as amended from time to time.

(7) **Vacation.** During the term of the Employee's employment, the Employee shall be entitled to ____ (____) weeks paid vacation each calendar year. Any vacation shall be taken at the reasonable and mutual convenience of the Company and the Employee. Accrued vacation not taken in any calendar year will not be carried forward or used in any subsequent calendar year and the Employee shall not be entitled to receive pay in lieu of accrued but unused vacation in any calendar year.

3. **Termination of Employment.**

(a) **Death or Disability.** The Employee's employment shall terminate automatically upon the Employee's death during the Employment Period. If the Disability (as defined below) of the Employee occurs during the Employment Period, the Company may give to the Employee written notice in accordance with Section 10.(b) of its intention to terminate the Employee's employment. In such event, the Employee's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Employee (the "**Disability Effective Date**"), provided that, within the 30 days after such receipt, the Employee shall not have returned to perform, with or without reasonable accommodation, the essential functions of his position. For purposes of this Agreement, "**Disability**" shall mean the Employee's inability to perform, with or without reasonable accommodations, the essential functions of his position hereunder for a period of ____ days, consecutive or non-consecutive, in any 12-month period due to mental or physical incapacity, as determined by a physician selected by the Company or its insurers and acceptable to the Employee or the Employee's legal representative, such agreement as to acceptability not to be unreasonably withheld or delayed. Any refusal by Employee to submit to a medical examination for the purpose of determining Disability under this Section 3.(a) shall be deemed to constitute conclusive evidence of Employee's Disability.

(b) **Cause or Without Cause.** The Company may terminate the Employee's employment during the Employment Period for Cause or without Cause. For purposes of this Agreement, "**Cause**" shall mean a breach by the Employee of the Employee's obligations under

Section 2.(a) (other than as a result of physical or mental incapacity) which constitutes a continued material nonperformance by the Employee of his obligations and duties thereunder, as determined by the Board, and which is not remedied within 30 days after receipt of written notice from the Company specifying such breach; commission by the Employee of an act of fraud, embezzlement, misappropriation, willful misconduct or breach of fiduciary duty against the Company, as reasonably determined by a majority of the members of the Board after a hearing by the Board following ten days' notice to the Employee of such hearing; a material breach by the Employee of Sections 6, 7, 8, or 9, the Employee's conviction, plea of no contest or *nolo contendere*, or unadjudicated probation for any felony or crime involving moral turpitude; the failure of the Employee to carry out, or comply with, in any material respect any lawful directive of the Board consistent with the terms of this Agreement, which is not remedied within 30 days after receipt of written notice from the Company specifying such failure; or the Employee's unlawful use (including being under the influence) or possession of illegal drugs on the Company's premises. The Company may suspend the Employee's title and authority pending the hearing provided for above, and such suspension shall not constitute Good Reason as defined below. For purposes of this Agreement, "**without Cause**" shall mean a termination by the Company of the Employee's employment during the Employment Period for any reason other than a termination based upon Cause, death, Disability or upon a Change of Control, as defined below.

(c) **Good Reason**. The Employee's employment may be terminated during the Employment Period by the Employee for Good Reason or without Good Reason; provided, however, that the Employee agrees not to terminate his employment for Good Reason unless (1) the Employee

has given the Company at least 30 days' prior written notice of his intent to terminate his employment for Good Reason, which notice shall specify the facts and circumstances constituting Good Reason, and (2) the Company has not remedied such facts and circumstances constituting Good Reason within such 30-day period. For purposes of this Agreement, "**Good Reason**" shall mean:

(A) any significant reduction, approved by the Board without the Employee's consent, in the Employee's position, authority, duties or responsibilities as contemplated in Section 2.(a) or any other action by the Company which results in a material diminution in such position, authority, duties or responsibilities, excluding for this purpose an inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of written notice thereof given by the Employee.

(B) any termination or material reduction of a material benefit under any Investment Plan or Welfare Plan in which the Employee participates unless (A) there is substituted a comparable benefit that is economically substantially equivalent to the terminated or reduced benefit prior to such termination or reduction or (B) benefits under such Investment Plan or Welfare Plan are terminated or reduced with respect to all employees previously granted benefits thereunder;

(C) any failure by the Company to comply with any of the provisions of Section 2.(b), other than an inadvertent failure not occurring in bad faith and which is

remedied by the Company promptly after receipt of written notice thereof given by the Employee;

(D) any material breach by the Company of this Agreement; and

(E) the Company's requirement that the Employee's ongoing and regular duties and responsibilities be performed in a location other than the _____, _____ area, except for travel reasonably required in the performance of the Employee's duties and responsibilities.

As used in this Agreement, "**affiliate**" means, with respect to a person, any other person controlling, controlled by or under common control with the first person; the term "**control**," and correlative terms, means the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a person; and "**person**" means an individual, partnership, corporation, limited liability company, trust or unincorporated organization, or a government or agency or political subdivision thereof.

(d) **Change of Control.** If a Change of Control (defined below) occurs during the Employment Period and the Board determines in good faith that it is in the Company's best interest to terminate the Employee's employment with the Company, the Company may terminate the Employee's employment by giving the Employee written notice in accordance with Section 10.(b) of its intention to terminate the Employee's employment. For purposes of this

Agreement, “**Change of Control**” shall have the meaning given to such term in the [Company’s *Stock Option Plan*], as such Plan may be amended from time to time. Any such termination by the Company as contemplated in this Section 3.(d) is referred to herein as a termination “**upon a Change of Control.**”

(e) **Notice of Termination.** Any termination by the Company for Cause or without Cause or upon a Change of Control, or by the Employee for Good Reason or without Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 10.(b). For purposes of this Agreement, a “**Notice of Termination**” means a written notice: which indicates the specific termination provision in this Agreement relied upon; to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee’s employment under the provision so indicated; and if the Date of Termination (defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall not be more than 15 days after the giving of such notice). The failure by the Employee or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause or a termination upon a Change of Control shall not waive any right of the Employee or the Company hereunder or preclude the Employee or the Company from asserting such fact or circumstance in enforcing the Employee’s or the Company’s rights hereunder.

(f) **Date of Termination.** “**Date of Termination**” means: if the Employee’s employment is terminated by the Company for Cause or upon a Change of Control, or by the

Employee for Good Reason or without Good Reason, the date of receipt of the Notice of Termination or any later date specified therein pursuant to Section 3.(e), as the case may be; if the Employee's employment is terminated by the Company other than for Cause or upon a Change of Control, the date on which the Company notifies the Employee of such termination; and if the Employee's employment is terminated by reason of death or Disability, the date of death of the Employee or the Disability Effective Date, as the case may be.

4. **Obligations of the Company upon Termination.**

(a) **For Cause; Without Good Reason; Other Than for Death, Disability or Upon a Change of Control.** If, during the Employment Period, the Company shall terminate the Employee's employment for Cause or the Employee shall terminate his employment without Good Reason, and the termination of the Employee's employment in any case is not due to his death or Disability or upon a Change of Control, the Employee shall forfeit all rights to the Incentive Bonus otherwise due to him or to which he may be entitled, and the Company shall have no further payment obligations to the Employee or his legal representatives, other than for the payment of: (1) in a lump sum in cash within ten (10) days after the Date of Termination the sum of the Employee's Annual Base Salary through the Date of Termination to the extent not theretofore paid, any compensation previously deferred by the Employee (together with any accrued interest or earnings thereon) and any accrued vacation pay (collectively, the "**Accrued Obligations**"); and (2) any amount arising from the Employee's participation in, or benefits under, any Investment Plans (the "**Accrued**

Investments”), which amounts shall be payable in accordance with the terms and conditions of such Investment Plans.

(b) **Death**. If the Employee’s employment is terminated by reason of the Employee’s death during the Employment Period, the Company shall have no further payment obligations to the Employee or his legal representatives, other than for payment of: in a lump sum in cash within ten (10) days after the Date of Termination the Accrued Obligations; the Accrued Investments, which shall be payable in accordance with the terms and conditions of the Investment Plans; and the Incentive Bonus prorated from the first day of the Company’s then-current fiscal year to the Date of Termination (the “**Prorated Incentive Bonus**”) payable in a lump sum in cash within ten (10) days after the Date of Termination.

(c) **Disability**. If the Employee’s employment is terminated by reason of the Employee’s Disability during the Employment Period, the Company shall have no further payment obligations to the Employee or his legal representatives, other than for payment of: in a lump sum in cash within ten (10) days after the Date of Termination the Accrued Obligations; the Accrued Investments, which shall be payable in accordance with the terms and conditions of the Investment Plans; and the Prorated Incentive Bonus, payable in a lump sum in cash within ten (10) days after the Date of Termination.

(d) **Without Cause or for Good Reason**. If the Employee’s employment is terminated by the Company without Cause or by the Employee for Good Reason, the Company

shall have no further payment obligations to the Employee or his legal representatives, other than for: (1) payment of, in a lump sum in cash within ten (10) days after the Date of Termination, the Accrued Obligations; (2) payment of the Accrued Investments, which shall be payable in accordance with the terms and conditions of the Investment Plans; (3) payment of the Prorated Incentive Bonus, payable in a lump sum in cash within ten (10) days after the Date of Termination; and (4) payment of the greater of (A) one year's Annual Base Salary or (B) the Annual Base Salary that would be payable over the remaining life of the original three-year term of this Agreement if this Agreement had not been so terminated, in each case payable in a lump sum within ten (10) days after the Date of Termination.

(e) **Change of Control.** If the Employee's employment is terminated upon a Change of Control as contemplated in Section 3.(d), the Company shall have no further payment obligations to the Employee or his legal representatives, other than for (1) payment of, in a lump sum in cash within ten (10) days after the Date of Termination, the Accrued Obligations; (2) payment of the Accrued Investments, which shall be payable in accordance with the terms and conditions of the Investment Plans; (3) payment of the Prorated Incentive Bonus, payable in a lump sum in cash within ten (10) days after the Date of Termination; and (4) payment of an amount equal to Employee's Annual Base Salary for a period of three years, which shall be payable in a lump sum in cash within ten (10) days after the Date of Termination.

5. **Full Settlement, Mitigation.** Employee shall not be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Employee

under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Employee obtains other employment. Neither the Employee nor the Company shall be liable to the other party for any damages in addition to the amounts payable under Section 4 arising out of the termination of the Employee's employment prior to the end of the Employment Period; provided, however, that the Company shall be entitled to seek damages from the Employee for any breach of Sections 6, 7, 8, or 9 by the Employee or for the Employee's criminal misconduct.

6. **Confidential Information.**

(a) The Employee acknowledges that the Company and its affiliates have trade, business and financial secrets and other confidential and proprietary information (collectively, the "**Confidential Information**"). Confidential Information includes sales materials, technical information, processes and compilations of information, records, specifications and information concerning customers or vendors, manuals relating to suppliers' products, customer lists, information regarding methods of doing business, and the identity of suppliers. Confidential Information shall not include information that is generally known to other persons or entities who can obtain economic value from its disclosure or use and information required to be disclosed by the Employee pursuant to a subpoena or court order, or pursuant to a requirement of a governmental agency or law of the United States of America or a state thereof or any governmental or political subdivision thereof.

(b) During and following the Employee's employment by the Company, the Employee shall hold in confidence and not directly or indirectly disclose or use or copy or make lists of any Confidential Information or proprietary data of the Company or its affiliates except to the extent authorized in writing by the Board or required by any court or administrative agency, other than to an employee of the Company or its affiliates or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by the Employee of his duties as an employee of the Company.

(c) The Employee shall not use any Confidential Information for the benefit of any person or entity other than the Company.

(d) As used in this Section 6, "**Company**" shall include any of its affiliates.

7. **Surrender of Materials Upon Termination.** All records, files, documents and materials, or copies thereof, relating to the Company's and its respective affiliates' business which the Employee shall prepare, or use, or come into contact with, shall be and remain the sole property of the Company or its affiliates, as the case may be, and shall be returned promptly by the Employee to the owner upon termination of the Employee's employment with the Company.

8. **Successors.** The Company may assign its rights and obligations under this Agreement to any successor to all or substantially all the assets of the Company, by merger or otherwise, subject, however, to the Employee's right to terminate this Agreement for Good Reason

as provided in Section 3.(c), and may assign or encumber this Agreement and its rights hereunder as security for indebtedness of the Company and its affiliates. The Company shall require that any successor agree to assume in writing the obligations of the Company pursuant to this Agreement and the failure to secure such assumption on or prior to the closing of any merger or similar transaction shall constitute Good Reason under Section 3.(c). Nothing set forth in this Section 8 shall be deemed to limit or otherwise affect in any way the right of the Company or such successor to terminate the Employee's employment upon a Change in Control as contemplated in Section 3.(d). The rights of the Employee under this Agreement may not be assigned or encumbered by the Employee, voluntarily or involuntarily, during his lifetime, and any such purported assignment shall be void. However, all rights of the Employee under this Agreement shall inure to the benefit of and be enforceable by the Employee's personal or legal representatives, estates, executors, administrators, heirs and beneficiaries. All amounts payable to the Employee hereunder shall be paid, in the event of the Employee's death, to the Employee's estate, heirs and representatives.

9. **Non-Competition.**

(a) The "**Term of Non-Competition**" (herein so called) shall be for a term beginning on the date hereof and continuing until (1) the first anniversary of the Date of Termination if the Employee's employment is terminated by the Company for Cause or due to Disability or by the Employee without Good Reason, (2) the Date of Termination if the Employee's employment is terminated by the Company without Cause (and not due to Disability) or by the Employee for Good

Reason or (3) the first anniversary of the Date of Termination if the Employee's employment is terminated upon a Change in Control.

(b) During the Term of Non-Competition, the Employee will not (other than for the benefit of the Company pursuant to this Agreement) directly or indirectly, individually or as an officer, director, employee, shareholder, consultant, contractor, partner, joint venturer, agent, equity owner or in any capacity whatsoever: engage in the business of owning, managing, developing, acquiring, financing and otherwise dealing in or in connection with institutional quality industrial bulk distribution, warehouse, and service center real estate properties, or in any other business activity that the Company is conducting on the Date of Termination or has notified the Employee that it proposes to conduct in the United States (a "**Competing Business**"); hire, attempt to hire, or contact or solicit with respect to hiring any officer, employee or consultant of the Company; or divert or take away any customers, tenants, or suppliers of the Company. Notwithstanding the foregoing, the Company agrees that (1) the Employee may be involved in brokerage activities (both sales and leasing) with regard to real estate properties of the type described above; (2) the Employee may conduct property management services whether as an owner, adviser, officer or other participant; and (3) the Employee may own less than ____ percent of the outstanding voting securities of any publicly traded company that is a Competing Business so long as the Employee does not otherwise participate in such competing business in any way prohibited by the preceding clause.

(c) During the Term of Non-Competition, the Employee will not use the Employee's access to, knowledge of, or application of Confidential Information to perform any duty for any Competing Business; this Section 9.(c) shall be in addition to and not be construed as a limitation upon the covenants in Sections 6 and 9.(b).

(d) The Employee acknowledges that the geographic boundaries, scope of prohibited activities, and time duration of the preceding paragraphs are reasonable in nature and are no broader than are necessary to maintain the goodwill of the Company and the confidentiality of its Confidential Information, and to protect the other legitimate business interests of the Company.

(e) If any court determines that any portion of this Section 9 is invalid or unenforceable, the remainder of this Section 9 shall not thereby be affected and shall be given full effect without regard to the invalid provisions. If any court construes any of the provisions of this Section 9, or any part thereof, to be unreasonable because of the duration or scope of such provision, such court shall have the power to reduce the duration or scope of such provision and to enforce such provision as so reduced.

(f) As used in this Section 9, "**Company**" shall include any of its affiliates.

10. **Miscellaneous.**

(a) **Construction.** This Agreement shall be deemed drafted equally by both the parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Agreement are only for convenience and are not intended to affect construction or interpretation. Any references to paragraphs, subparagraphs, sections or subsections are to those parts of this Agreement, unless the context clearly indicates to the contrary. Also, unless the context clearly indicates to the contrary, (1) the plural includes the singular and the singular includes the plural; (2) “and” and “or” are each used both conjunctively and disjunctively; (3) “any,” “all,” “each,” or “every” means “any and all”, and “each and every” (4) “includes” and “including” are each “without limitation”; (5) “herein,” “hereof,” “hereunder” and other similar compounds of the word “here” refer to the entire Agreement and not to any particular paragraph, subparagraph, section or subsection; and (6) all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the entities or persons referred to may require.

(b) **Notices.** All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Employee: _____

Fax: _____

If to the Company: _____

Attn: _____

Fax: _____

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received at the address of the addressee.

(c) **Enforcement.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a portion of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added

automatically as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(d) **Withholding**. The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local or foreign withholding or other taxes or charges which it is from time to time required to withhold. The Company shall be entitled to rely on an opinion of counsel if any questions as to the amount or requirement of such withholding shall arise.

(e) **No Waiver** No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at any time.

(f) **Equitable Relief**. The Employee acknowledges that money damages would be both incalculable and an insufficient remedy for a breach of Section 6, 7, 8, or 9 by the Employee and that any such breach would cause the Company irreparable harm. Accordingly, the Company, in addition to any other remedies at law or in equity it may have, shall be entitled, without the requirement of posting of bond or other security, to equitable relief, including injunctive relief and specific performance, in connection with a breach of Section 6, 7, 8, or 9 by the Employee.

(g) **Complete Agreement**. The provisions of this Agreement constitute the entire and complete understanding and agreement between the parties with respect to the subject matter

hereof, and supersedes all prior and contemporaneous oral and written agreements, representations and understandings of the parties. Other than expressly set forth herein, the Employee and the Company acknowledge and represent that there are no other promises, terms, conditions or representations (oral or written) regarding any matter relevant hereto. This Agreement may be executed in two or more counterparts.

(h) **Arbitration**. The Company and the Employee agree to the resolution by arbitration of all claims or controversy ("**claims**"), whether or not arising out of this Agreement or the Employee's employment (or its termination), that the Company may have against the Employee or that the Employee may have against the Company or its parents, subsidiaries and affiliates, and each of the foregoing entities' respective officers, directors, employees or agents in their capacity as such or otherwise, except that this arbitration agreement shall not limit the Company's right to seek equitable relief, including injunctive relief and specific performance, and damages in a court of competent jurisdiction for an alleged breach of Sections 6, 7, 8, or 9 of this Agreement. Claims covered by this Agreement include claims by the Employee for breach of this Agreement, wrongful termination, discrimination (based on age, race, sex, disability, national origin or any other factor) and retaliation. In the event of any breach of this Agreement by the Company, it is expressly agreed that notwithstanding any other provision of this Agreement, the only damages to which Employee shall be entitled is lost compensation and benefits in accordance with Section 2.(b) or 4. The Company and the Employee agree that any arbitration shall be in accordance with the then-current National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("**AAA**"). The arbitrators shall supply the substantive law (and the law of remedies, if

applicable) of the State of Texas, or federal law, or both as applicable to the claims asserted. The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this arbitration agreement, including any claim that all or part of this Agreement is void or voidable. Any decision or award made by an arbitrator pursuant to this section will be binding upon the parties, and may be reviewed by a court only as provided by law. The parties agree that venue for arbitration will be in Dallas, Texas, and that any arbitration commenced in any other venue will be transferred to Dallas, Texas, upon the written request of any party to this Agreement. If arbitration is conducted pursuant to this Section 10.(h), the party in whose favor the Arbitrator renders the award shall be entitled to recover from the other party all costs and expenses incurred in such action or any appeal therefrom, including reasonable attorneys' fees, expert witness fees, and costs actually incurred.

(i) **Survival**. Sections 6, 7, 8, 9, and 10 of this Agreement shall survive the termination of this Agreement.

(j) **Choice of Law**. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Texas without reference to principles of conflicts of law of Texas or any other jurisdiction, and, where applicable, the laws of the United States.

(k) **Amendment**. This Agreement may not be amended or modified at any time except by a written instrument approved by the Board and executed by the Company and the Employee.

(l) **Employee Acknowledgment**. Employee acknowledges that he has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on his own judgment.

Executed as of the date set forth above.

EMPLOYEE:

By: _____

COMPANY:

By: _____

Name: _____

Title: _____

EXHIBIT A

Bonus Structure

EXHIBIT B

_____ Bonus Targets

APPENDIX B

EARN OUT AGREEMENT

This Earn Out Agreement is entered into effective as of _____, ____ by _____ and _____ (collectively, "**Contributor**"), _____ ("**Company**") and _____ (the "**Partnership**").

RECITALS:

1. Of even date, Contributor and Company have executed the Limited Partnership Agreement for, and have become partners in, the Partnership. Concurrently therewith, Contributor and Company have made certain contributions to the Partnership, all of which are reflected in the Partnership Agreement and in that certain Contribution and Sale Agreement dated _____, ____ among Contributor, Company and the other parties therein referenced (the "**Contribution Agreement**"); all defined terms used herein shall have the same meaning as set forth in the Partnership Agreement or the Contribution and Sale Agreement unless the context specifically indicates to the contrary.

2. Pursuant to the Contribution Agreement, Contributor is entitled to obtain certain additional interests in the Partnership, as evidenced by additional partnership units ("**Partnership Units**") therein for leasing certain vacant space in the Projects;

3. Contributor, Company and the Partnership wish to further evidence the terms and conditions under which Contributor is entitled to receive such additional Partnership Units.

AGREEMENTS:

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term.** This Agreement shall be in effect for a period of one year after the date hereof, at which time this Agreement shall terminate. Contributor' rights to receive additional Partnership Units for obtaining New Leases (defined below) as herein contemplated shall be effective only as to New Leases executed during the term of this Agreement.

2. **Determination of Additional Partnership Units Earned Through Leasing Activities.** Contributor shall be entitled to receive additional Partnership Units based upon the economic value of Leases executed after the date hereof for certain vacant space in the Project ("**New Leases**"), as provided in this Section 2.

(a) **Applicable Vacant Space.** The vacant space in the Project which, if leased by Contributor as herein provided, shall entitle Contributor to additional Partnership Units, is comprised of the areas reflected on Schedule 2(a) this Agreement. Contributor shall not be entitled to receive additional Partnership Units for leasing space that is not listed on Schedule 2(a).

(b) During the term of this Agreement, if Contributor obtains a prospective tenant for any portion of the vacant space listed in Schedule 2(a), it shall notify the Partnership and Company thereof, including with such notice the complete terms and conditions for the proposed New Lease and the form of proposed lease agreement therefor. All New Leases shall be subject to Company's approval. Company shall respond to any proposal submitted by Contributor within five (5) business days after receipt thereof, indicating whether it approves or disapproves of the proposed New Lease, in the latter case specifying the reason for its disapproval. Company shall not unreasonably withhold, delay or condition its approval of any New Lease, but shall be entitled to withhold approval for any New Lease that is not (i) in conformance with any leasing guidelines approved by Contributor and Company, or (ii) on conditions comparable to those available in the relevant market for comparable space to that being leased by the proposed New Lease. However, Company, in its sole discretion, reserves the right to approve any tenant improvement costs for a proposed New Lease that are in excess of those customarily provided to like tenants for similar space in the relevant market. All New Leases shall be on the standard form lease utilized by the Partnership, with reasonable customary modifications thereto, unless Company otherwise agrees.

(c) If Company approves of a New Lease, then after execution thereof by the tenant and the Partnership, Contributor shall be entitled to receive additional Partnership Units in accordance with the following:

(1) Promptly following execution of a New Lease, Company shall determine the net operating income to be derived therefrom by taking the gross revenues to be derived from the rents provided for therein and deducting therefrom the estimated operating expenses over the life of the New Lease (excluding any operating expenses that will be borne by the tenant);

(2) The result obtained in clause 2(c)(1) shall be divided by ____% to determine the marginal value of the New Lease;

(3) The result obtained in Section 2(c)(2) shall be reduced by the cost of tenant improvements and leasing commissions incurred or to be incurred with respect to the New Lease in question; and

(4) The result obtained in Section 4(c)(3) shall then be reduced by an amount equal to \$____ per square foot of area covered by the New Lease, and the result divided by \$____ to determine the additional number of Partnership Units Contributor shall receive by virtue of execution of such New Lease.

(d) The Additional Partnership Units payable to Contributor shall be issued promptly after the foregoing calculations are completed, but in any event within 30 days after approval and full execution of any New Lease. If, after any such Partnership Units are delivered to Contributor and prior to the occupancy of the space demised by a New Lease, the tenant thereunder repudiates its obligations thereunder and, as a result thereof, the Partnership terminates such New Lease, then the Partnership Units delivered to Contributor in respect of such New Lease shall be returned to the Partnership promptly following such termination.

3. **Further Assurances.** The parties shall take such actions and execute such other agreements as may be necessary to give effect to the intents and purposes of this Agreement.

4. **Notices.** Any and all notices desired or permitted to be given shall be given in the same manner provided for in the Partnership Agreement.

Executed effective as of the date and year set forth above.

COMPANY

By: _____
Name: _____
Title: _____

CONTRIBUTOR

By: _____
Name: _____
Title: _____

PARTNERSHIP

By: _____
Name: _____
Title: _____

APPENDIX C

REAL ESTATE SERVICES AGREEMENT

BY AND BETWEEN

and

DATED AS OF: _____

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REAL ESTATE SERVICES AGREEMENT

This REAL ESTATE SERVICES AGREEMENT ("**Agreement**") is dated as of _____, and is entered into by and between _____, a _____ corporation ("**REIT**"), and _____, a _____ ("**Agent**").

RECITALS:

- A. REIT presently owns improved _____ properties located in various geographical regions within the United States, and also seeks to acquire additional quality properties of a similar nature in selected markets designated by REIT and meeting REIT's investment criteria. REIT is also interested in acquiring and developing unimproved property with _____ facilities on a build-to-suit basis or speculative basis.
- B. Agent is an experienced and qualified company licensed to provide property acquisition, development, management, leasing and construction management services in the State of _____ (the "**State**") with respect to _____ properties, and wishes to provide such services to REIT with respect to certain of the properties presently owned by REIT in the State and more particularly described in Exhibit A attached hereto, as well as to assist REIT in connection with the acquisition or acquisition/ development of additional properties which REIT may acquire within the State or such smaller geographical area as REIT may designate. Each of the real properties on Exhibit A, and such additional properties acquired by REIT with the assistance of Agent and made a part of this Agreement by amendment of Exhibit A, shall be individually referred to as a "**Property**", and collectively as the "**Properties**".
- C. Based upon the representations of Agent to REIT regarding the qualifications, expertise, personnel and facilities of Agent, REIT wishes to retain Agent to provide such services, all as more particularly described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises and covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

APPOINTMENT AND ACCEPTANCE OF AGENCY

REIT hereby appoints Agent as the local managing agent for the Properties and hereby authorizes Agent to exercise such powers with respect to the Properties as may be necessary for the performance and discharge of Agent's obligations as set forth in this Agreement. Agent hereby accepts such appointment and agrees to perform each and every of the duties and obligations set forth in this Agreement during the term hereof. Agent shall have no right or authority, express or implied, to bind or otherwise obligate REIT in any manner whatsoever, except to the extent specifically provided in this Agreement.

ARTICLE II

PROPERTY MANAGEMENT SERVICES

2.1 Duties and Rights of Agent. Agent agrees to use its best efforts to perform and discharge the following property management obligations under this Agreement, and to comply with REIT's policies, guidelines and instructions in the execution thereof. Agent's duties shall include, without limitation, provision of the following services:

(a) Property Maintenance. To keep and maintain the Properties in good condition, Agent shall: (1) upon the request of REIT, at REIT's expense (in an amount approved by REIT in writing), inspect and review of each of the Properties and submit a report summarizing its findings within sixty (60) days of the effective date of this Agreement. Agent's review shall include, without limitation, an examination of the various building systems (e.g., roof, HVAC, fire sprinkler, etc.), the parking lot, tenant compliance with the storage, use, and disposal of hazardous substances, landscaping, signage, compliance of all improvements with local, state and federal laws and regulations having jurisdiction over the Properties. At the request of REIT, Agent shall also retain consultants approved by REIT to conduct an assessment of the Properties' compliance with (i) local, state and federal environmental laws and regulations, (ii) the Americans With Disabilities Act, (iii) local building code regulations applicable to the Properties, and (iv) any covenants or conditions imposed upon the Properties by recorded documents, and based upon such assessment make a written recommendation as to any appropriate remedial action; (2) implement in accordance with the Budget (as hereinafter defined) a preventative maintenance program to maximize the useful life of all buildings, roofs, HVAC equipment and parking lots; (3) make reasonable and necessary repairs and alterations, do all decorating and landscaping, and purchase all equipment, tools, materials and supplies necessary for the proper maintenance and operation of the Properties (which equipment, tools, materials and supplies shall become the exclusive property of REIT); (4) perform each of REIT's obligations under any and all leases, agreements, encumbrances or record and contracts with respect to its Properties; (5) assure each of the Properties' compliance with any insurance requirements imposed by the insurance carriers for the Properties. Notwithstanding the foregoing, with respect to each Property, Agent is not authorized to, and shall not, purchase any materials or services or perform any work, the cost of which exceeds by \$2,500.00 the

amount set forth in the Budget approved by REIT with respect to such service or work, without obtaining, in each instance, the express prior written approval of REIT, which REIT may hold in its sole discretion. Further, no single unbudgeted expenditure, purchase, improvement, alteration or repair costing in excess of \$2,500.00 shall be made without REIT's express prior written authorization.

Notwithstanding the foregoing, Agent may perform services and incur costs without the prior written approval of REIT in the event of an emergency, but only to the extent needed for the protection of the Properties or of tenants or other persons or to avoid the suspension of essential building services. Agent shall notify REIT immediately of the necessity for, the nature of, and the cost of, any such emergency work.

(b) Lease Administration. Agent shall monitor tenant compliance with the terms and conditions of each tenant's lease, including all environmental laws and regulations thereunder. Such obligations shall include, but not be limited to, physical inspections of the Properties and all leased premises therein and Agent shall promptly notify REIT if Agent has reason to believe that a tenant is not complying with applicable environmental laws and regulations. Agent shall use its best efforts to ensure compliance of the Properties with the Americans with Disabilities Act. Agent shall use its best efforts to ensure tenant compliance with insurance requirements as set forth in each lease, will secure Certificates of Insurance evidencing such and will, during the term of the lease, require updated insurance coverage and evidence thereof.

(c) Tenant Relations. To promptly handle complaints and requests from tenants, to notify REIT of complaints made by tenants and to notice and provide REIT with copies of supporting documentation with respect to any: (1) notice of violation or alleged violation of any governmental requirements, condemnation proceedings, rezoning or other governmental order, lawsuit or threat thereof involving the Properties, (2) defect in the Properties; and (3) fire or other damage or casualty to the Properties, and, in the case of any serious damage to the Properties, to also immediately notify the REIT's insurance carrier by telephone so that an insurance adjuster can inspect the damage before repairs are begun and to complete customary loss reports in connection with such fire or other damage to such Properties. Agent shall work diligently to respond to tenant's space requirements and to administer tenant questionnaires from time to time.

(d) Utilities and Service Contracts. To contract for terms no longer than one year, in the name and at the expense of REIT, for gas, electricity, water and such other services as are necessary to the operation of the Properties. Service contracts shall include, the right by REIT to cancel such contract upon thirty (30) days notice, without penalty or forfeiture of security deposit, if any.

(e) Notice of Claims. To promptly notify REIT's general liability insurance carrier and REIT of any personal injury or property damage occurring to or claimed by any

tenant of third party on or with respect to the Properties and to immediately forward to the carrier, with copies to REIT, any summons, subpoena, or other similar legal document served upon Agent, relating to alleged liability of REIT or Agent with respect to the Properties.

(f) Rent Collection. To receive and collect rent and all other monies payable to REIT by all tenants and licensees in the Properties and to deposit the same promptly as provided in this Agreement. REIT shall establish a rent collection account (the “**Collection Account**”) and shall notify Agent of the bank in which such account is established and the account number thereof for purposes of collecting all rents and other tenant reimbursements. The Collection Account shall be a special trust account maintained for the deposit of funds relating to the Properties and shall not be commingled with the funds of Agent. Agent shall maintain one copy of the receipted deposit slip together with copies of all documents relating to the deposits, and enter the information in REIT's database in accordance with REIT's Designated Accounting Software. Agent shall reconcile the total amount deposited in the Collection Account each month with the Monthly Report for such month.

(g) Legal Proceedings. Upon the prior approval of REIT, to institute in the REIT's name, all necessary legal proceedings for the collection of rent or other income from the Properties, or the ousting or dispossessing of tenants or any other persons therefore, and all other matters requiring legal action. Agent agrees to use its best efforts to collect rent and other charges from tenants in a timely manner and to assist in pursuing the REIT's legal remedies for non-payment of same. Agent shall not terminate any lease, lock out a tenant, institute suit for rent or for use and occupancy, or legal proceedings for recovery of possession, without the approval of REIT. REIT reserves the right to designate or approve counsel and to control litigation of any character affecting or arising out of the operation of the Properties.

(h) Invoices. Agent shall receive and review all invoices from vendors, approve them for payment within REIT guidelines, code with REIT's general ledger accounting format, enter the information into REIT's Designated Software database, and pay such invoices based on the Budget; provided, however, any payment in excess of \$35,000 shall not be paid by Agent but shall be paid directly by REIT.

(i) Accounting. Agent shall provide full accounting, billing, and payment services for the Properties in accordance with software designated by REIT on a cash basis (“**Designated Accounting Software**”). REIT hereby designates Skyline as its current Designated Accounting Software, and Agent acknowledges receiving from REIT a copy of REIT's Skyline Implementation Guide (the “**Guide**”). Agent, in the discharge of its duties under this Agreement, shall at all times follow and adhere to the Guide. REIT reserves the right to update, amend and modify the Guide at any time, or to change the Designated Accounting Software (including without limitation software upgrades and enhancements). Accounting data shall be electronically transmitted on a regular basis from Agent to REIT in accordance with the Guide or supplemental instructions provided by REIT.

(j) Preparation of Budget. For each Property, Agent shall submit, for REIT's review, operating and capital budgets (respectively, the "**Annual Operating Budget**" and the "**Annual Capital Budget**"; collectively, the "**Budget**") for the promotion, operation, repair, and maintenance of each Property for the following calendar year. The Budget shall comply in all respects with all requirements set forth in the Guide. The first Budget for each Property shall be prepared within forty-five (45) days from the effective date of this Agreement. Each Budget shall be prepared in the format designated by REIT. If REIT disapproves any Budget, REIT and Agent shall jointly prepare the Budget as soon as may be reasonably practicable. Until a new Budget is approved, Agent shall operate on the Budget for the Property approved for the preceding year, if any, with the exception of taxes, insurance premiums, utilities and salaries for personnel which must be increased in accordance with existing competitive conditions.

Each Annual Operating Budget shall include, without limitation, the following information with respect to each Property:

(i) Revenues. All revenues generated by the Property, including rents collected, expense reimbursements, recaptures and any other expected income. Specific assumptions as to rental rate, rental term, and free rent given will be provided for each suite that is vacant or scheduled for lease renewal during the year. Such assumptions shall be based upon market research of current market conditions for like properties.

(ii) Operating Expenses. All operating expenses incurred in renting, servicing, maintaining or repairing the Properties, including, but not limited to, the compensation described in this Agreement, and compensation for maintenance personnel and related payroll taxes and maintenance and office supplies to the extent chargeable to REIT under this Agreement. The Annual Operating Budget shall designate, by position, salary and amount of time to be devoted to the Property, the employees employed at the Property at REIT's expense and shall designate by name the employee or employees of Agent with whom REIT should correspond regarding the Property.

(iii) Taxes. Real and personal property taxes and other taxes or assessments levied and assessed against the Property.

(iv) Insurance. Premiums for all general liability, all-risk hazard and all other insurance covering the Property.

The Annual Capital Budget for each Property shall consist of an estimate of costs for capital improvements, tenant improvements and leasing commissions, on a suite by suite basis, with respect to such Property, for the following year. Capital improvements relating to, without limitation, roofs, HVAC equipment, painting, parking lots, and general building improvements shall be projected for a five (5) year period.

Each Budget shall constitute a major control under which Agent shall operate the Property which is the subject of such Budget. After approval of each Budget by REIT, Agent shall use diligence and employ all reasonable efforts to ensure that the actual costs of operating each Property shall not exceed the applicable Budget and shall not make any expenditures exceeding such amounts (or any amount exceeding the dollar limit set forth in subparagraph [h] above) without REIT's prior written approval. If, with respect to any Property, substantial variances occur within the first six (6) months of the Budget period, Agent shall submit a revised Budget for such Property to REIT for review and approval; such revised Budget shall comply with all requirements set forth in the Guide.

(k) Appraisal Information. Agent shall use its best efforts to compile such information as may be requested from time to time by REIT for purposes of preparing the annual appraisals of the Properties. Such information may include, without limitation, sales and lease information for comparable properties.

(l) REIT's Right of Inspection and Review. Agent shall serve as custodian of property-level information and as such shall keep originals of all leases, contracts, and documents relating to the operation of the Properties in a manner and format approved by REIT. REIT and its accountants, attorneys and agents shall have the right to enter upon any part of the Properties at all times during the term of this Agreement for the purpose of examining or inspecting the Properties or examining or making extracts of books and records of the Properties. Books and records for each Property shall be kept at such Property or at the location where any central accounting and bookkeeping services are performed by Agent. Such books and records shall at all times be the sole and exclusive property of REIT. Agent shall retain and properly maintain such books and records for a minimum of seven (7) years, after which time, and upon not less than thirty (30) days prior written notice to REIT, such book and records may be discarded.

(m) Property and Tax Review Programs. Agent shall participate in REIT's property review programs to the extent requested by REIT, provided such review programs are of reasonable length, do not conflict with property management responsibilities and reasonable notice of such review programs is given. Such review programs may include, without limitation, asset, investment, financial and strategy profiles. Agent shall respond, as requested, to REIT's management evaluation reports concerning actions to be taken by Agent to correct or modify its management standards for the operations, leasing or financial services provided for the Properties. Agent shall participate in REIT's tax review program, to verify tax assessments and to assist REIT, when requested to do so, in efforts to reduce such taxes. Agent shall promptly furnish REIT with copies of all assessment notices and bills.

(n) Monthly Reporting Package. With respect to each Property, Agent agrees to provide to REIT monthly, within the time periods set forth in the Guide, a reporting package (the "Monthly Report") in form and substance designated by REIT. The Monthly Report

for each Property shall be kept separate and distinct from the Monthly Reports for other Properties subject to this Agreement. Each Monthly Report shall include, without limitation, the following: (a) cash basis income statements, (b) comparison of Budget to actual operating results with a narrative explanation of significant budget variances, (c) capital improvement and major repair status report, (d) an explanation of delinquent account receivables, collection efforts, and an opinion on collectibility, and (e) monthly leasing and renewal activity reports. Agent also agrees to keep separate and distinct records with respect to the management and operation of each of the Properties, and to retain such records for periods specified by REIT.

(o) Control of Financial Transactions. Agent shall ensure such control over accounting and financial transactions as is necessary to protect REIT's assets from loss or diminution due to negligence or willful misconduct on the part of the Agent's associates, employees, agents or subcontractors. Losses caused by such activity shall be borne by Agent, and Agent hereby agrees to indemnify REIT against such loss.

(p) Employment Policies. Agent shall select, employ, pay, supervise and discharge all employees, independent contractors, and personnel necessary for the operation, maintenance, and protection of the Properties. All personnel used by Agent in the operation of the Properties shall be employees of Agent, employees of an affiliate of Agent, vendors to Agent or independent contractors. The employment of all full-time personnel assigned to the Properties, if any, shall be subject to the prior written approval of REIT. Agent shall keep weekly time sheets describing the work performed by such employees, copies of which shall be provided to REIT. Agent shall be responsible for complying with all laws, regulations and collective bargaining agreements affecting such employment; provided that, Agent shall obtain REIT's written approval prior to modifying or accepting any such agreement. Agent shall, throughout the term of this Agreement, be an equal opportunity employer.

(q) Market Research. With respect to any Property or Properties, Agent shall submit, upon the request of REIT, quarterly market research reports of competitive properties in the surrounding market area.

(r) Construction Supervision Services. Agent shall represent REIT in connection with the supervision of capital improvements and tenant improvements at each Property and shall perform the services at a compensation arrangement as set forth in Exhibit D and carry out the responsibilities set forth herein and such additional duties and responsibilities as are reasonably within the general scope of such services, which shall include:

(i) Negotiating and letting bids, preparing and enforcing contracts for the hiring of professionals and contractors, and supervision on behalf of REIT, the completion of capital improvements to the Properties which are within the Annual Capital Budget. All construction projects shall be competitively bid. Construction

jobs greater than \$10,000 must be bid by at least three (3) qualified contractors. Unbudgeted items and all change orders shall require the prior written consent of REIT. Agent shall also negotiate, executed agreements and supervise those tenant improvements pursuant to leases with tenants and/or those included in the Annual Capital Budget. Any other tenant improvements shall require the prior written consent of REIT.

(ii) Providing such consultation and advice relating to supervision of the construction projects as may be reasonably requested by REIT.

(iii) Keeping REIT fully informed on a regular basis of the progress of the construction at the Properties, including without limitation the obtaining of building permits, the preparation of construction draws, the obtaining of all required lien releases in connection with each construction draw, the issuance of certificates of occupancy or like documents evidencing all necessary final governmental approval of the work of construction, and such reports as are provided for herein or as may be reasonably requested by REIT.

(iv) Assembling and retaining all contracts, agreements and other records and data as may be necessary to carry out Agent's functions hereunder.

(v) Reviewing insurance coverage of contractors to ensure adequacy and compliance. With respect to any Property, At REIT's request and expense, Agent shall obtain and maintain course-of construction insurance coverage (in coverage amounts and at premium costs within the Budget or otherwise approved by REIT in writing) for the Properties, REIT, Agent, and their officers, employees and agents while construction activities at such Property are under way.

(vi) Using its best efforts to accomplish the timely completion of construction projects in accordance with the approved plans and specifications and approved project costs, and within the time schedules for such completion. Agent shall coordinate final punch list items.

If Agent desires to contract for repairs, construction, or any other service described in this Agreement, with a party in which any partner or shareholder of Agent holds a beneficial interest (either directly or indirectly), such interest shall be disclosed to REIT before such services are procured. The cost of any such services shall be at prevailing market rates. Notwithstanding the foregoing, Agency may employ a corporation or other entity in which Agent (or any subsidiary, affiliate or related corporation) has a financial interest, for the purpose of making repairs and alterations and performing other services to the Properties without the approval of REIT if, and only if, such work is done at a tenant's request and at such tenant's sole expense ("**Tenant Work**"). Agent shall hold REIT and its related entities and employees harmless from any and all claims which may be advanced by any such tenant in connection with Tenant Work performed by Agent or under its supervision. Agent shall, however, not require any tenant to use Agency or any subsidiary, affiliate or related corporation or its general contractor to perform such Tenant Work.

2.2 Compensation. REIT agrees to pay Agent a management fee for the property management services performed for each Property pursuant to this Agreement at a percentage of Gross Receipts of each Property, as described on Exhibit A. Such fee shall be payable monthly, not later than the fifteenth (15th) day of each calendar month, and shall be based on Gross Receipts of the immediately preceding calendar month. For purposes of computing such fee, "**Gross Receipts**" shall mean base rent payments and tenant reimbursement of operating expenses (including tax and insurance) actually collected with respect to a Property and shall exclude sales tax on rental receipts, security deposits, percentage rents, amortization of special tenant improvements, compensation for loss, damage, condemnation, and other non-operating receipts.

With respect to any space occupied by REIT at a Property, Agent shall be entitled to management fees as if REIT were paying rent at the average square foot rental rate being paid for comparable space in the Property.

2.3 Expenses Not Reimbursed to Agent. Except as otherwise provided herein or in the applicable Budget, all expenses or costs incurred by or on behalf of Agent in connection with the management of each Property shall be the sole cost and expense of Agent, and shall not be reimbursable by REIT. Such non-reimbursed expenses and costs shall include, without limitation, the following items:

(a) Salaries. Cost of gross salaries and wages, payroll taxes, insurance, worker's compensation, pension benefits and any other benefits of the personnel of Agent.

(b) General Office Expenses. Cost of telephone and general office expenses incurred at the Properties by Agent for the operation and management of the Properties, including without limitation postage, Federal Express, courier service and similar delivery charges, check stock and billing statement stock.

(c) Data Processing Equipment. Cost of software and hardware for electronic data processing, whether located at the Properties or at the Agent's office. Agent shall maintain the software and version designated by REIT for electronic data processing.

(d) Data Processing and Accounting Services. Costs of electronic data processing and property management accounting services.

(e) Bonding Employees. Costs of bonding Agent's employees who may handle or be responsible for monies or property of REIT, where required by law or where requested by REIT.

ARTICLE III

LEASING/MARKETING SERVICES

3.1 Duties and Rights of Agent. With respect to each Property, Agent shall be responsible for (1) evaluating the existing marketing program, including, without limitation, the current leasing parameters and performance of third party listing brokers ("**Exclusive Listing Agents**"), (2) overseeing the leasing and marketing services currently being provided by Exclusive Listing Agents, (3) ensuring that lease terms are negotiated pursuant to the leasing guidelines as contained in Exhibit B or otherwise approved, and (4) ensuring that lease submissions are complete which includes, without limitation, tenant credit underwriting, tenant acceptance of premises, approval of third-party leasing commissions, and tenant set-up of REIT's property management system software. Agent shall, in conjunction with REIT and Exclusive Listing Agent, prepare within forty-five (45) days from the effective date of this Agreement (and on or before October 1st in subsequent years), leasing guidelines for each calendar year (described on Exhibit B) which shall, without limitation: (i) contain a brief narrative description of the anticipated market, (ii) list all vacant spaces as well as those leases due to expire during the following year, (iii) project the rate of rents and terms for new leases and concessions to tenants; and (iv) estimate the cost of alterations for space to be leased and other estimated costs. Such leasing guidelines shall be approved by REIT in writing and may be amended, with REIT written approval, from time to time as the circumstances warrant.

Agent agrees to review prospective leases against the leasing parameters described in Exhibit B and to determine any inconsistencies thereto. Agent will review the lease submission package to ensure that the following items are included:

1. Four originals of the lease executed by lessee;
2. Photocopy of the tenant's check;
3. Financial statements and credit information (credit bureau reports, bank references);
4. Plans, drawings and specifications on tenant improvements;

5. Leasing commission agreements and invoices;
6. Hard copy of REIT's tenant set-up form;
7. Narrative statement as to the nature of the tenant's business; and
8. Net present value analysis.

Agent shall review the marketing plan for each Property including, without limitation, the effectiveness of periodicals, signs, plans, brochures and other media employed by Exclusive Listing Agents to advertise each Property. No sign shall be placed on any Property by Agent without REIT's prior written approval.

Agent shall be solely responsible for all of its expenses in the performance of its duties hereunder.

Agent shall at all times act in conformance with the policies and programs established by REIT and the scope of Agent's authority shall be limited to said policies. In connection therewith, Agent shall use its best efforts to comply with present and future laws, ordinances, orders, rules, regulations and requirements of federal, state and local governments, or any other body/entity exercising functions similar to those of any of the foregoing, which may be applicable to the Properties or any portion thereof or to the leasing thereof.

No less frequently than each calendar quarter, Agent shall work with Exclusive Listing Agents to ensure that REIT is provided with current assessments of local market conditions for each of the Properties so as to permit REIT to thoroughly understand both broad market trends and each Property's competitive position in the market or sub-market.

Each month, Agent shall work with Exclusive Listing Agents to ensure that REIT is provided with prospect activity reports in a form acceptable to REIT detailing the leasing activities undertaken by Exclusive Listing Agents during the immediately preceding month.

Agent agrees, for itself and all persons retained or employed by Agent in performing its services, to hold in confidence and not use or disclose to others any confidential or proprietary information of REIT disclosed to Agent, including, but not limited to, any data, information, plans, programs, processes, costs, operations, or tenants which may come within the knowledge of Agent in the performance of, or as a result of, its services, except where REIT specifically authorizes Agent to disclose any of the foregoing to others or such disclosure reasonably results from the performance of Agent's duties hereunder.

3.2 Leasing Compensation. For leasing services performed by Agent hereunder, REIT shall pay Agent leasing commissions at the rates specified in Exhibit C attached hereto at the time a lease is consummated, whether such lease is consummated as a result of the efforts of REIT, Exclusive Listing Agents, or other persons or entities. If a new lease contains a cancellation option exercisable by the tenant, a leasing commission will be paid with respect to the term prior to such cancellation exercise date; provided that, if such cancellation option is not exercised, REIT shall then

pay a leasing commission on the balance of the term. Leasing commissions shall be based on base rents (“**Base Rents**”) payable to REIT only and shall exclude (i) formula based rent increases not subject to computation at the commencement of the lease, (ii) tenant reimbursement of operating expenses (for example, property taxes, insurance and common area maintenance), (iii) the assumption by REIT of any lease covering space currently occupied by a tenant, (iv) rentals or any compensation payable by the tenant for parking, leasehold improvements, decorations, or tenant extras furnished or paid for by REIT, or utilities or equipment charges where such equipment charges are identified as such in the lease or where the cost for the same is a part of the rent charged the tenant under the lease, (v) security deposits, (vi) any portion of the rent intended or stated in the lease to constitute an amortization of all or any part of tenant improvements constructed for such tenant, and (vii) to the extent not in lieu of rent, any termination payments. In the event a tenant fails to take possession and pay rent, Agent shall refund to REIT any commission received to the extent recovered from the Cooperating Broker (as defined below). If, for any reason whatsoever, any lease is not entered into between REIT and a prospective tenant, then no commission shall be deemed to be due or earned, nor shall the same be paid to Agent by REIT, and REIT is and shall be received from liability for the payment of any and all commissions, claims or charges whatsoever. REIT shall have the unqualified right, at its sole and absolute discretion, to refuse to enter into a lease for any reason whatsoever without REIT incurring any obligation to Agent for the payment of a commission, or otherwise.

When leases are negotiated by outside brokers, Agent shall cooperate with such brokers (“**Cooperating Broker**”). If Agent finds a tenant or prospective tenant for any Property or any portion thereof, REIT authorizes Agent to also act as agent for such tenant and REIT consents to such dual agency. If a Cooperating Broker finds or represents a tenant, then Agent shall act as agent for REIT only, the Cooperating Agent shall act as agent for the tenant only, and the Cooperating Broker shall not be REIT's agent, even though the Cooperating Broker's compensation for services rendered is paid by REIT because the Cooperating Broker may share Agent's commission. A Cooperating Broker shall not be an agent or sub-agent of REIT or Agent.

3.3 Excluded and Registered Persons. REIT shall, within twenty (20) business days after the date hereof, provide Agent, in writing, with the names of those persons or entities registered with REIT by another broker under any prior agreement concerning the Property or portions thereof (“**Excluded Persons**”). REIT shall also specify for each Excluded Person the type of transaction the consummation of which during the term of this Agreement entitles such other broker to any compensation (“**Excluded Transaction**”). If REIT timely provides Agent with the names of the Excluded Persons and specifies the Excluded Transaction for each Excluded Person, then Agent shall not be entitled to a commission with respect to consummation of such an Excluded Transaction with an Excluded Person. If REIT fails to so notify Agent of the existence of any Excluded Persons, then it shall be conclusively deemed that there are no Excluded Persons. A person or entity shall not be an Excluded Person if REIT fails to timely specify an Excluded Transaction for such person or entity.

With respect to each Property, Agent shall, within ten (10) business days after the termination of this Agreement or the expiration of the term hereof, provide to REIT, in writing, the names of those persons or entities with whom Agent either directly or through another broker had negotiated during the term hereof (“**Registered Persons**”), and specify the type of transaction affecting such Property or portions thereof for which such negotiations were conducted (“**Registered Transaction**”). If Agent fails to timely notify REIT in writing of the existence of any Registered Persons, then it shall be conclusively deemed that there are not any Registered Persons with respect to such Property.

If, within thirty (30) days after the expiration of the term hereof, REIT enters into a contract with a Registered Person for consummation of a Registered Transaction, then REIT shall, upon consummation of such Registered Transaction, pay Agent a commission for the Registered Transaction in accordance with Exhibit C. If, within ninety (90) days after the expiration of the term hereof, REIT enters into another agency to lease agreement with respect to any Property or a portion thereof with a broker other than the Agent, then REIT shall provide to its new broker the names of the Registered Persons and the Registered Transaction for each Registered Person, and provide in such a new agreement that the new broker shall not be entitled to receive any compensation payable to Agent hereunder for consummation of a Registered Transaction with a Registered Person.

ARTICLE IV

ACQUISITION AND DEVELOPMENT SERVICES

4.1 Obligation to Seek and Propose Property Acquisitions. REIT has established criteria and guidelines for the acquisition and/or development of properties within the state or such smaller geographical area designated by REIT, a copy of which is attached hereto as Exhibit E (the “**Investment Guidelines**”). During the term of this Agreement, unless otherwise directed by REIT in writing, Agent shall (i) seek, identify and propose for REIT's acquisition real properties conforming to the Investment Guidelines (“**Proposed Properties**”), and (ii) submit to REIT for consideration all acquisition and build-to-suit opportunities fitting REIT's Investment Guidelines which become available within Agent's market. In connection therewith, Agent shall furnish to REIT monthly (or on such other periodic basis established by REIT) an updated “deal list” identifying, in general terms, the efforts of Agent, all Proposed Properties and all potential acquisitions by REIT, as well as Agent's assessment as to the likelihood that the Proposed Properties can be acquired. REIT shall have the right to modify, amend and/or supplement the Investment Guidelines in its sole discretion upon written notice to Agent. Agent shall not have any exclusivity arrangements with any other clients, persons, or entities (including without limitation partnerships, corporations, trusts or limited liability companies or affiliates thereof) which would preclude or restrict Agent from presenting to REIT all opportunities that meet REIT's Investment Guidelines.

4.2 Presentation of Information. (a) When Agent has identified a Proposed Property, Agent shall prepare and submit to REIT a package of information (“**Approval Package**”) with

respect to the Proposed Property, which shall include, to the extent reasonably available, the following:

- (i) a term sheet identifying and describing the Proposed Property in general terms, including its ownership, location, rentable area, tenant and lease status, overall condition and (to the extent available) historical operating information;
- (ii) an outline of the contemplated acquisition strategy (i.e., the proposed purchase price, Deposit, contingency period, closing schedule and similar matters);
- (iii) a preliminary form of a budget (“**Acquisition Budget**”) setting forth the estimated timing and amount of all projected due diligence and acquisition expenses, including both third-party expenditures and labor costs associated with all stages of the proposed acquisition, including title review, appraisal costs, legal expenses and Phase I environmental work; and
- (iv) preliminary economic projections (current year and beyond) for the operation of the Proposed Property;
- (v) a site plan;
- (vi) floor plans;
- (vii) property description;
- (viii) market survey/comparables;
- (ix) aerial photographs/property photographs;
- (x) rent roll;
- (xi) historical operating experience (when available);
- (xii) property management strategy;
- (xiii) economic projections (current year and beyond);
- (xiv) preliminary operating budget;
- (xv) any applicable refurbishment or improvement activities (preliminary, final to be submitted after inspection);
- (xvi) a statement of asset replacement costs;

(xvii) standard form lease;

(xviii) all other material agreements (e.g., easement agreements, PUD agreements, etc.), when and as available; and

(xix) such other information as REIT shall request.

(b) REIT shall, promptly upon receipt of a proposed Approval Package, review the same and notify Agent if any portion of the required information was not included in such package. The failure of REIT to notify Agent of any deficiencies within ten (10) days after receipt of a package (or any additional or supplementary submission, as applicable) shall be deemed to constitute acceptance of the same by REIT as complete; provided, however, that notwithstanding such acceptance, Agent shall continue during REIT's process of review to provide, whether or not requested by REIT, such additional or changed information as may be material and relevant to the determination of REIT whether the applicable Proposed Property should be acquired by REIT.

(c) REIT, shall within twenty(20) days after receipt of a complete Final Approval Package for a Proposed Property, notify Agent whether REIT desires to proceed with acquisition of such Proposed Property. If REIT notifies Agent of its intention to proceed with acquisition of the Proposed Property, Agent shall assist REIT with the negotiation and preparation of a purchase and sale agreement in accordance with Section 4.3 below.

(d) In the event that REIT fails to notify Agent on or before the twentieth (20th) day following the day upon which REIT receives a complete Approval Package for a Proposed Property, to advise Agent that REIT desires to proceed with acquisition of such Proposed Property, REIT shall conclusively be deemed to have declined to acquire such Proposed Property.

4.3 Purchase and Sale Agreement; Closing. (a) At such time, during the period commencing with REIT's conditional approval of a Proposed Property pursuant to Section 4.2, Agent shall assist REIT in the negotiation of a purchase and sale agreement ("**Purchase and Sale Agreement**") for the acquisition of such Proposed Property, it being understood that the form and content of such Purchase and Sale Agreement, including amount of any deposit, the purchase price and all other terms and conditions therein, must be reviewed by and be acceptable, in both form and substance, to REIT in its sole discretion.

(b) Following the execution by REIT of any such Purchase and Sale Agreement, Agent shall forthwith carry out all remaining required due diligence and documentation required hereunder, so as to facilitate the acquisition of such Proposed Property by REIT in accordance with the terms of such Purchase and Sale Agreement. Prior to waiver or approval of the inspection/due diligence conditions set forth in the Purchase and Sale Agreement, however, Agent shall further prepare and submit to REIT for REIT's review and approval a

revised and updated Acquisition Budget, an Annual Business Plan and a detailed status report on the due diligence review and investigations conducted by Agent and Agent's legal counsel. Any determination as to the satisfaction of any closing condition or other requirement to closing under any Purchase and Sale Agreement shall be made by REIT in its sole discretion; REIT shall at all times have the right, in its discretion, to decline to proceed with the purchase of any Proposed Property and, as applicable, to forfeit any deposit or other liquidated damages thereunder.

4.4 Disapproval; Failure to Proceed. (a) In the event that REIT declines or is deemed to have declined to proceed with acquisition of a Proposed Property within the twenty (20) day period specified in Section 4.3 or fails or declines for any reason to proceed with purchase of such Proposed Property in accordance with Section 4.3, or otherwise at any time declines to permit Agent to make further expenditures with respect to the proposed acquisition of a Proposed Property in accordance with the applicable Acquisition Budget, Agent shall thereupon have the right, either directly or through one or more Affiliated Persons, to acquire the applicable Proposed Property without the participation of REIT therein, provided that the same is carried out substantially in accordance with the applicable submission package or packages, with such changes thereto as Agent shall in good faith, without the intention of evading the provisions of this Article IV, deem appropriate. In the event that REIT, in declining to participate in the acquisition of a Proposed Property, has given Agent specific written grounds for so declining, which grounds are capable of being remedied without material cost to Agent (as, for example, by seeking a reduced purchase price), Agent shall endeavor in good faith to address such grounds before proceeding with the acquisition of such Proposed Property without the participation of REIT therein. If Agent proceeds with any acquisition of a Proposed Property without the participation of REIT, REIT shall be reimbursed for the cost of any due diligence materials (such as surveys, engineering reports and the like) or activities for which REIT has paid.

(b) REIT shall, as from time to time requested by Agent, provide a certificate stating that Agent has complied with the requirements of this Article with respect to any Proposed Property and, if applicable, that REIT has declined, or is deemed to have declined, to proceed with acquisition of such Proposed Property.

4.5 Costs and Expenses. Unless and until REIT shall have given its conditional approval of acquisition of a Proposed Property in accordance with Section 4.2, REIT shall have no obligation to pay any costs or expenses incurred by Agent in connection with investigation or acquisition of any such Proposed Property. From and after the giving of any such notice, REIT shall be obligated to indemnify Agent in accordance with the applicable provisions of this Agreement, and otherwise to reimburse Agent, for all reasonable out-of-pocket costs and expenses incurred and paid to third parties in connection with the proposed acquisition of any Proposed Property, provided that: (i) all such costs and expenses to be reimbursed are incurred, or any action giving rise to such obligation of indemnification occurs, prior to the first date upon which REIT declines or is deemed to have declined to proceed with purchase of the Proposed Property and are not otherwise the subject of any express limitation on permitted expenditures set forth in any notice from REIT with respect to a

Proposed Property; (ii) all such reimbursable costs and expenses are reasonable in amount and do not exceed the sums budgeted therefor under the then current Acquisition Budget as approved (subject to any limitations imposed) by REIT; (iii) if the Proposed Property is acquired by REIT, Agent shall be entitled to no reimbursement whatsoever for any overhead expenses of Agent; and (iv) if such Property is not acquired by REIT (and subject to the final sentence of Section 4.4(a) above), Agent shall be entitled to reimbursement pursuant to Exhibit E for the reasonable labor costs incurred by Agent in the performance by Agent's personnel of acquisition-related services specifically approved by REIT, such as architectural, engineering, building system and landscaping inspections, market studies or legal work, which could otherwise be performed by third parties.

4.6 Compensation. In consideration for the services which are provided to REIT pursuant to this Article, Agent shall be compensated in accordance with the provisions of Exhibit F attached hereto.

4.7 Development Services. REIT anticipates that it will have the opportunity to develop industrial/warehouse properties on a build-to-suit in response to the growth needs of existing tenants of Properties or from parties seeking to have REIT develop an industrial/warehouse facility for them on a “turn-key” build-to-suit lease basis. REIT is also considering acquiring and developing properties on a speculative “for lease” basis under certain circumstances. In such event, REIT may seek the services of Agent in connection with the acquisition and development of unimproved properties meeting REIT's Investment Guidelines or other criteria established by REIT. Upon the request of REIT, Agent shall assist REIT in such endeavors in the following manner:

(a) In addition to providing the acquisition services specified in this Article, Agent shall assist REIT in the development of a design plan and general specifications for the development of the Proposed Property (the “**Development Program**”);

(b) If REIT proceeds with the acquisition of the Proposed Property, Agent shall use diligent efforts to obtain all subdivision, zoning and all other governmental and municipal licenses, permits, consents, approvals, waivers, exemptions, agreements and orders required in connection with the implementation of the Development Program, and shall provide liaison and other contacts with, and arrange for the preparation and submission of all plans, contracts and other materials as may be required by the authorities granting the foregoing;

(c) Agent shall supervise the bidding and conduct, on behalf of REIT, the negotiations of contracts for the development of the Proposed Property in accordance with the Development Program and the instructions of REIT, and shall administer all contracts entered into by REIT in furtherance thereof unless otherwise directed by REIT;

(d) Agent shall administer and approve the payment of construction costs, equipment costs, architectural and engineering costs, insurance costs and other hard and soft costs incurred in furtherance of the Development Program for the Proposed Property;

(e) Agent shall use diligent efforts to obtain all utility and other similar services or facilities and all grants, dedications, easements, agreements, licenses, rights and covenants necessary, appropriate or required by the Development Program;

(f) Agent shall use diligent efforts to obtain all payment, performance, surety and other bonds which may be necessary in connection with the development of the Proposed Property; provided, however, no bond assuring performance by REIT shall be offered to any person without the prior express, written approval of REIT, in its sole discretion;

(g) Agent shall use diligent efforts to comply with, and perform, or cause to be performed, all obligations REIT under any covenants, conditions easements and any other agreements encumbering the Proposed Property; and

(h) Agent shall use diligent efforts to cause all contractors, subcontractors, engineers and other providing goods and services in connection with the development of the Proposed Property in order to comply with all laws, ordinances, rules, regulations and orders affecting the Proposed Property.

ARTICLE V

TERM, DEFAULT, TERMINATION RIGHTS

5.1 Term. The term of this Agreement shall be twelve (12) months, commencing the date hereof, unless sooner terminated pursuant to the provisions of this Article V. Notwithstanding any other provisions of this Agreement to the contrary, this Agreement may be terminated either (i) by mutual agreement of the parties, or (ii) REIT for any reason upon thirty (30) days written notice to Agent, by (iii) Agent for any reason upon sixty (60) days written notice to REIT, or (iv) for cause as set forth in Sections 5.2 and 5.3 below. Notwithstanding the foregoing, this Agreement shall terminate as to any Property sold or conveyed by REIT immediately upon the divesting of REIT's ownership in such Property.

This Agreement shall constitute a separate contract with respect to each Property. Either party may invoke the foregoing termination provisions with respect to the entire Agreement or with respect only to a designated Property or Properties, and in the event the Agreement is not terminated as to all Properties, the Agreement shall continue in full force and effect with respect to such Property or Properties, and each exhibit attached hereto shall be modified to delete all references to such Property or Properties.

5.2 Default by Agent; Remedies of REIT. Agent shall be in default hereunder in the event Agent shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Agent, and such default shall continue for a period of ten (10) days after written notice thereof by REIT to Agent, or if such default cannot be cured within ten (10) days, then for such period as shall be reasonable, provided that Agent

is capable of curing such default and has proceeded diligently to cure same; provided, however, in no event shall the cure period exceed thirty (30) days without REIT's written consent; provided further, that in the event the breach relates to the willful misconduct of Agent or its employees or involves theft of funds of REIT, such breach may at REIT's option be deemed incurable, and REIT shall have the right to terminate this Agreement immediately upon notice. Upon the occurrence of any event of default by Agent, REIT shall have the option of immediately terminating this Agreement in its entirety or only with respect to the Property in question, by written notice to Agent. Notwithstanding such termination, Agent shall nonetheless remain liable for any losses suffered as a result of its default.

5.3 Default by REIT; Remedies of Agent. REIT shall be in default hereunder in the event REIT shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by REIT, and such default shall continue for a period of thirty (30) days after notice thereof by Agent to REIT, or if such default cannot be cured within thirty (30) days, then for such period as shall be reasonable, provided that REIT is capable of curing such default and proceeds diligently to cure same. Upon the occurrence of any event of default by REIT, Agent may terminate this Agreement upon notice to REIT as required herein. REIT shall nonetheless remain liable for any losses suffered as a result of its default and the resulting termination of this Agreement.

5.4 Bankruptcy. Notwithstanding anything to the contrary set forth herein, in the event a petition in bankruptcy is filed by or against REIT or Agent, or in the event that either REIT or Agent shall make an assignment for the benefit of creditors or take advantage of any insolvency laws, the other party hereto may terminate this Agreement upon notice to the other as required herein.

5.5 Casualty. In the event that one or more of the Properties is substantially damaged or totally destroyed by fire, flood or other casualty during the term of this Agreement, Agent or REIT may terminate this Agreement with respect to the damaged or destroyed property, upon giving the other party written notice of termination on or before the date which is thirty (30) days after the date of such casualty. In the event of termination pursuant to this Section, neither party shall have any further liability hereunder, with respect to that Party.

5.6 Duties of Agent on Termination. In the event of termination of this Agreement (whether in its entirety or with respect to any Property), Agent shall use its best efforts to effect an orderly transition of the management and operation of each affected Property to REIT or an agent designated by REIT. On or before twenty (20) days following the termination date, Agent shall deliver the following to REIT with respect to each Property affected by the termination:

(a) Any amounts due to REIT, including tenant security deposits, if any, held by Agent with respect to the Property;

(b) All records, contracts, drawings, leases, correspondence, receipts for deposits, unpaid bills, paid bills and all other papers or documents which pertain to the Property;

- (c) A summary of all leases in existence at the time of termination, and a status report of current lease prospects for the Property;
- (d) Assign existing contracts and permits in name of Agent relating to the Property to REIT or such party as REIT shall designate; and
- (e) A monthly operating statement covering the period from the date of the last previous statement to the date of termination of this Agreement.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

6.1 Agent's Insurance Responsibility. Agent shall maintain or cause to be maintained, at its sole cost and expense, (i) all legally required insurance coverage relating to its employees, including, but not limited to, Workers Compensation, Employers Liability and Non-Occupational Disability Insurance, (ii) "All Risks" protection on Agent's personal property including but not limited to fixtures, furnishings, equipment, furniture, inventory and stock; (iii) commercial general liability with a per occurrence limit of not less than \$1,000,000 and \$2,000,000 general aggregate, (iv) business auto liability with a per accident limit of not less than \$1,000,000 covering all owned, non-owned and hired vehicles; and (v) professional liability insurance with a per occurrence limit of not less than \$1,000,000. "All Risks" is to include but not be limited to sprinkler leakage, vandalism and malicious mischief perils.

6.2 REIT's Insurance Responsibility. REIT shall maintain commercial general liability insurance coverage (including blanket contractual automobile non-ownership and personal injury liability) with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage.

6.3 Evidence of Insurance. Agent and REIT will provide each other with certificates of insurance or other satisfactory documentation which evidence that the insurance required under this Agreement is in full force and effect at all times. Policies required to be obtained pursuant to Section 5.2 must be endorsed to provide that thirty (30) days advance written notice of cancellation of material change will be given to REIT. Policies required to be obtained pursuant to Section 5.3 shall provide that Agent shall be an additional insured. All policies to be obtained by Agent and REIT shall contain mutual waivers of subrogation rights denying the insurer of any rights of subrogation against the other party.

6.4 Contract Documents. Agent shall use its best efforts to cause to be inserted in any new service and supply contract prepared or executed by Agent in connection with the Properties provisions to the effect that the contracting party shall indemnify and save harmless Agent and REIT from and against all claims, losses and liability resulting from any damage to or injury to, or death

of, persons or property caused or occasioned by or in connection with or arising out of any action or omissions of said contracting party or its employees or agents, and from and against all costs, fees and attorneys expenses in connection therewith.

Prior to permitting any contractor or subcontractor to enter upon a Property, or any part thereof, to commence any work therein, and for the duration of the contract, the Agent shall use its best efforts to obtain copies of such contractor's or subcontractor's insurance as follows:

Worker's Compensation, Employers Liability, Automobile Liability and Commercial General Liability Insurance (including blanket contractual coverage) the last name policy to include the interests of the REIT and Agent as additional insured and for not less than a combined single limit of \$1,000,000 per occurrence bodily injury and property damage, unless lower limits are prior approved by REIT.

6.5 REIT to Approve Insurance Companies. All insurance required to be carried by Agent shall be written with companies having a rating in the Best's Key Rating Guide of A-VII or better and reasonably acceptable to REIT which companies shall be licensed to do business in the state in which the Property is located.

6.6 Agent's Duties in Case of Loss. Agent shall:

(a) notify REIT of any fire or other damage to the Property. REIT shall arrange for an insurance adjuster to view the Property before repairs are started, but in no event shall Agent settle any losses, complete loss reports, adjust losses and endorse loss drafts without REIT's prior consent; and

(b) promptly notify REIT of any personal injury or property damage occurring to or claimed by any tenant or third party on or with respect to the Property.

6.7 Express Covenants, Warranties and Representations. Agent warrants not to make any representation, misrepresentations, warranties, concessions, or agreements pertaining to a lease or any of the Properties without the prior approval of REIT, except to the extent provided for in Exhibit B. Agent further covenants and warrants and represents that it will devote sufficient time, services, and personnel to secure prospective tenants for the Properties in order to accomplish the purposes of this Agreement, that it will designate specific personnel of Agent who will be dedicated to REIT's Properties and that such personnel will not be rotated out of such position while employed by Agent without the prior written consent of REIT. Agent warrants and represents that it is a licensed broker in good standing under the laws of the state or states where the Properties are located. Agent warrants and represents that it will not discriminate against any tenant or prospective tenant, including, but not limited to, discrimination by reason of race, color, creed, national origin, disability, religion, sex or age.

6.8 Indemnification of Agent. With respect to liabilities in connection with the Properties and arising out of the agency relationship established by this Agreement, REIT shall indemnify, defend and hold harmless Agent from and against all claims, losses and liabilities resulting from damage to property, or injury to or death of persons occasioned by or in connection with or arising out of acts or omissions of (i) REIT (except in cases of willful or reckless misconduct, negligence or failure of Agent to act), (ii) the employees, contractors or subcontractors of REIT (except in cases of willful or reckless misconduct, negligence or failure of Agent to act).

6.9 Indemnification of REIT. Agent shall indemnify, defend and hold harmless REIT from all costs, losses, claims or liabilities (including, without limitation, all attorney's fees and expenses) with respect to Agent's breach of this Agreement or its warranties or representations expressed herein or arising out of the willful or reckless misconduct, negligence or failure to act of Agent.

ARTICLE VII

ASSIGNMENT; CHANGE IN CONTROL

7.1 Assignment. This Agreement shall not be assigned by Agent.

7.2 Change in Control. If, at any time during the term of this Agreement, Agent is (i) a corporation and such percentage of the shares of Agent shall be transferred by sale, assignment, bequest, inheritance, operation of law or other disposition so as to result in a change in effecting voting control of Agent, or (ii) a partnership or association or otherwise not a natural person (but not a corporation), and there shall occur any change in identity of more than one of the persons who are general partners of such partnership or members of such association or who comprise Agent on the date of this Agreement, then such change shall constitute a default by Agent under this Agreement.

ARTICLE VIII

MISCELLANEOUS

8.1 Independent Contractor. Agent's relationship to REIT is that of an independent contractor and agent, and not a partner, joint venture, partner or an employee. REIT shall not be held responsible for the collection and payment of taxes or contributions of any nature on behalf of Agent.

8.2 Other Duties of Agent. Agent shall at all times act in conformance with the policies and programs established by REIT and the scope of Agent's authority shall be limited to said policies. In connection therewith, Agent agrees to use its best efforts to comply with present and future laws, ordinances, orders, rules, regulations and requirements of federal, state and local

governments, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Properties or any part thereof or to the leasing, use, repair, operation and management thereof. In the event such compliance is undertaken in the name of and on behalf of REIT, such compliance shall be at REIT's expense, provided such expenses are approved by REIT in writing.

8.3 Disclosure Regarding Competing Properties. Agent agrees for itself and its affiliates that except as previously disclosed in writing to REIT, neither Agent nor any affiliate of Agent has any interest, directly or indirectly, whether as an owner, partner, employee, option holder, asset, incentive or fee manager in any property which directly or indirectly competes with any Property which is the subject of this Agreement. Following the date hereof, if Agent shall acquire an interest in a competing property, Agent shall immediately upon acquiring such interest promptly notify REIT in writing of such circumstance, and identify the address of the competing property or properties. Agent's failure to disclose Agent's acquisition of a competing property without notifying REIT shall constitute a material breach by Agent of this Agreement.

8.4 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by telex, telecopy, cable or overnight courier, and shall be deemed received upon the earlier of (i) if personally delivered or via overnight courier, the date of delivery to the address of the person to receive such notice; (ii) if mailed, upon the date of receipt as disclosed on the return receipt; or (iii) if given by telex, telecopy or cable, when sent with verification of sending. Any notice, request, demand, direction or other communication sent by cable, telex or telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

If to REIT:

Attn: _____

Tel No. _____

Fax No. _____

Agent: _____

Attn: _____

Tel No. _____

Fax No. _____

Notice of change of address shall be given by written notice in the manner detailed in this Paragraph.

The date of service of the notice or demand shall be the date of actual personal service or the postmark on the registered or certified mail, as the case may be. Either party hereto may designate a different address for the receipt of notice by a written notice served upon the other party in accordance with this provision.

8.5 Severability. Each provision of this Agreement is intended to be several. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

8.6 Attorneys' Fees. In the event either of the parties hereto shall institute any action or proceeding against the other party with respect to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its costs incurred in connection therewith, including reasonable attorneys' fees as fixed by the court.

8.7 No Waiver. Neither party hereto shall be deemed to have consented to or waived a breach of default by the other party hereunder unless that waiver or consent is made in writing, and no such consent or waiver shall be deemed or construed to be a consent to or waiver of other breaches of defaults of the same or any other obligations of such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of REIT shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

8.8 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State.

8.9 No Personal Liability. Agent acknowledges and agrees that it shall not make any claim under this Agreement against any of the trustees, directors, officers, employees or shareholders of REIT, and that Agent's recourse hereunder shall at all time be strictly limited to the equitable interest of REIT in the Properties within the State.

8.10 Entire Agreement. The terms of this Agreement are intended by the parties as a final expression of their agreements and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement constitute the exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement.

8.11 Successors and Assigns. Subject to the provisions of Articles VI and VII hereof, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

8.12 Modifications. This Agreement may be modified only by a written instrument executed by the parties hereto.

8.13 Exhibits Incorporated. Exhibits A, B, C, D, E and F attached hereto are incorporated herein by this reference.

8.14 Arbitration of Disputes. Any controversy between or among REIT, Agent and Cooperating Broker, or any of them arising under or relating to the obligations and/or rights of the parties to this Agreement shall be determined by binding arbitration to be conducted by JAMS (Judicial Arbitration and Mediation Service) - Endispute or by such other judicial arbitration service approved by both Agent and REIT. Hearings on such arbitration shall be held in the county where the Property that serves as the basis of such controversy is located. The prevailing party in such arbitration shall be awarded all costs incurred by such party (including without limitation, reasonable attorneys and accountants fees) as determined by the prevailing party.

8.15 No Third Party Rights. Nothing herein shall create, or give rise to, any rights, claims, benefits, or preferences in any person, corporation, partnership or other entity whatsoever.

8.16 Time of Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

8.17 Captions. The captions, paragraph and subparagraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Agreement nor in any way affect this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“REIT”

By: _____

Name: _____

Title: _____

“AGENT”

a _____

By: _____

Its: _____

EXHIBIT A

**PROPERTY DESCRIPTION
AND PROPERTY MANAGEMENT FEES**

Management Fees

1. REIT will pay Agent a base management fee equal to the greater of (a) _____% of the monthly Gross Receipts, as defined in Section 2.2, or (b) a minimum monthly fee based on fifty percent (50%) occupancy at market rental rates.

2. Upon full satisfaction of the goals and objectives as set forth below with respect to all Properties [subject to agreement where indicated] concerning tenant retention, expense control and net operating income benchmarks, Agent will receive an incentive management fee of _____ percent (____%) of the preceding twelve (12) month's Gross Receipts:
 - (a) Tenant Retention - Agent must renew at least _____ percent (____%) of tenants covering not less than _____ percent (____%) of net rentable area; and

 - (b) Expense Control - Agent must reduce controllable expenses on service contracts by [to be determined by agreement of the parties] compared to the previous contract amount; and

 - (c) NOI - Actual net operating income of the Properties must be within _____ percent (____%) or better of budgeted net operating income.

Property Descriptions

[TO BE PROVIDED]

EXAMPLE ONLY

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EXHIBIT B

LEASING GUIDELINES

EXAMPLE ONLY

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EXHIBIT C

LEASING COMMISSIONS

New Leases

1. for each new lease procured by Agent, Agent will receive a commission equal to _____ percent (____%) of the Base Rents as defined in Section 3.2.
2. For each new lease procured by Cooperating Broker, Agent will receive a commission equal to _____ percent (____%), and Cooperating Broker will receive a _____ percent (____%) commission, of the Base Rents as defined in Section 3.2.
3. For each month to month tenancy, Agent will receive a commission equal to the greater of _____ percent (____%) of the first month's rent, or \$_____.

Exercise of Options, Renewals, Extensions, Expansions, and Relocations

1. For each existing tenant procured by a Cooperating Broker that exercises an option, renews, extends or expands, Agent will receive an override commission of _____ percent (____%) and the Cooperating Broker will receive a commission not to exceed _____ percent (____%), if and only if both of the conditions specified below are complied with:
 - (a) Such option, renewal, extension or expansion is written in the initial lease and (i) is exercised within _____ (____) months of the initial date of the lease term and is exercised exactly as stated in the initial lease agreement as to rate and term with no additional tenant improvements required or material modification of the terms of such option, renewal, extension or expansion, (ii) the Cooperating Broker is actively part of the negotiation with Agent, and
 - (b) The Cooperating Broker is the exclusive representative of the tenant which representation is acknowledged in writing by the tenant.
2. For each existing tenant that exercise an option, renews, extends or expands, Agent will receive a commission equal to a _____ percent (____%) of the Base Rents as such term is defined in the Agreement.

Agent shall not receive any commission for a lease term in excess of _____ (____) years.

The commission determined per the paragraphs above shall be paid _____ percent (____%) upon the delivery of a fully executed lease by REIT to tenant and fifty percent (50%) upon occupancy and tenant acceptance of the premises. The commission on options,

EXAMPLE ONLY

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renewals, extensions, expansions and relocations shall be paid upon the delivery of a fully executed lease.

EXHIBIT D

CONSTRUCTION SUPERVISION FEES

In consideration of construction supervision services as described in Section 2.1(r), Agent shall be entitled to _____ percent (____%) of all construction costs relating to tenant improvements work or general building repairs up to a maximum of \$_____ in construction costs. Construction supervision fees for construction projects costing over \$_____ and for general building repairs shall be _____ percent (____%). Construction supervision fees shall be limited to a maximum of \$_____ for any single tenant improvement job.

EXAMPLE ONLY

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EXHIBIT E

INVESTMENT GUIDELINES

EXAMPLE ONLY

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EXHIBIT F

DISPOSITION SERVICES/FEEES

Agent will provide marketing services on behalf of REIT when REIT determines in its sole discretion to sell a Property or Properties. Marketing services shall include, without limitation, coordinating due diligence efforts, securing executed estoppel letters, arranging for appraisals and or environmental assessment reports, and reviewing the marketing plan. In consideration of such services, Agent will receive a fee equal to _____ percent (_____%) of the gross sale price.

EXAMPLE ONLY

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APPENDIX D

**DEVELOPMENT AND PROPERTY MANAGEMENT
AND
LEASING AGREEMENT**

(Incentive Form)

Date: _____

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**DEVELOPMENT MANAGEMENT, PROPERTY MANAGEMENT
AND LEASING AGREEMENT**
(Incentive Form)

EFFECTIVE as of _____, _____, _____ (“**Owner**”) and
_____ (“**Manager**”) agree as follows:

**ARTICLE (i)
APPOINTMENT AND TERM**

Section (i) **Appointment**. Owner engages Manager to manage and coordinate the development of the following improvements: _____ (collectively, the “**Project**”). Owner also appoints Manager to operate, maintain and manage the Project, as herein provided.

Section (ii) **Term**. Manager shall manage the development of the Project as herein specified until such development is completed as certified by the architect for the Project (“**Completion**”). Following Completion, this Agreement shall be for a term of ____ years commencing _____, _____ and ending _____, _____ with respect to Manager’s property management and leasing activities. This Agreement shall automatically renew and continue in full force and effect for successive periods of _____ months each for a maximum of _____ months. Following Completion (but not before) either party may terminate this Agreement without cause by giving thirty days written notice to the other party at any time.

Section (iii) **Independent Contractor**. Owner employs Manager as an independent contractor to develop, manage, and operate the Project. Manager shall be responsible for hiring employees and determining methodology for management in accordance with the standards of this Agreement. Manager’s authority to act on behalf of Owner is strictly limited to that expressly delegated herein. Manager warrants that it has all requisite licenses and other approvals required by law to carry out its duties hereunder, to the extent that Manager is prevented by applicable law from obtaining all requisite licenses in its own name, then Manager warrants and represents that it will effect the services requiring such licenses through duly licensed agents and subcontractors who have all requisite licenses and authority to carry out such services. Manager shall provide Owner with copies of all requisite licenses.

**ARTICLE (ii)
MANAGER’S DUTIES**

Section (i) **Development Duties**. Subject to the other provisions of this Agreement, Manager, on behalf of Owner, shall manage and coordinate generally development of the Project in accordance with the Development Plan and the Development Budget (as each such

term is hereafter defined) in a good and workmanlike manner as is customary for similar developments. Without limiting the generality of the foregoing, those duties shall include:

(i) those duties described in Schedule 7; and

(ii) to the extent funds are available therefore from Owner, payment each month of expenditures authorized in the Development Budget and the Fees provided for in Section 3.1(a). Except for expenditures made and obligations incurred in accordance with the approved Development Budget or otherwise approved by Owner, Manager shall not have authority to make any expenditure or incur any obligation on behalf of Owner in connection with developing the Project; provided, however, in an emergency involving the Project, Manager may incur such expenditures on behalf of Owner as shall be reasonably necessary to cope with such an emergency.

Section (ii) **Development Plan and Development Budget.**

(i) Within 30 days from the date hereof, Manager shall prepare and submit to Owner for its approval a detailed development plan setting forth a precise description of the proposed plans and specifications for the improvements comprising a part of the Project, the schedule for development thereof, and the proposed parameters of agreements with architectural engineering, consulting, and general contracting firms and such other detailed information as Owner may reasonably request. Such development plan, as approved by Owner, as from time to time amended with the approval of Owner, is called the "**Development Plan.**"

(ii) Within 30 days from the date hereof, Manager shall prepare and submit to Owner for its approval a budget (herein, as from time to time modified and as approved by Owner, the "**Development Budget**") setting forth the sums of money required during the period covered thereby in connection with developing the Project. The Development Budget shall be in such detail as Owner may request and shall provide for contingencies and an estimate of all costs to be incurred in developing the Project.

(iii) After approval of the Development Plan and the Development Budget, Manager shall use its best efforts to implement the same and, without need for further approval by Owner, may make the expenditures and incur the obligations specifically referred to therein.

Section (iii) **Management, Maintenance and Operational Matters.** With regard to management, maintenance and operation of the Project, Manager agrees to:

(i) manage and operate the Project in a good, proper, and efficient manner, implementing and following the procedures and standards set forth in the _____ Owner's Policies and Procedures Manual, as amended (the "**Manual**");

(ii) submit to Owner for its approval and execution leases that conform with approved leasing guidelines, and (ii) enforce all leases with tenants of the Project in accordance with their terms and collect and remit to Owner revenues in accordance with this Agreement. Owner's prior consent shall be required before instituting litigation to enforce or terminate any lease; however, Manager shall not be required to obtain Owner's consent to serve 3 day notices, notices of abandonment, notices to cure or quit, notices of non-responsibility or other similar notices raptured to enforce leases.

(iii) execute service and other ages as necessary to provide for maintenance and operation of the Property subject to the Budgetary Limitations (hereafter defined); however, any agreement for a term, in excess of one year, or that is not terminable on 30 days or less notice without a termination fee, shall require Owner's specific approval;

(iv) to the extent there are outstanding loans with reference to the Project, prepare monthly draw packages as necessary to draw funds in respect of such loan;

(v) comply with all applicable laws, ordinances, and regulations; the property related provisions of all mortgages and ground leases affecting the Project; and any restrictive covenants affecting the Project;

(vi) promptly notify Owner of any material matter with regard to the Project, including any major tenant default; and promptly notify Owner of any casualty loss to, or injury to persons on or about, the Project;

(vii) supervise the repair and maintenance of the Project in accordance with the Budgetary Limitations;

(viii) provide for the making of normal maintenance and repair and capital improvements to the Property, to the extent provided for in any Capital Budget; and

(ix) audit each property using the Building Owners and Managers Association ("**BOMA**") or an equivalent checklist.

Section (iv) **Accounting and Reporting**. With regard to accounting and reporting, Manager agrees to:

(i) keep and maintain proper books of accounts and records with regard to all aspects of the development, operation, and management of the Project in accordance with generally accepted accounting principles and practices, consistently applied. Such records and accounts shall be in form and shall include all matters from time to time designated by Owner, shall be Owner's property, and shall be maintained at a location designated by Manager and approved by Owner. All accounting and management information systems relating specifically to the Project shall be maintained and updated in a manner that is

compatible with Owner's systems, and shall be directly accessible by Owner through its data processing systems; and

(ii) provide the reports listed in Schedule 2 to Owner on forms specified by Owner from time to time within the time frames described in Schedule 2.

Section (v) **Post-Completion Budgetary**. Following Completion, with regard to budgetary matters and Project expenditures, Manager agrees to:

(i) prepare and submit to Owner for annual approval a budget for the Project for (i) day-to-day operations and maintenance (the "**Operating Budget**") and (ii) any necessary capital expenditures relative to the repair, maintenance, or improvement of the Project (the "**Capital Budget**"). All budgets shall be in form as determined by Owner from time to time and shall be prepared and submitted for approval on a schedule designated by Owner, and

(ii) after approval of the Operating Budget or Capital Budget, implement the same and, for Owner's account, incur the obligations and expenditures therein expressly provided for Manager shall not incur any obligation or expend any sum which would exceed that provided for in any approved Operating Budget or Capital Budget (the "**Budgetary Limitations**") by \$_____ unless (i) expressly consented to by Owner in writing, or (ii) in the reasonable judgment of Manager such expenditure is necessary because of an emergency situation with regard to the Project, involving either damage to property or potential personal injury, and Manager shall promptly notify Owner of any such occurrence and of the action taken with regard thereto. Further, no expenditure for capital or other non-operating items in excess of \$_____ shall be made without Owner's specific approval even if set forth in a Capital Budget.

Section (vi) **Collection and Disbursements**. With regard to collections and disbursements of funds, Manager agrees to:

(i) collect all rents and other revenues from the Project and deposit the same in operating accounts with banks approved by Owner. All security deposits and similar reserve items shall be deposited in a separate security account (the "**Asset Reserve Account**") in banks approved by Owner. Manager shall not commingle funds from the Project with other funds of Manager. If Owner so directs, separate operation and security accounts shall be maintained for the Project; and

(ii) disburse funds from the operating account to pay expenditures incurred in accordance with the terms of this Agreement, including compensation as provided for in Article 3. A working capital balance shall be maintained in the operating account of not less than one-month's debt service for the Project unless Owner otherwise specifies; sums in the operating account from time to time in excess of such minimum balance shall be immediately disbursed to Owner. If funds on hand are insufficient to pay expenses incurred

in accordance with this Agreement, Manager shall notify Owner's agent, specifying the expenses, and Owner will deposit the required funds in the operating account. Amounts in the Asset Reserve Account shall be had and applied to repayment of security deposits made by tenants of the Project or, if and to the extent such security deposit has been forfeited, applied to remedying defaults under leases or disbursed to Owner. Use of any funds from the Asset Reserve Account must be preapproved in writing by Owner.

Section (vii) **General Standards.**

(i) Manager shall perform its duties hereunder in a good and proper fashion in accordance with good industry standards and the standards set forth in the Manual. With regard to handling of funds, Manager and Owner shall have a fiduciary relationship and Manager shall strictly account to Owner for all funds received and disbursed; and

(ii) Owner shall have the continuing right to inspect all books and records pertaining to the Project and to request not more frequently than once per year an audit or examination, the cost of which shall be borne by Owner. Such inspections and/or audits shall be conducted during normal business hours with reasonable advance notice.

Section (viii) **Leasing.**

(i) Manager shall use its best efforts to lease the Project, and cause the same to be fully occupied.

(ii) All leases shall be on forms approved by Owner and shall be in accordance with written leasing guidelines as approved by Owner from time to time or shall otherwise be specifically approved in writing by Owner. Terms of the leasing agreement are attached as Schedule 4.

(iii) Manager shall advertise the Project for lease in accordance with a plan approved by Owner. Advertising expenditures shall be included within the applicable Operating Budget.

Section (ix) **Expenses.** Following Completion, expenses to be charged directly to the Project are limited to those in Schedule 3.

Section (x) **Sale and Refinancing Assistance.** Upon the sale or refinancing of the Project, Manager shall provide assistance as set forth in Schedule 5.

Section (xi) **Related Party Service.** If any service provided with respect to development, management, leasing, or operating the Project (as, for example, roofing work or construction services) is to be provided by a party affiliated with Manager, Manager shall notify Owner thereof prior to acquiring such service (specifying in such notice all fees and compensation,

direct or indirect, payable in-connection therewith) and shall submit the same to a competitive bidding process or otherwise obtain Owner's express approval before proceeding with such service.

ARTICLE (iii) COMPENSATION

Section (i) **Development and Management Fees.**

(i) For services rendered in connection with managing the development of the Project, Manager shall be paid a fee equal to _____% of the "**Project Hard Costs**" (which shall mean the amounts actual expended in connection with the development of the Project including cost of labor and materials for shell, landing and tenons finish work but excluding architecture, engineering, testing and land acquisition costs, interest expense on financing, ad valorem and other taxes, costs of insurance premiums and other similar costs).

(ii) For management services hereunder, Monad shall be paid the percent of Gross Rental Receipts actually collected in respect of the Project during the applicable month as described in Schedule 1. The term "**Gross Rental Receipts**" means all fixed rents, any rent, increases tied to an index, reimbursement of operating expenses and C.A.M., percentage rent late fees, parking fees and proceeds of business interruption insurance, but excludes (i) investment income, (ii) security deposits, (iii) advance rentals, (iv) payments for physical installations or finish-out work, (v) payments in the nature of indemnification or compensation for loss, damage or liability sustained, (vi) receipts and other income from or on account of vending machines and other concessions, (vii) purchase discounts, (viii) any sums which, under normal accounting practice, are attributable to capital, (ix) payments received in connection with early lease termination, (x) proceeds received in respect of a condemnation or conveyance in lieu thereof, and (xi) all other receipts of whatever kind and nature.

Section (ii) **Reimbursable Expenses.** Expenditures of the type specified in Schedule 3 incurred by Manager in performing its duties shall be subject to reimbursement, and no others.

Section (iii) **Leasing Compensation.** For procuring leases hereunder, Manager shall be compensated in accordance with the fee schedule specified in Schedule 4.

Section (iv) **Construction Management.** Following Completion, if and to the extent Manager, with Owner's consent, supervises the performance of any construction or refurbishment activities for the Project (but not regular repair and maintenance), Manager shall be compensated in accordance with the fee schedule specified in Schedule 4.

Section (v) **Sales and Refinancing Assistance Compensation.** Manager shall assist in the sale or refinancing of a Project in accordance with Section [2.10](#). Manager shall not be entitled to any brokerage commission in connection with a sale or refinance unless separately contracted for.

Section (vi) **Incentive Management Fees.** In addition to the compensation provided for above, Manager shall also be entitled to earn the incentive management fees specified in [Schedule 6](#).

Section (vii) **Payment.**

(i) The Development Management Fee specified in Section [3.1\(a\)](#) shall be paid monthly during the progress of development of the Project in accordance with the Development Budget, to the extent the lender providing construction financing for the Project advances funds therefor. In and to the extent such lender does not advance such funds, any amounts not paid shall be carried forward and paid in subsequent months from first available funds available either from Owner's construction financing or from Project revenues following completion and leasing of space in the Project to tenants.

(ii) Compensation for Project management services and reimbursable expenses shall be payable monthly in arrears. Reimbursables shall be payable from the operating account as incurred. Compensation for construction supervision shall be progress payments paid every 30 days with owner's payment for the relevant work. Leasing compensation shall be payable as specified in [Schedule 4](#). Any incentive management fee earned shall be payable as provided in [Schedule 6](#).

ARTICLE (iv) INSURANCE AND INDEMNITY

Section (i) **Casualty Insurance.** Owner shall carry property damage insurance to cover physical loss or damage to the Project from fire and extended coverage periods, including vandalism and malicious mischief. All such insurance shall be in such amounts and with such insurers as Owner may determine. If requested by Owner, Manager shall obtain such insurance, subject to Owners approval thereof.

Section (ii) **Liability Insurance.** Manager will obtain and maintain comprehensive general liability (on an occurrence basis) as to the Project in an amount of at least One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate combined single limits for property damage and bodily injurer, umbrella liability coverage in the amount of at least Five Million Dollars (\$5,000,000); workers' compensation and Employer's Liability Insurance; and hired and nonowned automobile coverage with a combined single limit of \$1,000,000 for property damage and bodily injury. Such insurance shall be placed with a company

or companies acceptable to Owner, shall be in form and substance satisfactory to Owner and shall include the Owner as an additional insured with a provision giving thirty (30) days written notice prior to cancellation or material modification of the coverage.

Section (iii) **Indemnity.** Manager agrees to indemnify and hold Owner harmless from and against any claims, losses and expenses (including but not limited to reasonable attorneys' fees and expenses) which may be made against or incurred by any one or more of the Owner's arising out of any breach of this Agreement by any one or more of Managers, its directors, officers, shareholders, employees, contractors or subcontractors, agents and representatives and their respective successors, heirs, legal representatives and assigns; provided, such failure is not caused by events beyond the reasonable control of Manager, or by Owner's negligence or misconduct. Owner shall indemnify and hold Manager harmless from and against all costs, expenses, attorneys's fees, suits, liabilities, damages, or claims for damages arising out of any breach of this Agreement by any gross negligence or willful misconduct of the Owner, and the Owner's failure or refusal to comply with or abide by or perform its obligation set forth in this Agreement.

Section (iv) **Waiver of Claims.** Anything in this Agreement to the contrary notwithstanding, Owner and Manager hereby waive and release each other from any and all right of recovery, claim, action, or cause of action against each other, their agents, officers and employees, for any loss or damage that may occur to the Project, improvements to the Project, or personal property within the Project, by reason of fire or the elements, or other casualty, regardless of cause or origin including negligence of Owner or Manager and their agents, officers and employees, to the extent the same is insured against under insurance policies carrier by Owner or Manager (or required to be carried by Manager hereunder). Owner and Manager agree to obtain a waiver of subrogation from the respective insurance companies which have issued policies of insurance covering all risk of direct physical loss, and to have the insurance policies endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers.

ARTICLE (v) DEFAULT AND REMEDIES

If either party defaults in performance of any of its obligations hereunder, which default continues for a period of 10 days after written notice thereof, then the non-defaulting party, in addition to pursuing all other rights, remedies and recourses available at law, may terminate this Agreement by written notice to the other party. If within that 10 day period defaulting party diligently commences curing such default, the non-defaulting party will grant a thirty (30) day extension during which it will not laminate this Agreement, so long as defaulting party continues to pursue such cure. Enforcement of the provisions of this Article 5 shall not diminish Manager's obligations under Article 6.

ARTICLE (vi)
DUTIES UPON TERMINATION OR EXPIRATION

Section (i) **Manager's Duties.** Upon termination or expiration of this Agreement, Manager shall, within five (5) days thereafter, deliver to Owner complete copies of all books and records maintained by Manager for the Project Including computer records and operational programs) and all funds in possession of Manager belonging to Owner or received by Manager with regard to such Project. Manager shall also be available for a period not less than 60 days following termination or expiration to consult with Owner concerning operation of the Project. Owner will compensate Manager for time spent in excess of twenty (20) hours consulting with Owner during this period.

Section (ii) **Owner's Duties.** Owner shall compensate Manager for all fees earned hereunder through the date of termination promptly following the delivery of the information called for in Section 6.1, subject to any claims Owner may have arising out of Manager's default in performance hereunder.

ARTICLE (vii)
MISCELLANEOUS PROVISIONS

Section (i) **Notices.** All notices given hereunder shall be made in writing and given to the addressee at the address specked on the signature pages hereof. Notices may be given by certified mail, return receipt requested, by hand delivery, or by facsimile transfer and shall be effective upon receipt at the address of the addressee.

Section (ii) **Assignment.** Manager may not assign its rights nor delegate its duties hereunder without the prior written consent of Owner.

Section (iii) **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of _____.

Section (iv) **Liability of Owner.** Except for claims covered by insurance as provided for in Article 4, Manager shall look solely to Owners interest in the Project at the time any such claim accrued for recovery of any judgment or claim against Owner relating or arising out of this Agreement, and Owner, its partners, officers, directors, shareholders, agents and representatives shall not be liable otherwise for any claim of Manager arising out of or relating to this Agreement.

Section (v) **Entireties, Beneficiaries.** This Agreement represents the entire Agreement between Owner and Manager with regard to management of the Project and all prior agreements are superseded hereby. This Agreement is for the sole benefit of Owner and Manager and no other party is benefited hereby. This Agreement creates contractual rights only between Owner and Manager, and Manager has no lien rights in or to the Project.

Executed effective as of the date written above.

OWNER:

_____, a _____
By: _____

By: _____
Name: _____
Title: _____

MANAGER:

_____, a _____

By: _____
Name: _____
Title: _____

SCHEDULE 1

OWNER/PROJECT/BASE MANAGEMENT FEE

____ % of Gross Receipts

SCHEDULE 2

REPORTING REQUIREMENTS

ANNUALLY:

- Management Plan including leasing guidelines as outlined in Section _____ of the Manual. Plan should also include review and recommendation often, insurance and environmental issues.
- Operating and Capital Budgets in format as recommended by Manager and approved by Owner or Owners' representative.

MONTHLY:

1. Published Market Information and Market Report.
2. List of the names of persons to whom space in the Project was shown.
3. List setting forth the status of proposals for space in the Project and, if a prospective tenant elects not to pursue a proposal the reason therefor.
4. During construction, draw schedules detailing costs incurred to date, variance from original budget, anticipated future draws, detail of known and anticipated change orders.
5. Project level operating report in the format specified by Owner.
6. Any other reasonable information requests as necessary.

SCHEDULE 3

DIRECT PROJECT CHARGES

Pass through expenses for the Projects are limited to the following direct charges, to the extent expressly provided for in an approved Operating Budget or Capital Budget or otherwise approved by Owner:

1. Property Taxes and Assessments (including related taxes such as tenant rent tax in Florida)
2. Repairs and Maintenance (including environmental matters)
3. Capital Expenditures
4. Property Service Contracts
5. Property Management Salaries (including maintenance personnel) to the extent allowed by market, subject to prior approval by Owner (as to retail or industrial projects only maintenance personnel salaries may be passed through unless otherwise approved in writing by Owner)
6. Notices
7. Leasing & Marketing directly related to Project—indirect expenses such as event tickets, professional memberships, subscriptions, and similar items are not subject to pass through unless specifically approved.
8. Legal Notices
9. Inspections, Permits & regulatory costs
10. Utilities
11. Security
12. Insurance

To the extent any of the foregoing expenses are incurred as to the Project and as to other properties or activities, such charges shall be allocated among the same as set forth in the annual Management Plan or as otherwise approved by Owner.

SCHEDULE 4

TERMS OF LEASING AGREEMENT

1. **Basic Tends.**

- (a) Exclusive Broker: Manager.
- (b) Project: The real property listed in Schedule 1.
- (c) Commissions:
 - (1) ____% of the total base rent less Exclusions (hereinafter defined) if direct;
 - (2) ____% override if brokered;
 - (3) ____% for direct renewals;
 - (4) ____% for brokered renewals;
 - (5) Payments to outside brokers shall be at market;
 - (6) Expansions will be treated as new leases unless in a particular market the custom is to pay the renewal rate; and
 - (7) If a lease fails to commence or terminates prior to actual receipt of 12 months of rental which failure to commence or termination is not a result of a default by Owner, then full rebate; after such 12 month period no rebate;

2. **Exclusive Broker; Term.**

- (a) **Engagement.** Owner engages Broker as Owner's exclusive real estate broker in connection with the leasing of the Project for the term of the Agreement.
- (b) **Leasing Only.** This Agreement relates to leasing only and Broker shall have no right to recover any commission or other fee hereunder relating to any sale of the Project.

3. **Commissions.**

Owner's and Broker's agreements concerning payment(s) of commissions, and the terms and conditions thereto, are as follows:

- (a) **Payment Schedule of Commissions.** Commissions shall be payable ____% upon lease execution and ____% upon lease commencement.

- (b) **Term of More than 10 Years.** If a lease term is in excess of ten (10) years, then any commission for that period following the tenth (10th) anniversary of the lease commencement date shall be as negotiated by the parties.
- (c) **Renewals, Extensions, or Expansions.** If a lease for which commission is payable hereunder is renewed or extended prior to the termination or expiration of this Agreement and the tenant commences payment of regularly scheduled monthly base rental following the expiration of all rental abatement then subject to Section 3.5, Owner shall pay a leasing commission, with respect to the term of the extension as provided in Section 1.3. If the space leased under a lease for which a commission is payable hereunder is expanded prior to termination or expiration of this Agreement and a tenant occupies such additional space and commences payment of regularly scheduled monthly base rental following the expiration of all rental abatement, then Owner shall pay a leasing commission with respect to the additional space as provided in Section 1.3.
- (d) **Exclusion from Commissionable Base Rent.** The following items (collectively, the “**Exclusions**”) shall be excluded from commissionable base rent under any lease:
 - (1) (A) Escalations in excess of the original base rent for each year, as stated in the lease, including escalations resulting from increases in ad valorem/real estate taxes, in operating expense pass-throughs and/or in the Consumer Price Index or similar indexes resulting in a corresponding increase to the base rental.

(B) Payments in direct reimbursement of expenses of operating, maintaining and owning the property including operating expenses, insurance costs and taxes, where there is no base year or expense stop involved.
 - (2) Rentals credited to any tenant by reason of lease takeover or lease assumptions and/or Owner take-back or subleasing.
 - (3) Additional rentals for special tenant services above and over Owner’s customary tenant services.
 - (4) Cancellation or penalty payments for termination rights.
 - (5) Late payment charges.
 - (6) Payments for parking.
 - (7) Percentage rental in the case of retail leases.
 - (8) Cash credits, payments, deferrals or abatements of rent or other concession items.

- (9) Sums designated as or in the nature of additional rent under the lease.
- (10) Security deposits (including any amounts necessary to restore any security deposit after application of same).
- (11) Rent for services or facilities available to tenant at locations other than the demised premises covered by the lease.
- (12) Payments by tenants, whether denominated as rent or not, to amortize or defray the cost of special or above - standard tenant improvements.
- (13) Rentals payable upon continuation of a tenancy on a month-to-month or statutory basis or any other tenancy following expiration or termination of the lease.
- (14) To the extent exclusion of any of these items is not consistent with market, market shall apply to commissions paid to third parer brokers, but the above listed exclusions shall always apply to Manager.
- (e) **Cancellations**. Any leasing commission shall be deemed earned or payable on the cancelable portion of a lease term only upon passing of final cancellation date.
- (f) **Leases Executed After Expiration of Term**. Owner shall also pay Broker a commission if within _____ (_____) days after the expiration of the term of this Agreement, the Project is leased to, or Owner enters into a contract to lease the Project thereafter resulting in a lease of the Project with and occupancy of, any person to whom Broker has submitted in person the Project prior to the expiration of the term in an effort to lease the Project. Broker shall as a condition precedent to its rights and Owners obligations under this Section, submit a written list of such persons containing full and complete names, addresses, telephone numbers and primary contact persons to Owner no later than five (5) days following the expiration of the term. Notwithstanding the foregoing, this Section 3.6 shall not apply if this Agreement is terminated by Owner in connection with a sale of the Project, and in such event no commissions shall be payable for leases executed following termination unless the buyer of the Project so agrees. Owner shall request any such buyer to agree to be bound by the provisions of this Section 3.6.
- (g) **Construction Management:**

Construction Management Fees will be charged, with Owner's prior approval, on all new development projects when there is a significant amount of time spent by Managers personnel managing the construction of the Project in lieu of hiring an outside consultant. The amount of the fees, if any, for development projects shall be determined by Owner on a case-by-case basis.

(h) **Construction/TI Fees:** (for refitting space and major refurbishment and not initial finish-out unless approved by Owner where Manager supervises the plans, specifications, bidding and construction of tenant finish-out):

on jobs below \$ _____ - _____ %
on jobs \$ _____ or above - to be negotiated

No fee shall be payable, however, for supervision of routine work (such as recarpeting painting, or minor repairs) performed in conjunction with renewals or expansions.

SCHEDULE 5

SALE AND REFINANCING ASSISTANCE

Manager shall provide the following services without additional compensation in connection with a sale of, or refinancing with respect to, the Project.

1. Perform various inspection tours with buyers, lenders, and their respective consultants.
2. Prepare and obtain estopped certificates and subordination, nondisturbance, and attornment agreements from tenants.
3. Provide the following financing information reports in the form they were originally or are currently being prepared:
 - (a) historical operating information
 - (b) current year budget and actual operating info YTD
 - (c) operating expense billback info (past and present)
 - (d) capital expense summaries (past and present)
4. Provide the following Project information:
 - (a) current rent roll in standard format
 - (b) security deposit report
 - (c) copies of leases
 - (d) copies of service contracts
 - (e) copies of insurance certificates
 - (f) project summaries (system generated)
property inventory and equipment list
5. At or near time of sale/refinance reconcile and close books including
 - (a) A/P & A/R
 - (b) proration of OPE billbacks and other pro ratable expenses
6. Transfer to new owner
 - (a) all appropriate files
 - (b) funds (security deposits, etc.)

7. Any and all other functions routinely performed by property manager in relevant market

SCHEDULE 6

INCENTIVE MANAGEMENT FEES

1. **Definitions:** As used in this Schedule 6 the following terms shall have the meanings indicated:

“**Capital Proceeds**” shall mean funds that are the proceeds of a sale, financing, refinancing, or other similar transaction with regard to the Project (including condemnation awards, title induce proceeds, and casualty loss insurance proceeds other than business interruption or rent loss insurance proceeds, to the extent not payable to lenders to pay refinanced debt or otherwise or not utilized to repair damage caused by the casualty loss or taking in question, or in alleviation of any title defect), net of the actual costs incurred in connection with consummating the transaction giving rise to such funds.

“**Cumulative Preferred Return**” shall mean an annual return to Owner determined by applying the interest rate hereafter specified to the amounts actually invested by Owner in the Project from the date(s) of investment until repaid by distribution(s) of funds from the Project to the investor. The Cumulative Preferred Return shall be calculated at the rates specified in Section 2 of this Schedule 6 and shall be compounded on an annual basis.

“**Internal Rate of Return**” shall mean the pretax internal rate of return realized in cash by Owner (or any participant in Owner, as applicable) calculated on a monthly basis.

“**Net Cash Flow**” shall mean, for any given fiscal period, the amount by which Operating Revenues exceed Operating Expenses for such period.

“**Operating Expenses**” shall mean, for any fiscal period, the current obligations- for such period, determined in accordance with generally accepted accounting principles and practices consistently applied, for expenses of owning, opening, managing, and maintaining the Project, for capital expenditures for the Project, for payments of interest and principal on any loans secured by liens against the Project, and for payment of rental and other costs of any ground lease relating to the Project. Operating Expenses shall include all fees payable under this Agreement, asset management fees paid by Owner with respect to the Project, and costs incurred for accounting, risk management, and other services allocable to the Project. Operating Expenses shall not include any non cash expenses such as depreciation or amortization.

“**Operating Revenues**” shall mean, for any fiscal period, the gross revenues that remit from the ownership and operation of the Project during such period, including proceeds of any business interruption insurance maintained from time to time.

2. **Incentive Management Fee - Cash Flow.** Manager shall be entitled to receive an incentive management fee equal to _____% the amount by which the Net Cash Flow actually distributed to Owner exceeds a 12% Cumulative Preferred Return on the amount Owner has invested, from time to time, as capital in the Project. Such incentive management fee shall be payable annually, within ___ days after the close of each calendar year, based upon the results of operation of the Project during the preceding year. Within such ___ day period, Owner shall provide to Manager a calculation of such incentive management fee reflecting the Net Cash Flow distributed to Owner during such year, and the amount of equity capital invested by Owner in the Project from time to time as reflected on Owner's books and records. The calculation of the 12% Cumulative Preferred Return to Owner shall commence on the date of Owner's original investment.

3. **Incentive Management Fee - Capital Event.** In addition to the incentive management fee provided for in Section 2 above, Manager shall also be entitled to an incentive management fee upon sale, refinancing or similar transaction with regard to the Project during the term hereof equal to ___% of the amount by which the Capital Proceeds actually distributed to Owner in respect of such transaction exceed a 12% Internal Rate of Return to Owner, calculated with reference to all amounts invested by Owner in the Project from date of acquisition through the date of payment of such amount. The incentive management fees payable in this Section shall be payable within ___ days after Owner's receipt of the Capital Proceeds in cash from the event giving rise thereto. Within such time period, Owner shall provide to Manager a calculation of the Capital Proceeds distributed to Owner from the transaction in question, of the Internal Rate of Return payable to Owner as provided above, and the amount of the incentive management fee payable to Manager.

4. **Payment of Incentive Management Fees Upon Termination or Expiration of Agreement.**

(a) If this Agreement is terminated because of a default by Manager in performance of its duties herein, as provided for in Section 5, Manager shall be enabled to payment of any incentive management fee earned pursuant to Section 2 of this Schedule 6, through the date of such termination, but shall not be entitled to any incentive management fee pursuant to Section 3 of this Schedule 6.

(b) If Owner terminates this Agreement for convenience pursuant to Section 1.2, then Manager shall be entitled to any incentive management fee earned pursuant to Section 2 of this Schedule 6 through the date of such termination. Further, in the event of such a termination by Owner, if, within a period of one year after such termination, Owner consummates a transaction with respect to the Project that generates Capital Proceeds, then Manager shall be entitled to an incentive management fee pursuant to Section 3 of this Schedule 6 with respect to such Capital Proceeds as if this Agreement had not been terminated.

(c) If Manager terminates this Agreement pursuant to Section 1.2 for convenience, then Manager shall be entitled to any incentive management fee earned pursuant to Section 2 of this Schedule 6 through the date of such termination, but Manager shall thereafter not be entitled to any incentive management fee pursuant to Section 3 of this Schedule 6.

SCHEDULE 7

DEVELOPMENT DUTIES

1. **Planning.**

- (a) Review the preliminary planning, design, financial analysis, and market study information already prepared for the Project.
- (b) Recommend areas that need to be updated or augmented.
- (c) Meet with Owner and other parties to establish a basic framework of development planning for the Project. Address such issues as budget, scheme, size of initial phase, phasing and future growth, ownership structure, financing options, marking, project execution (architect, correctors, constants), special requirements and conditions.
- (d) Finalize building height, total area, and floor size.

2. **Financing and Ownership Structuring.**

- (a) Meet with Owner to finalize goals for financial and ownership decisions.
- (b) Finalize Development Budget for all hard and soft costs.
- (c) Finalize operating pro forma income and expense statement.
- (d) Compute return on investment and other relative indicators to help determine financing and ownership strategies.
- (e) Finalize financing and ownership strategy.
- (f) Compile Project Data including Development Plan, site information, budget, income and expense statement, schedule, drawings and renderings, and other information in a financing package for review by potential lenders.
- (g) Negotiate interim loan proposal.
- (h) If required, select and negotiate a proposal for permanent loan, or take-out commitment.
- (i) Complete documentation and finalize loan commitment(s).

(j) Comply with requirements of interim loan and any permanent loan commitment.

3. **Project Development Management.**

(a) Appoint Project management and support staff.

(b) Provide a master schedule for all major Project activities. Update the master schedule as the Project progresses.

(c) Hold regular meetings to be attended by representatives of architect, contractor(s), lender and other key parties. Hold special meetings with Owner, aforementioned parties, and others as required. Record and distribute minutes and decisions; keep project team members informed verbally and by means of written reports if required.

(d) Publish a periodic reporting system that covers major operations, cost, schedule, and many aspects of the Project.

(1) **Cost Status** - provide a monthly cost status report for each major cost item in the Project. Establish the format according to Project needs. Track budget, estimate amount contracted, change orders and estimated cost to complete

(2) **Payments Status** - provide a monthly payments status report for each major cost item in the Project. Establish the format according to Project needs. Track payments made and amounts yet to be paid. Project monthly cash requirements and update projects periodically.

(3) **Marketing Status** - provide a monthly report that will reflect the status of all leasing activity. Report on the stage of each lease and compare actual lease status numbers with projections.

(e) Select and negotiate agreements with architectural, engineering, and consulting firms. Direct the activities of the firms during all phases of programming, design, interior design, and construction. Review the design to see that it meets the quality, cost, and functional objectives of the Project.

(f) Coordinate and establish agreements with government agencies and utilities.

(g) Establish and administer a program for review and approval of progress payments.

(h) Establish and maintain a central file for all design, construction, and related contractual documents including contracts, purchase orders and change orders.

(i) Suggest insurance coverage and limits for Owner and third parties. Consider builder's risk personal injury, property damage, fire and extended coverage, and other insurance coverages.

(j) Provide Owner With copies of warranties, guarantees, operating manuals and a set of as-build drawings at completion of Project.

APPENDIX E

DEVELOPMENT RIGHTS AGREEMENT

This Development Rights Agreement (this “**Agreement**”) is entered into as of _____, _____, between _____ (“**REIT**”) and _____ (“**Developer**”) [*and the other parties set forth on Exhibit A*].

For valuable consideration, whose receipt and sufficiency are acknowledged, the parties agree as follows:

4. **Definitions.** When used herein, the following terms shall have the following meanings:

“**_____ Region**” means the following States of the United States of America: _____ and _____.

“**Excluded Development**” means (a) any development that is described in clause (a) of the definition of a Restricted Development whose presentation to Developer would result in a breach of fiduciary duty owed by a REIT Restricted Entity to any other Person [*but only to the extent such fiduciary duty exists as of the date hereof*] and (b) any development in which Developer elected not to participate after it was presented to Developer under the terms of this Agreement.

“**Excluded Investments**” means (a) any investment opportunity whose presentation to REIT would result in a breach of a fiduciary duty owed by a Developer Restricted Entity to any Person, but only to the extent that such fiduciary duty exists as of the date hereof, (b) any investment opportunity which involves acquiring, disposing of, or otherwise dealing in any publicly-traded securities of any Person, and (c) any investment in which REIT elected not to invest after it was presented to REIT under the terms of this Agreement.

“**Party**” means REIT or Developer, as the context may require.

“**Person**” means an individual or an entity.

“**Restricted Affiliate**” means an entity which is, directly or indirectly through one or more intermediaries, controlled by a Party, either individually by one Party or jointly with another Party.

“**Restricted Entities**” means each of the Parties and its Restricted Affiliates, and “**Restricted Entity**” means a Party or a Restricted Affiliate of one of the Parties.

“**Restricted Development**” means (a) the acquisition of real property (or interest therein) or any transaction resulting in the acquisition of any real property (or interest therein), provided that in each case such real property is in the _____ Region and will be acquired and

developed for _____ purposes and (b) is not an Excluded Development. Nothing herein shall restrict any Party from acquiring any interest in any improved real property.

“**Restricted Investment**” means any investment opportunity in which a Developer Restricted Entity wishes to invest (either directly/ *or as a participant in an entity*) or to offer other Persons an opportunity to invest (either directly or as a participant in an entity) that involves a Restricted Development.

5. **Offer.**

(a) **Developer.** During the Term, (1) Developer shall not make any Restricted Investment or offer to any other Person an opportunity to invest in a Restricted Investment and (2) Developer shall not permit any of its Restricted Affiliates to make a Restricted Investment or offer to any other Person an opportunity to invest in a Restricted Investment, in each case, without first offering to REIT an opportunity to participate therein as provided herein (an “**Investment Offer**”). Each Investment Offer must be accompanied by a description of the Restricted Investment in question in form and substance reasonably satisfactory to REIT (an “**Investment Summary**”), including therein (A) location maps, (B) a detailed summary of the economic terms (including estimated required investment amounts, recommended hold periods, anticipated returns, and projected rents and expenses), (C) market information including comparable rents and sales, and (D) such other information as REIT may reasonably request. The Restricted Entity submitting an Investment Offer is herein called an “**Investment Offeror.**” Within 30 days after an Investment Offer and the related Investment Summary have been delivered to REIT, REIT shall notify the Investment Offeror thereof whether REIT will participate in the Restricted Investment in question, as provided herein. If, within such 30-day period, REIT does not deliver to the Investment Offeror written notice stating that it will participate in the Restricted Investment, then the Investment Offeror or any other Restricted Entity may participate in or offer other Persons an opportunity to participate in the Restricted Investment, provided that such investment is on substantially the same terms and conditions as were set forth in the Investment Offer and Investment Summary. If the terms and conditions of the Restricted Investment change in any material respect from those set forth in the Investment Offer and Investment Summary, then the Restricted Investment shall again be subject to this Agreement and the Investment Offeror shall be required to offer to REIT an opportunity to invest therein before the Investment Offeror or any other Restricted Entity may participate or offer to other Persons an opportunity to invest therein.

(b) **REIT.** During the Term, REIT shall not engage any other Person to develop a Restricted Development and REIT shall not permit any of its Restricted Affiliates to engage any other Person to develop a Restricted Development, in each case, without first offering to Developer an opportunity to develop such development as provided herein (a “**Development Offer**”). Each Development Offer must be accompanied by a description of the Restricted Development in question in form and substance reasonably satisfactory to Developer. The Restricted Entity submitting a Development Offer is herein called a “**Development Offeror.**” Within 30 days after a Development Offer has been delivered to Developer, Developer shall notify the Development Offeror whether

Developer will participate in the Restricted Development in question, as provided herein. If, within such 30-day period, Developer does not deliver to the Development Offeror written notice stating that it will participate in the Restricted Development, then the Development Offeror or any other Restricted Entity may engage another Person to perform the development services for the Restricted Development in question, provided that the terms and conditions on which such third party will be engaged are not materially more favorable than those which would have been applicable had Developer elected to develop the Restricted Development in question on the terms provided herein. If such terms and conditions are materially more favorable than those set forth herein, the Restricted Development shall again be subject to this Agreement and the Development Offeror shall be required to offer to Developer an opportunity to participate therein on such more favorable terms and conditions before the Development Offeror or any other Restricted Entity may engage another Person to develop the Restricted Development in question.

6. **Development.** If REIT elects to participate in the Restricted Investment by timely delivering written notice thereof to the Investment Offeror or if Developer elects to participate in a Restricted Development by timely delivering written notice thereof to the Development Offeror, the Parties shall participate in the Restricted Investment as follows:

(a) **Acquisition of Land.** The property which is part of the Restricted Investment shall be acquired by REIT, either directly or through an affiliate, provided that REIT is satisfied with the physical condition of the property (including environmental matters), matters relating to title, and legal requirements regarding the development and ownership of the property after it completes its inspections thereof. If, after conducting its inspections of the property in question, REIT is unsatisfied with such property, REIT shall have no obligation whatsoever to acquire the property and Developer may pursue the acquisition and development thereof by themselves or with another Person. Developer shall have no ownership rights or other interests in the Restricted Investment except for the contractual rights under the agreements described in Sections 3.(b), 3.(c), and 3.(d) below.

(b) **Development Services.** REIT, or its affiliate, shall enter into a development agreement with Developer or an affiliate thereof ("**Developer**"), whose form is attached as Exhibit B, under which Developer shall provide development services pursuant to the terms and conditions contained therein.

(c) **Construction Contract.** REIT, or its affiliate, shall enter into a construction contract with Developer or an affiliate thereof ("**Contractor**"), whose form is attached as Exhibit C hereto, under which Contractor shall construct the improvements on the land pursuant to the terms and conditions contained therein.

(d) **Property Management and Leasing.** REIT, or its affiliate, shall enter into a property management and leasing agreement with Developer or an affiliate thereof ("**Manager**"), whose form is attached as Exhibit D, under which Manager shall manage and lease the project after completion thereof pursuant to the terms and conditions contained therein.

7. **Term.** The “**Term**” of this Agreement shall begin on the date hereof and end on the corresponding date of the ____ month after the date hereof. The Term may be extended for successive ____-month periods upon the written agreement of the Parties.

8. **Miscellaneous.**

(a) **Invalidity.** If any portion of this Agreement is held invalid, then to the extent reasonable and possible, the remainder of this Agreement shall be deemed valid and effect shall be given to the intent manifested by the portion held invalid.

(b) **Specific Performance; Binding Effect; Governing Law.** In addition to any other rights and remedies the Parties may have, each Party may obtain specific enforcement of the terms hereof and injunctive relief to prevent a violation of the terms hereof. This Agreement shall be binding upon the Parties and their respective heirs, personal representatives, successors and assigns and shall be governed by _____ law.

(c) **No Third-Party Beneficiary.** This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any Person as third-party beneficiary.

(d) **Entirety.** This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings related to the subject matter hereof. This Agreement may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought. Failure by any Party to enforce against any other Party any term or provision of this Agreement shall not waive such Party’s right to enforce against any other Party the same or any other term or provision.

(e) **Further Assurances.** Each Party shall execute such documentation and take such action as may be reasonably requested by any other Party to evidence, effect, or consummate the terms hereof.

(f) **Time.** Time is of the essence in the performance of the terms and conditions in this Agreement.

(g) **Attorneys’ Fees and Expenses.** If any Party employs any attorney to enforce this Agreement, the losing Party shall pay the prevailing Party’s reasonable costs (including attorneys’ fees and expenses) expended or incurred in connection therewith.

(h) **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the address set forth under their signature below. Any such notice shall be sent by certified mail, return receipt requested; overnight delivery service using a nationally-recognized overnight courier; facsimile transmission; or hand delivery. All notices shall be effective

when delivered to the address of the intended addressee. Each Party's address may be changed by written notice to the other Parties.

(i) **Calculation of Time.** In computing any period of time described herein, if the final day of the period in question falls on a Saturday, Sunday, or legal holiday, the time period shall be extended to the next day which is not a Saturday, Sunday, or legal holiday.

Executed as of the date first written above.

_____ (“REIT”)

By: _____

Name: _____

Title: _____

Address: _____

Fax No.: _____

_____ (“Developer”)

By: _____

Name: _____

Title: _____

Address: _____

Fax No.: _____

EXHIBIT A

[List Affiliates]

EXHIBIT B

[Development Agreement]

EXHIBIT C

[Form of Construction Contract]

EXHIBIT D

[Form of Property Management and Leasing Agreement]