

**NAPA COUNTY AGREEMENT NO. 170577 (FORMERLY NO. 8049)**

**SIXTH AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT**

**THIS SIXTH AMENDMENT (“Amendment No. 6”) TO AGREEMENT NO. 170577 (FORMERLY NO. 8049 AND ALSO REFERRED TO AS NAPA COUNTY AGREEMENT NO. 170577B)** is made and entered into as of this 14th day of December, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and COLLIERS PARRISH INTERNATIONAL, INC., a California corporation doing business as Colliers International, whose mailing address is 380 Chadbourne Rd., Suite D, Fairfield, California 94534, hereinafter referred to as “CONTRACTOR.”

**RECITALS**

**WHEREAS**, on November 1, 2013, COUNTY and CONTRACTOR entered into Napa County Agreement No. 8049 B (which has since been renumbered for internal COUNTY purposes as Napa County Agreement No. 170577B), followed by Amendment No. 1 on October 21, 2014, Amendment No. 2 on March 22, 2016, Amendment No. 3 on December 5, 2017, and Amendment No. 4 on February 27, 2018 (referred to hereafter together as the “Agreement”), under which CONTRACTOR agreed to provide specialized real estate brokerage, transactional and consulting services to COUNTY as authorized by Government Code section 31000; and

**WHEREAS**, COUNTY issued a Request for Proposals for Real Estate Broker Services on July 6, 2021, and received only one response, which COUNTY did not accept; and

**WHEREAS**, COUNTY desires to continue to receive, and CONTRACTOR desires to continue to provide specialized real estate brokerage, transactional, and consulting services; and

**WHEREAS**, COUNTY and CONTRACTOR agree that COUNTY has fully paid CONTRACTOR for all previously completed work performed either by hourly rate or by commission pursuant to a previously executed Exclusive Authorization to Sell/Lease Agreement as of the date of the execution of this Amendment No. 6; and

**WHEREAS**, COUNTY and CONTRACTOR agree that as of the execution of this Amendment No. 6 there are no existing Exclusive Authorization to Sell/Lease Agreement that would result in payment of a commission to CONTRACTOR if any COUNTY property is sold or lease; and

**WHEREAS**, COUNTY and CONTRACTOR now wish to amend the Agreement to, adjust compensation, and to revise the scope of services as described in this Amendment No. 6 and as authorized by section 31000.

## **TERMS**

**NOW, THEREFORE,** COUNTY and CONTRACTOR, for good and valuable consideration, the adequacy of which is hereby acknowledged, hereby amend the Agreement as follows:

A. Sections 1, 2, and 3 of the Agreement are hereby amended to read in full as follows:

1. **Term of the Agreement.** The term of this Agreement commenced on November 1, 2013, and shall expire on June 30, 2022, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this agreement shall be automatically renewed for one (1) additional fiscal year, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purpose of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.
2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A-5," attached hereto and incorporated by reference herein.
3. **Compensation.**
  - (a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR in the manner and at the rates set forth below and as further described and governed by Exhibit "B-5," which is attached hereto and incorporated by reference herein.
  - (b) Expenses. No travel or other expenses will be reimbursed by COUNTY.
  - (c) Maximum Amounts. Notwithstanding subparagraphs (a) and (b):
    - (i) For hourly services described by Exhibit "A-5," which is attached hereto and incorporated herein by this reference, under the heading "Task 3" and for which CONTRACTOR does not have any opportunity to be compensated through a commission, the maximum payments by COUNTY shall be a total of THIRTY-FIVE THOUSAND (\$35,000) per COUNTY fiscal year.
    - (ii) For services described by Exhibit "A-5" hereto under the heading "Task 2" for which CONTRACTOR has an Exclusive Authorization to Sell and Lease Agreement ("Exclusive Agreement"), in the interim prior to payment of a commission or if no commission ultimately results because no sale or lease transaction is consummated, CONTRACTOR shall be paid for its services under each Exclusive Agreement at the hourly rate of \$250.00 as specified below, up to a maximum of THIRTY-FIVE THOUSAND (\$35,000) per COUNTY fiscal year.

However, when and if the sale or lease of the property covered by the Exclusive Agreement is consummated and CONTRACTOR is entitled to receive a commission, the commission that shall be paid to CONTRACTOR shall be reduced by the total amount of hourly payments received by CONTRACTOR as to services relating to that property for the twelve (12) months preceding close of escrow (even if the payments span more than one fiscal year). If the total amount of hourly payments received by CONTRACTOR under this provision exceed the amount of the commission to which CONTRACTOR is entitled, CONTRACTOR shall not receive any commission. For reference and definitional purposes only, an example of Exclusive Authorization Agreement is attached hereto and incorporated herein by this reference as Exhibit "C-1" and would be modified as needed per the contract.

(iii) CONTRACTOR shall not be paid by the COUNTY on an hourly basis for services described by Exhibit "A-5" hereto under the heading "Task 1."

(iv) The maximum compensation amounts specified in subsections (c)(i) and (c)(ii) above of this section 3 shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

B. Section 30 of the Agreement is hereby added to read in full as follows:

**30. ELECTRONIC SIGNATURES.** This Agreement may be executed by electronic signature(s) and transmitted in a portable document format ("PDF") version by email and such electronic signature(s) shall be deemed original for purposes of this Agreement and shall have the same force and effect as a manually executed original.

C. This Amendment No. 6 shall become effective as of November 29, 2021. Except as provided in paragraph A and B and its subparagraphs above, the remaining terms and provisions of the Agreement as previously amended shall remain in full force and effect.

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**IN WITNESS WHEREOF**, this Amendment No. 6 to the Agreement was executed by the parties hereto as of the date first above written.

COLLIERS PARRISH INTERNATIONAL, INC., doing  
Business as Colliers International

DocuSigned by:  
By Scott Ellis  
SCOTT ELLIS, Executive Managing Director

DocuSigned by:  
By Bill Kampton  
WILLIAM KAMPTON, Senior Vice President

"CONTRACTOR"

NAPA COUNTY, a political subdivision of  
the State of California

By Alfredo Pedroza  
ALFREDO PEDROZA, Chair of the Board of  
Supervisors

"COUNTY"

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| APPROVED AS TO FORM<br>Office of County Counsel<br><br>By: <u>Thomas S. Capriola</u><br>Deputy County Counsel<br><br>Date: <u>December 2, 2021</u> | APPROVED BY THE NAPA COUNTY<br>BOARD OF SUPERVISORS<br><br>Date: _____<br>Processed By: _____<br><br>Deputy Clerk of the Board | ATTEST: NEHA HOSKINDS<br>Clerk of the Board of Supervisors<br><br>By: _____ |
|--|--|---|

## **EXHIBIT "A-5"**

### **SCOPE OF SERVICES**

CONTRACTOR shall provide COUNTY with the following services:

#### **I. DESCRIPTION OF SERVICES**

TASK 1: If and as requested by COUNTY, locate property suitable for the COUNTY to lease or purchase for a time period which the COUNTY deems appropriate.

TASK 2\*: If and as requested by COUNTY, market COUNTY owned property for purposes of sale or lease on behalf of the COUNTY, including, but not limited to:

- Provide analyses and recommendations on certain COUNTY-owned properties.
- Confirm encumbrances and/or constraints utilizing official records and geographic information systems.
- Assist with preparation of applicable real estate documents.
- Verify zoning and land use requirements including flood map designations, available utilities and related jurisdiction requirements.
- Complete market comparable and availability analyses.
- Provide status reports at agreed upon frequencies.

TASK 3: If and as requested by COUNTY, provide consulting services related to real estate feasibility and marketing analysis, including, but not limited to, performing typical real estate brokerage services, opinions of value, consulting, participation in property inspections, and providing recommendations and reports on property suitable for potential leasing, acquisition, and/or sale as requested by COUNTY.

All work shall be performed in a professional manner and quality conforming to generally accepted practices of the real estate profession.

CONTRACTOR shall be paid for each Task as set forth in Section 3 of the Agreement, above and as further described in Exhibit "B-5."

\*Prior to CONTRACTOR receiving any compensation based on a commission amount for Task 2 assignments, COUNTY and CONTRACTOR shall first enter into an appropriate Exclusive Authorization to Sell and Lease Agreement(s). Exhibit "C-1," which is attached hereto and incorporated by reference, is the current form of Exclusive Authorization that would be used for such tasks. Any final Exclusive Authorization to Sell/Lease Agreement(s) shall be approved by the Office of County Counsel prior to its execution. Any Exclusive Authorization to Sell/Lease Agreement not individually approved by the Office of County Counsel prior to its execution shall have no effect. Additionally, any and all such Exclusive Authorization to Sell and Lease Agreement(s) entered into for the purposes of Task 2 shall be revised from the existing

form to match the rates for those specified tasks as set forth in this Agreement and more particularly described in Exhibit "B-5." Through the Chair's execution of the prior Amendments No. 4 and No. 5 and this Amendment No. 6, COUNTY hereby authorizes the Napa County Public Works Director to execute an Exclusive Authorization to Sell/Lease Agreement if previously approved by the Office of County Counsel. COUNTY and CONTRACTOR agree that as of the execution of this Amendment No. 6 CONTRACTOR has been fully paid for all previously earned hourly amounts and commissions and that there are no pre-existing Exclusive Authorization to Sell and/or Lease Agreement(s) that would result in payment of a commission to CONTRACTOR if any COUNTY property is sold or leased if any COUNTY property were to be sold after the execution of this Amendment No. 6.

**II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

**EXHIBIT “B-5”****COMPENSATION**

CONTRACTOR shall be paid as provided in Section 3 of the Agreement above and as further described as follows for the tasks identified in Exhibit “A-5:”

**TASK 1:** In assisting COUNTY in negotiating the sale or lease of property covered by Task 1 services, CONTRACTOR shall use its best efforts to have the seller or landlord/lessor agree (as part of the written purchase or lease agreement if possible) to pay CONTRACTOR’s commission. It is the intent of the parties hereto that CONTRACTOR’S commission shall be paid by the Landlord/Lessor or Seller. If and only if the Landlord/Lessor or Seller refuses to pay CONTRACTOR’s commission and COUNTY chooses to consummate the transaction despite Seller’s refusal to pay CONTRACTOR’s commission, then COUNTY shall pay CONTRACTOR a commission that shall be calculated as follows:

- A. As to leases covered by Task 1, and which CONTRACTOR materially assists COUNTY in consummating, a sliding scale percentage of the aggregate stream of monthly lease payments to be paid by the COUNTY during the initial term of the lease, using the base monthly rent rate as the basis for calculation, without considering or including in the calculation any later option periods, renewals or extensions of the lease (the “Lease Commission Basis”).\*\* The applicable percentage shall vary for different portions of the Lease Commission Basis (and will be reduced for higher portions) as shown by the following table:

| <b>Lease Commission Basis</b>                           | <b>Commission Percentage</b> |
|---|------------------------------|
| For the portion from \$1.00 up to \$2,500,000           | 2.5%                         |
| For the portion above \$2,500,000 and up to \$5,000,000 | 1.5%                         |
| For the portion from \$5,000,001 and above              | 1.0%                         |

- B. As to purchases of property covered by Task 1, and which CONTRACTOR materially assists the COUNTY in consummating, a sliding scale percentage of the final purchase price as adjusted to reflect any reductions, offsets, deductions or credit backs that are made to the final purchase price (the “Purchase Commission Basis”). The applicable percentage shall vary for different portions of the Purchase Commission Basis (and will be reduced for higher portions) as shown by the following table:

| <b>Purchase Commission Basis</b>                        | <b>Commission Percentage</b> |
|---|------------------------------|
| For the portion from \$1.00 up to \$2,500,000           | 2.5%                         |
| For the portion above \$2,500,000 and up to \$5,000,000 | 1.5%                         |
| For the portion from \$5,000,001 and above              | 1.0%                         |

- C. If the Landlord/Lessor or Seller does not have a licensed real estate broker negotiating on their behalf, the COUNTY shall pay CONTRACTOR's commission at the following percentages applied to the "Purchase Commission Basis":

| <b>Lease Commission or Purchase Commission Basis</b> | <b>Commission Percentage</b> |
|--|------------------------------|
| For the portion from \$1.00 up to \$2,500,000        | 3.0%                         |
| For the portion above \$2,500,000 up to \$5,000,000  | 2.5%                         |
| For the portion from \$5,000,001 and above           | 2.0%                         |

**TASK 2:** Subject to the provisions of Section 3 of the Agreement above regarding credit to be received by the COUNTY for any payments on compensation on an hourly basis, for marketing of COUNTY owned property for sale or lease which ultimately results in consummation of a final sale or lease transaction, COUNTY shall pay CONTRACTOR a commission in connection with any Exclusive Authorization to Sell/Lease Agreement executed after the execution of this Amendment No. 6 in conformance with the process set forth in Exhibit A-5 with such commission to be calculated as follows:

- A. As to leases consummated with CONTRACTOR's assistance and services as covered by Task 2, a sliding scale percentage of the aggregate stream of monthly lease payments to be paid to the COUNTY during the stated initial full term of the lease, using the base monthly rent rate as the basis for calculation, without considering or including in the calculation any payments that may be made in any later option periods, renewals or extensions of the lease (the "Lease Commission Basis").\*\* The applicable percentage shall vary for different portions of the Lease Commission Basis (and will be reduced for higher portions) as shown by the table below.

| <b>Lease Commission Basis</b>                           | <b>Commission Percentage</b> |
|---|------------------------------|
| For the portion from \$1.00 up to \$2,500,000           | 2.5%                         |
| For the portion above \$2,500,000 and up to \$5,000,000 | 1.5%                         |
| For the portion from \$5,000,001 and above              | 1.0%                         |

- B. As to sales of property by the COUNTY consummated with CONTRACTOR's assistance and services as covered by Task 2, a sliding scale percentage of the final sale price as adjusted to reflect any reductions, offsets, deductions or credit backs that are made to the final sale price (the "Sale Commission Basis"). The applicable percentage shall vary for different portions of the Sale Commission Basis (and will be reduced for higher portions) as shown by the following table:

| <b>Sale Commission Basis</b>                            | <b>Commission Percentage</b> |
|---|------------------------------|
| For the portion from \$1.00 up to \$2,500,000           | 2.5%                         |
| For the portion above \$2,500,000 and up to \$5,000,000 | 1.5%                         |



|  |      |
|--|------|
| For the portion from \$5,000,001 and above | 1.0% |
|--|------|

- C. As to transactions which are significantly below-market, leases or sales, of COUNTY property consummated with CONTRACTOR's assistance, CONTRACTOR will be paid \$250.00 per hour with no commission compensation. The intent of such is to provide CONTRACTOR a fair compensation when a commission based on the sale price or lease value would not adequately compensate CONTRACTOR.
- D. If the sale or lease of a COUNTY property requires the COUNTY to compensate a real estate broker representing a buyer/tenant, then the tenant or buyer's broker shall receive a percentage of the Sale Commission Basis or Lease Commission Basis at an amount equal to CONTRACTOR. No compensation will be paid to a real estate broker representing a buyer/tenant when the sale/lease price of the COUNTY property is below market value.

**TASK 3:** Subject to the provisions of Section 3 of the Agreement above, CONTRACTOR shall be paid \$250 per hour for services covered by Task 3 described in Exhibit "A-5."

**\*\* The following is an illustration to explain how the Lease Commission Basis and the commission would be determined in the context of Leases for Tasks 1A and 2A:**

If a Lease has an initial 10-year term, with base monthly rent to be paid during the first year of \$30,000, but with escalations of \$1,000 per month in each of the subsequent 9 years (years 2 through 10), the calculation of the Lease Commission Basis would start with the base monthly rent of \$30,000, multiply that by 12 (one year's worth of lease payments), and then each subsequent year would incorporate the escalated amount (e.g., year two would be \$31,000 multiplied by 12, etc. – see table below). Thus, in this example, the Lease Commission Basis would be \$4.14 million. Applying the sliding scale, the commission to be paid would be \$87,100, consisting of \$62,500 (2.5 percent of the first \$2.5 million) and \$24,600 (1.5 percent of the next \$1.64 million).

| Lease Year   | Monthly Lease Payments | Annual Lease Payments |
|--------------|------------------------|-----------------------|
| 1            | \$30,000               | \$360,000             |
| 2            | \$31,000               | \$372,000             |
| 3            | \$32,000               | \$384,000             |
| 4            | \$33,000               | \$396,000             |
| 5            | \$34,000               | \$408,000             |
| 6            | \$35,000               | \$420,000             |
| 7            | \$36,000               | \$432,000             |
| 8            | \$37,000               | \$444,000             |
| 9            | \$38,000               | \$456,000             |
| 10           | \$39,000               | \$468,000             |
| <b>Total</b> |                        | <b>\$4,140,000</b>    |



## EXHIBIT "C-1"

### EXCLUSIVE LISTING EXAMPLE

#### EXCLUSIVE AUTHORIZATION TO SELL/LEASE

Pursuant to this Exclusive Authorization to Sell and Lease ("Agreement"), the undersigned Napa County ("Client") hereby irrevocably grants to COLLIERS INTERNATIONAL ("Broker"), and its authorized agents, the exclusive right to negotiate a sale or lease of that certain real property hereinafter described ("Property"). The exclusive agency hereby created ("Agency") shall be for a period commencing on Date #, 2018 ("start date") and ending at midnight on Date #, 2018 ("end date") ("Initial Agency Period").

#### **A. PROPERTY**

The Property is located at Address, in the City of Blank, County of Napa, State of California and further described as brief description.

#### **B. PRICE AND TERMS**

The lease(s) shall be for a rental of \$0.0 or any other terms acceptable to Client. The price and terms for a sale of the Property shall be as follows: \$0,000,000.00 or as negotiated by Client and the prospective purchaser of the Property with the assistance of Broker.

#### **C. EXTENSION OF INITIAL AGENCY PERIOD**

The Agency shall continue automatically for thirty (30) days from and after the end date of the Initial Agency Period and thereafter be extended again for additional thirty (30) day increments until the Agency is expressly revoked by Client in writing OR on the one year anniversary of the originally established end date, whichever occurs first. Client agrees to provide thirty (30) days' notice to Broker before such express revocation shall be effective. The Agency can be extended beyond the one year anniversary date by the Client's written notice to Broker that Client agrees to extend the Agency to a new date certain. In this Agreement, "Agency Period" shall refer to the period of time from the start date to the end of the last extension of the Agency.

#### **D. COMMISSION SCHEDULE AND PAYMENT**

In consideration of this Authorization and Broker's agreement to diligently pursue the procurement of a purchaser and/or tenant(s) for the Property, Client hereby agrees to pay commissions to Broker, as follows:

1. **SALES, EXCHANGES AND OTHER TRANSFERS:** The parties agree that the commission due to Broker under this Agreement shall be \_\_\_\_ percent (\_\_\_\_%) of the gross sales price of the interest to be transferred less any offsets, deductions or credits back. A commission that has been earned by Broker shall be payable in accordance with the following provisions:

1.1 For sales or exchanges: (a) if such transaction is closed through an escrow, upon the closing of said escrow; (b) if such transaction is closed without an escrow, upon the earlier of (i) recordation of a deed; or (ii) delivery of a deed or other instrument of conveyance.

**1.2** For a contract or agreement of sale, joint venture agreement, business opportunity or other transaction not involving the delivery of a deed, upon the mutual execution of the agreement evidencing the transaction.

- 2. LEASES:** The Commission shall be based on the value of the rent to be paid by the tenant, rent being defined as the dollar value of consideration paid by the tenant for the benefit of Client. In consideration of this Agreement and Broker's agreement to diligently pursue the procurement of a tenant(s) for the Property, Client hereby agrees to pay commissions to Broker, as follows:

#### **GROSS LEASE**

\_\_\_% of the rent for the first 12 months  
\_\_\_% of the rent for the second 12 months  
\_\_\_% of the rent for the third 12 months  
\_\_\_% of the rent for the fourth 12 months  
\_\_\_% of the rent for the fifth 12 months  
\_\_\_% of the rent for the next 60 months

**2.1 TIME FOR PAYMENT OF LEASING COMMISSION:** The foregoing leasing commissions shall be payable as follows: one-half upon the mutual execution of a lease by Client and tenant; the balance upon the earlier to occur of (i) occupancy of the Property by the tenant for the conduct of its business; or (ii) the requirement that the tenant commences payment of rent pursuant to the terms of the lease. For the purpose of computing the amount of the commission due on a leasing transaction, the first month when the base or minimum rent commences shall be deemed to be the first month of the lease. Notwithstanding the provisions of this paragraph, the commission shall not be paid later than six (6) months after the tenant's signing of the lease.

#### **E. CLIENT COOPERATION**

Broker agrees to use all reasonable efforts to find a purchaser or tenant for the Property, and Client agrees to cooperate with Broker in causing a sale or lease of the Property to occur. Client shall immediately refer to Broker all inquiries of any party interested in purchasing or leasing the Property, a portion thereof or an interest therein and Broker shall diligently pursue all such referrals. All negotiations regarding the sale or lease of the Property shall be pursued through Broker or with Broker's knowledge as to the terms and parties. Client hereby authorizes Broker to accept a deposit from any prospective purchaser or tenant and to transfer such deposit to an escrow agent for the account of the purchaser in the case of a Sale of the Property. All written offers received by Broker for the purchase of the Property shall be promptly reviewed and responded to by Client and Broker. Client further authorizes Broker to advertise the Property, and Broker shall have the exclusive right to place a sign or signs on the Property if, in Broker's opinion, the placement of such signs would facilitate the sale or leasing thereof.

#### **F. COOPERATING BROKERS**

Client acknowledges that Broker is entitled and encouraged to solicit the cooperation of other real estate brokers. However, Broker may not enter into any commission arrangements with other brokers that would be inconsistent with the terms of this Agreement or which would increase the total amount of Client's liability hereunder, and Client's sole liability for commissions shall be as provided in this Agreement. Broker has no responsibility to pay a fee

or commission to a cooperating broker, unless and until Client has paid the fee or commission to Broker.

#### **G. NONDISCRIMINATION**

Both Client and Broker hereby acknowledge their understanding that it is illegal to refuse to present, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

#### **H. CLIENT REPRESENTATIONS**

Except as may be provided in an addendum to this agreement signed by both Client and Broker, Client hereby warrants and represents to Broker that (1) Client is the owner of record of the Property or has the legal authority to execute this Agreement on behalf of such owner of record, (2) no person or entity has any right to purchase or sell the Property or any portion thereof by virtue of any agreement, option or right of first refusal, (3) there are no delinquencies or defaults under any deed of trust, mortgage or other encumbrance of the Property, (4) the Property is not subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding, and (5) neither Broker nor any salesperson affiliated with Broker has made any promises or representations to or agreements with Client not contained herein on the subject matter of this Agreement.

#### **I. DISCLOSURES, EXPERT MATTERS AND RESPONSIBILITIES OF CLIENT AND BROKER**

1. **DISCLOSURES:** Owners of real estate must comply with California law for the disclosure of any and all known material facts concerning their property to prospective tenants or buyers as well as any other items required by California law. To meet this requirement, Broker recommends that Owners of real estate obtain legal advice from a qualified legal professional. Broker shall have no responsibility for property disclosures beyond the delivery and/or disclosure of information provided by the Owner or known to the Broker. Parties to a sale or lease transaction should not and will not rely on Broker with regard to matters of disclosure required by Owners, but instead will rely entirely on their own investigation and that of qualified professionals and experts.

Matters requiring disclosure may include, but are not limited to, the following: Natural Hazard Disclosures (including whether or not the property is located in a flood hazard area, fire hazard severity zone, forest fire risk area, earthquake fault zone, or a seismic hazard zone), toxic mold disclosures, known material defects, presence or proximity to hazardous materials, compliance with the Americans with Disabilities Act (ADA), compliance with zoning laws, whether or not the property is located in a special tax zone (such as a Mello-Roos Community Facilities District) or a special assessment district, as well as historic energy use and the existence and results of Certified Access Specialist (CASp) inspections.

#### **2. EXPERT MATTERS:**

**2.1** There are a number of potentially significant matters related to commercial properties, which may be material to a particular transaction, the evaluation of which would require specialized expertise which is beyond the expertise and/or responsibility of the Broker ("Expert Matters"). Broker recommends that parties to a potential lease or sale transaction obtain the advice of qualified professionals and experts prior to the consummation of any transaction. Parties to a sale or lease transaction should not and

will not rely on Broker with regard to Expert Matters, but instead will rely entirely on their own investigation and those of qualified professionals and experts.

**2.2** Expert Matters may include, but are not limited to, the following: the use, generation, storage or presence of hazardous or toxic substances and underground storage tanks; natural hazards, such as fire, flood, or earthquake; building safety and structural integrity of roof, walls, and foundations or any improvements located on the Property; operation or condition of mechanical, plumbing, utility or life safety systems; mold, fungus, water damage, or effects of moisture; compliance with Americans with Disabilities Act (ADA); compliance with building and fire codes; tax, accounting, or legal effects or consequences of the proposed transaction; survey, linear or area measurements of the Property; availability of utilities and utility connections, adequacy, availability and condition of sewer lines and/or connections, public transportation, or other infrastructure; zoning and permitted land uses; insurance policies and premiums; architectural design or engineering; geotechnical/soil condition; termites or other pests or rodents; statements of income and expense or other financial statements; the financial soundness of a prospective tenant or subtenant; condition of title; or existing taxes, assessments or liens.

**2.3** Broker has no responsibility to, has not made and will not make an independent investigation or determination with respect to any Expert Matters. Any information communicated by Broker regarding any of the Expert Matters arises from third party sources and has not been and will not be independently verified by Broker.

#### **J. MEDIATION OF DISPUTES**

Broker and Client agree to mediate any dispute between them arising out of this Agreement prior to the initiation of any legal proceedings. If the parties cannot agree on a mediator, either party may petition the Superior Court of the County where the Property is located, which Court shall be authorized to appoint a mediator. The parties shall cooperate to promptly schedule the mediation. The mediator may conduct more than one session and both parties to the dispute shall pay fees equally. Matters that are within the jurisdiction of the small claims court are excluded from mediation. In the event a party pursues legal action without first seeking mediation, that party shall not be entitled to recover prevailing party attorney fees or costs.

#### **K. GENERAL PROVISIONS**

- 1. BINDING ON SUCCESSORS:** The parties intend for and agree that their respective successors, assigns, heirs and transferees shall be bound by this Agreement.
- 2. AMENDMENTS AND MODIFICATION:** No amendments to or modifications of this Agreement nor the termination of this Agreement shall be valid or binding unless made in writing and signed by both Client and Broker. Any purported amendment, modification or termination of this Agreement that is oral, or that is in writing but not signed by both Client and Broker, shall be void and of no effect whatsoever.
- 3. ATTORNEY'S FEES, COSTS AND INTEREST:** If any claim or controversy arises concerning the performance or interpretation of this Agreement, the prevailing party shall be entitled to attorney's fees, court costs, expert witness fees and/or other expenses relating to said claim or controversy, through appeal, if any. For the purposes of this Agreement, "prevailing party" shall mean the party that received substantially the relief requested,

whether by settlement, dismissal, summary judgment, mediation, arbitration, judgment or otherwise

4. **ENTIRE AGREEMENT OF PARTIES:** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the Property. Both parties to this Agreement acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
5. **PARTIAL INVALIDITY:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.
6. **GOVERNING LAW:** This Agreement will be governed by and construed in accordance with the laws of the State of California. In the event of any legal action, jurisdiction and venue shall be in the Superior Court of the State of California, for the County in which the Property is located.
7. **NOTICES:** Notices under this Agreement shall be provided in writing to the other party by regular U.S. mail, by facsimile, or by e-mail, addressed to the last known postal address, facsimile number, or e-mail address of the party.
8. **TIME:** The parties agree that time is of the essence with regard to the matters provided for in this Agreement.

**L. OTHER TERMS AND CONDITIONS**

Client and Broker have entered into a Professional Services Agreement dated November 12, 2013 (the "PSA"). To the extent there is a conflict or inconsistency between this Agreement and the PSA, the PSA shall control.

The undersigned Client has read and understood and hereby agrees to be bound by the foregoing.

**BROKER: Colliers Parrish International, Inc., dba Colliers International**      **Client: Napa County**

|   |            |            |       |
|---|------------|------------|-------|
| By: _____                               | 00/00/2018 | By: _____  | _____ |
| William Kampton                         | Date       |            | Date  |
| Email: <u>bill.kampton.colliers.com</u> |            | Its: _____ |       |
| CA License No. 00960310                 |            | By: _____  | _____ |
|   |            |            | Date  |

