



970 N. Oaklawn Avenue ♦ Suite 100 ♦ Elmhurst, IL 60126  
T. 630-782-9520 ♦ F. 630-782-9531 ♦ www.darwinreality.com

**EXCLUSIVE RIGHT TO SELL/LEASE AGREEMENT**

In consideration of the agreements of Broker contained in this Agreement, the undersigned ("Owner") appoints DARWIN REALTY & DEVELOPMENT CORPORATION ("Broker") as exclusive agent to sell/lease and grants Broker the exclusive right to sell/lease the following described Real Estate and improvements commonly known as: 9800 Franklin Avenue ("Premises") and in consideration of the promises by Owner to pay the Broker's commission as provided, Broker accepts the appointment. This Agreement is subject to the following covenants and conditions:

1. **Term.** This Agreement shall commence on this date and shall terminate on 12/31/2020.

2. **Owner Duties.** Owner agrees to: (a) sell the Premises at a price of \$190,000.00 subject to customary prorations, ~~or to lease the Premises at a (net) (gross) rental of \$\_\_\_\_\_ per square foot per annum for a term of \_\_\_\_\_ years~~ or any other price, rental or term which Owner may agree to accept; (b) to immediately refer all inquiries relating to the Premises to Broker, and to fully cooperate with Broker in the sale/leasing of the Premises; (c) to furnish satisfactory evidence of good title, ~~its standard lease form~~ and such other documentation as may be necessary to sell the Premises ~~or cause the execution of the lease~~, and (d) to provide Broker with a conformed or true copy of the sale contract ~~or lease~~ of the Premises immediately upon execution thereof.

3. **Broker Duties.** Broker agrees to: (a) use its best efforts to procure a Purchaser/Tenant for the Premises; (b) to advertise the Premises to be sold/leased at the expense of the Owner in an amount not to exceed \$0; (c) list the premises with members of the Chicago chapter of the Society of Industrial and Office Realtors and the Association of Industrial Real Estate Brokers and to solicit their active cooperation in obtaining a Purchaser/Tenant; (d) place a sign or signs about the Premises. Owner consents to Broker placing a "For Sale" or "For Rent" sign upon the Premises.

Owner understands that the information which Owner provides to Broker will be used to advertise Owner's Premises to the public and it is essential that this information be accurate. Owner understands that Owner may be held responsible by a buyer for any latent or hidden, undisclosed defects in the Premises which are known to Owner but which are not disclosed to the Buyer.

Owner agrees to indemnify and hold Broker and its sales associates and agents harmless from all claims, disputes, litigation, judgments, and costs (including reasonable attorney's fees) arising from Owner's breach of this Agreement, from any incorrect information or misrepresentation supplied by Owner or from any material facts, including latent defects, that are known to Owner and that Owner fails to disclose.

4. **Designated Agents; Exclusive Representation.** Broker designates the following brokers or sales associates as the legal agents of Owner under this Listing Agreement ("Designated Agents"), to the exclusion of all brokers or sales associates employed by or affiliated with Broker, unless and until Broker notifies Owner in writing to the contrary:

| <u>Name(s) of Designated Agents</u> | <u>Phone Number</u>   |
|-------------------------------------|-----------------------|
| Rollo Dace                          | 630-782-9520 ext 3854 |

Broker reserves the right to name additional Designated Agents when in Broker's discretion it is necessary. If additional Designated Agents are named, Owner shall be informed in writing within a reasonable time. If other brokers or sales associates employed by or affiliated with Broker are designated as the legal agents of the prospective buyer or tenant of the Property, then each of the designated brokers or sales associates shall be instructed to act exclusively for the party they have been designated to represent and not to share or attempt to obtain information not appropriate to share or obtain with representatives of adverse parties.

5. **Commission to Broker.** Owner agrees to pay Broker, or Broker may retain from the proceeds arising from such sale ~~or lease~~, a broker's commission as stipulated on the attached Commission Schedule in the event: (a) the Premises is sold/leased, or otherwise disposed of in any way, by or through Broker, or Owner, or any other person during the term of this agreement; (b) The Premises is sold/leased or otherwise disposed of within six (6) months from the termination date of this Agreement to a prospect to whom it was submitted by Broker during the term of this Agreement, and whose name has been submitted in writing to Owner within thirty (30) days after the termination hereof, or to a prospect to whom it was submitted on behalf of Broker whose name has been disclosed to Owner, or to anyone with whom Owner has dealt during the term of this Agreement; (c) if Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Premises during the term of this Agreement; (d) Owner contributes or conveys Premises to a partnership, joint venture or other business entity; or (e) Owner is a sublessor, and through the effort or intervention of the agent the building owner relieves the Owner of its obligation for the remaining term, or any part of the remaining term of the lease, based upon that forgiven portion of the remaining term. In the event Owner during the term of this Agreement (i) withdraws the Premises from sale/lease, (ii) revokes this Agreement, or (iii) fails to comply with its agreements hereunder, then Owner shall pay Broker as liquidated damages, and not as a penalty, an amount equal to the higher of the Broker's commission computed on the offered sale price or lease terms set forth above.

6. **Management and Other Brokers.** Broker shall not be responsible for the management, maintenance, repair, upkeep or operation of the Premises during the term of this Agreement and all extensions. Owner agrees to indemnify and save harmless Broker against any and all actions, claims, demands, disputes, litigation, judgments, and costs (including reasonable attorney's fees) relating to alleged or actual injury to persons or damage to property resulting from or occurring on the Premises or any appurtenances or improvements.

Owner acknowledges that potential buyers may elect to employ the services of a licensed real estate broker or sales associate as their own agent ("Buyer's Agent"). Broker is authorized to show the premises to prospective buyers represented by Buyer's Agent and Broker, in its sole discretion, may pay a part of the above commission to Buyer's Agent or other cooperating agents. Broker is authorized in its sole discretion to determine with which brokers it will cooperate, and the amount of compensation that it will offer cooperating brokers in the sale of the Property.

Owner understands and agrees that other sales associates affiliated with Broker, other than Owner's Designated Agent(s), may represent the actual or prospective buyer (or tenant) of Owner's property. Further, Owner understands and agrees that if the Premises is sold (or leased) through the efforts of a sales associate affiliated with Broker who represents the Buyer, the other sales associate affiliated with Broker will be acting as a Buyer's designated agent.

7. **Changes Must be Written.** The terms and conditions contained in the Commission Schedule on the attached Commission Schedule are expressly incorporated and made a part of this Exclusive Agency Agreement. No amendment or alteration of the terms and conditions of this Agreement shall be valid unless agreed to in writing by Broker and Owner.

8. **No Discrimination.** The parties acknowledge that pursuant to the General Rules and Regulations for the Administration of the Illinois Real Estate License Act of 2000, it is illegal for an owner or lessee of property, or the real estate broker to refuse to sell, or lease to, any person because of race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by Article 3 of the Illinois Human Rights Act.

9. **Lease Execution; Recordable Notice.** In the event the Premises are leased, the Owner agrees to execute in recordable form and deliver to Broker, a Notice containing legal description of the Premises, and reciting that the Owner has entered into a Lease with (naming the tenant) and that in accordance with this Agreement, the Broker is entitled to receive payment of commission (and is granted a lien therefor) from the then owner of the Premises at the time of the exercise by the lessee or its successors or assigns of any and all options to extend or renew said Lease, or upon the execution of any new Lease or amendment to the Lease, or if the lessee or its successors or assigns exercises an option for additional space or enters into a new lease for additional space or exercises any option to purchase the Premises or purchases the Premises.

10. **Arbitration of Disputes.** Any controversy or claim arising out of or relating to this Agreement or a breach under this Agreement, shall be settled by binding arbitration in Chicago, Illinois, in accordance with the commercial rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Discovery may be obtained in such proceedings to the same extent as authorized in civil court proceedings in Illinois. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar type damages. The arbitrator(s) shall award the prevailing party its expenses, costs and reasonable attorneys' fees.

11. **Duty to Disclose and Indemnify.** Owner agrees to disclose to Broker and prospective buyers all information which Owner has or may obtain regarding the Premises and all present and future zoning, ordinance and environmental matters affecting the Premises including, but not limited to, structural, mechanical and soil conditions, the presence and location of asbestos, PCB transformers, underground storage tanks and any hazardous or contaminated substances in, on or around the Premises. Broker is authorized to disclose all such information to prospective buyers. Owner agrees to indemnify and save harmless Broker and its officers and agents against any and all actions, claims, damages, liabilities, disputes, litigation, judgments and costs (including reasonable attorney's fees) (a) relating to the condition of the Premises; (b) pertaining to the presence and location of asbestos, PCB transformers, underground storage tanks and any hazardous or contaminated substances in, on or around the Premises; and (c) any damage or injury to person or property resulting from or occurring in, on or about the Premises. Broker is authorized to disclose all such information to prospective buyers.

12. **Dual Agency.** The undersigned confirms that they consent to Darwin Realty & Development Corporation ("Licensee") acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Darwin Realty & Development Corporation ("Licensee") acting as a Dual Agent in regard to the transactions referred to in this Listing Agreement

13. **Owner's Authority.** The Owner represents and warrants that it is either the owner of the Premises, the beneficiary under the land trust that owns the Premises or is the authorized agent of the Owner who has the power and authority to enter into this Contract on behalf of the legal or beneficial owner of the Premises. Upon Broker's written demand, Owner shall deliver to Broker documentation which reasonably substantiates such representation and warranty, including, without limitation, a certified copy of a land trust agreement or a certified copy of a corporate authorizing resolution.

14. **Interest in Premises.**  If this area is checked or initialed by Broker, a principal or affiliate of Broker has an ownership interest in the Premises or in the entity offering the Premises for sale or lease.

15. **Miscellaneous.** If more than one Owner or buyer is involved, the pronouns and grammatical structure shall be understood to conform. This agreement shall be governed by the laws of the State of Illinois and shall be binding and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

Dated: \_\_\_\_\_

**BROKER:**  
DARWIN REALTY & DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_

Name: Richard G. Daly  
Title: President  
Address: 970 N. Oaklawn Avenue, Ste. 100  
Elmhurst, IL 60126  
Phone: 630-782-9520  
Email: rdaly@darwinrealty.com

**OWNER:**  
VILLAGE OF FRANKLIN PARK

By: \_\_\_\_\_

Name: Barrett F. Pedersen  
Title: Village President  
Address: 9100 W. Belmont Ave  
Franklin Park, IL 60131  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_



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## Commission Schedule

### SALES COMMISSION

**VACANT LAND:** The commission is 10% of the selling price (or the condemnation award, if taken by eminent domain).

**BUILDING & IMPROVED REAL ESTATE:** The commission is the total of 6% of the first \$500,000 of the selling price (or the condemnation award, if taken by eminent domain) and 5% of the selling price (or condemnation award, if taken by eminent domain) in excess of \$500,000.

### LEASE & SUBLEASE COMMISSION

Unless otherwise set forth herein, in the event of a lease, sublease or assignment of lease the commission set forth below shall be based upon the full rental and/or other consideration and the full amount of any renewal or purchase option.

On **CROSS LEASES** (leases wherein the owner or lessor is responsible for paying all or a major portion of the costs of maintaining and operating the Premises),

#### When the term of the lease is:

**6 MONTHS OR LESS:** Commission is 7% of an amount equal to six month's rental computed on the basis of the average monthly rental for the term of the lease.

**MORE THAN 6 MONTHS TO AND INCLUDING 1 YEAR:** Commission is 7% of an amount equal to one year's rental computed on the basis of the average monthly rental for the term of the lease.

**MORE THAN 1 YEAR TO AND INCLUDING 5 YEARS:** Commission is 7% of the average annual rental, plus 3% of the balance of rent reserved in the lease.

**MORE THAN 5 YEARS:** Commission is 3.5% of the total rental reserved in the lease.

On **NET LEASES:** (leases wherein the tenant or lessee is responsible for paying all or a major portion of the costs of maintaining and operating the Premises),

#### When the term of the lease is:

**6 MONTHS OR LESS:** Commission is 8% of an amount equal to six month's rental computed on the basis of the average monthly rental for the term of the lease.

**MORE THAN 6 MONTHS TO AND INCLUDING 1 YEAR:** Commission is 8% of an amount equal to one year's rental computed on the basis of the average monthly rental for the term of the lease.

**MORE THAN 1 YEAR TO AND INCLUDING 5 YEARS:** Commission is 8% of the average annual rental, plus 3% of the balance of rent reserved in the lease.

**MORE THAN 5 YEARS:** Commission is 3.5% of the total rental reserved in the lease.

If a tenant is procured through a cooperating broker other than Broker or through a buyer's designated agent other than Owner's Designated Agents, the commission due will be one and one-half times the commission as stipulated above, with the procuring (cooperating) broker or buyer's designated agent receiving a full commission, and Broker receiving one-half of a full commission.

All commissions are earned upon procurement of a ready, willing and able purchaser or lessee (or at the conclusion of eminent domain proceedings) and are payable upon presentation of an invoice by the Broker. Simultaneously with payment of the entire commission, Broker shall deliver to Owner in recordable form a waiver of Broker's lien under the Broker's Lien Act. If the sale transaction is closed through an escrow, Broker may deliver to the escrow agent Broker's invoice and a copy of this Agreement. Owner authorizes the direct payment of Broker through such escrow and Broker will cooperate by delivering Broker's lien waiver with a direction that the waiver will not be recorded or released to Owner until the escrow agent is prepared to disburse the commission to Broker.

### RENEWAL OPTION

If a lease or separate instrument or agreement gives the lessee an option of renewal or extension, a commission is due for the term of the lease, exclusive of the period covered by the renewal or extension option. In the event the lessee exercises the option of renewal or extension, an additional commission will be due based upon the extended or additional period. Additionally, in the event the lessee remains in the premises for an additional period of time under a new lease, or an amendment to the original lease, a commission shall be due for such additional period based upon the rental to be paid for such additional period. The additional commission shall be the difference between the amount of commission due for the entire term of the lease, including the extended or additional period, and the amount of commission previously paid. Any such commissions shall be due and payable upon the exercise of the renewal or extension, or upon the execution of the new lease or amendment to the original lease. All of the aforesaid commission shall be payable by Owner whether or not the premises is conveyed or the lease assigned prior to the exercise of any such renewal or extension.

### ADDITIONAL SPACE OPTION

If a lease or a separate instrument or agreement gives the lessee an option to lease additional space and the lessee exercises such option, or, if any time during the original term of the lease in question the lessee enters into a new lease for such additional space, whether or not the lease or agreement for such additional space shall be upon the same terms and conditions as set forth in the original lease, then an additional commission is due equal in amount to what the charge would be if a lease for such additional space had been consummated with a new lessee, based on the term and rental provided for in the additional space option or in the new lease. The additional commission shall be due and payable at the time the option is exercised or the new lease is executed. All of the aforesaid commissions shall be payable by Owner whether or not the premises is conveyed or the lease assigned prior to the exercise of any such option or the execution of a new lease.

### ADDITIONAL SPACE

When the original lease, or an option provided for in the original lease that has been exercised, does not grant the lessee the option to acquire space in addition to that denied, but nevertheless the lessee, after consummation of said original lease or after said option has been exercised, leases additional space, then an additional commission is due equal in amount to what the charge would be if a lease for such additional space had been consummated with a new lessee, based upon the term and rental of the lease for such additional space to a new tenant. The additional commission shall be due and payable at the time the new lease is executed. The aforesaid commission shall be payable by Owner whether or not the premises is conveyed or the lease assigned prior to the lease of additional space.

### OPTION TO PURCHASE

When the lease or any renewal or extension thereof, or any separate instrument or agreement, contains a provision giving the lessee an option to purchase the premises, and the lessee does purchase the property at any time during the term covered by the original lease, any renewal or extension thereof or any separate instrument, even though on terms and conditions not in accord with those set forth in the aforesaid option, then an additional commission is due based upon the rate indicated in this schedule for making sales of real estate less an amount equal to the unamortized portion of the previously paid lease commission. Such commission shall be due and payable at the time of said purchase. This provision shall not apply if the commission applicable to the sale is less than the commission paid for negotiating the lease and any renewal or extension thereof. In the event the lessee does purchase the premises during the term of the original lease or any extension thereof or any separate instrument, even though the lessee does not have an option to purchase the premises, the provisions of this paragraph shall apply. The aforesaid option commission shall be payable by Owner whether or not the premises is conveyed or the lease assigned prior to such purchase.