

C-5293



CALIFORNIA ASSOCIATION OF REALTORS®

LEASE LISTING AGREEMENT EXCLUSIVE AUTHORIZATION TO LEASE OR RENT (C.A.R. Form LL, Revised 11/12)

1. EXCLUSIVE RIGHT TO LEASE: City of Newport Beach ("Owner") hereby employs and grants ReMax ("Broker") beginning (date) January 25, 2013 and ending at 11:59 P.M. on (date) April 30, 2013 ("Listing Period") the exclusive and irrevocable right to lease or rent the real property in the City of Newport Beach County of Orange, California, described as 1499 Monrovia Avenue (APN#424-401-14) 2 story office approx. 16,560 sq ft on approx. 1.09 acres ("Premises").

2. LISTING TERMS: A. RENT AMOUNT: Dollars \$ per B. SECURITY DEPOSIT: C. TYPE OF TENANCY: (Check all that apply): [] Month-to-month; [] One year [X] Other Up to ten years D. ITEMS INCLUDED IN LEASE/RENTAL: All fixtures and fittings attached to the Premises and the following items of personal property: E. ITEMS EXCLUDED FROM LEASE/RENTAL: [] Garage/Carport; [] F. ADDITIONAL TERMS: Term and rate to be negotiable, and must be acceptable to the Landlord.

3. COMPENSATION: Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Owner and Broker (real estate commissions include all compensation and fees to Broker).

A. Owner agrees to pay to Broker as compensation for services, irrespective of agency relationship(s): (1) For fixed-term leases: (a) Either (i) [] 5.000 percent of the total rent for the term specified in paragraph 2 (or if a fixed term lease is executed, of the total base payments due under the lease); or (ii) [X] for the full lease term; (b) Owner agrees to pay Broker additional compensation of if a fixed term lease is executed and is extended or renewed. Payment is due upon such extension or renewal. (2) For month-to-month rental: either (i) [] percent of ; or (ii) [X] 3 months rent. (3) The following terms apply whether the tenancy is for a fixed term or month-to-month: (a) If during the Listing Period, or any extension Broker, cooperating broker or any other person procures a Tenant who offers to lease/rent the Premises on the above amount and terms, or on any amount and terms acceptable to Owner. (Broker is entitled to compensation whether any tenancy resulting from such offer begins during or after the expiration of the Listing Period.) (b) If Owner, within 120 calendar days after the end of the Listing Period or any extension thereof, enters into a contract to transfer, lease or rent the Premises to anyone ("Prospective Transferee") or that person's related entity: (i) who physically entered and was shown the Premises during the Listing Period or any extension thereof by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Owner a signed, written offer to lease or rent the Premises. Owner, however, shall have no obligation to Broker under this subparagraph 3A(3)(b) unless, not later than 5 calendar days after the end of the Listing Period or any extension, Broker has given Owner a written notice of the names of such Prospective Transferees. (c) If, without Broker's prior written consent, the Premises are withdrawn from lease/rental, are leased, rented, or otherwise transferred, or made unmarketable by a voluntary act of Owner during the Listing Period, or any extension. B. If commencement of the lease or rental is prevented by a party to the transaction other than Owner, then compensation due under paragraph 3A shall be payable only if and when Owner collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any. C. In addition, Owner agrees to pay: in the event Landlord cancels the listing prior to the end of the listing period or any extensions; Landlord will reimburse broker for any and all related expenses. D. Broker may retain compensation due from any Tenant payments collected by Broker. E. Owner agrees to pay Broker if Tenant directly or indirectly acquires, or enters into an agreement to acquire title to Premises or any part thereof, whether by sale, exchange or otherwise, during the term or any extension of tenancy, compensation equal to 5.000 percent of the selling price or total consideration in said transfer, whichever is greater. Payment is due upon Tenant's direct or indirect acquisition of any legal or equitable interest in the Premises and, if there is an escrow, shall be through escrow. F. Broker is authorized to cooperate with and compensate other brokers in any manner acceptable to Broker. G. (1) Owner warrants that Owner has no obligation to pay compensation to any other broker regarding the lease or rental of Premises unless the Premises are leased or rented to: none (2) If Premises are leased or rented to anyone listed in 3G(1) during the time Owner is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Owner with respect to such transaction.

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Owner acknowledges receipt of a copy of this page. Owner's Initials ([Signature]) () Reviewed by _____ Date _____



- 4. **TENANT PAYMENTS:** Broker is authorized to accept and hold from a prospective Tenant, a deposit to be held uncashed or placed in Broker's trust account. Upon execution of a fixed term or month-to-month lease, payments received from Tenant shall be given to Owner or _____.
- 5. **KEYSAFE/LOCKBOX:** (If checked) Owner authorizes the use of a keysafe/lockbox to allow entry into the Premises and agrees to sign a keysafe/lockbox addendum (C.A.R. Form KLA).
- 6. **SIGN:** (If checked) Owner authorizes Broker to install a FOR LEASE sign on the Premises.
- 7. **MULTIPLE LISTING SERVICE:** Information about this listing will (or will not) be provided to a multiple listing service(s) ("MLS") of Broker's selection. All terms of the transaction will be provided to the selected MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Seller authorizes Broker to comply with all applicable MLS rules. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary.
- 8. **SECURITY AND INSURANCE:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a keysafe/lockbox, a showing of the Premises, or otherwise. Third parties, including, but not limited to, inspectors, brokers and prospective tenants, may have access to, and take videos and photographs of, the interior of the Premises. Owner agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Premises; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Owner.
- 9. **OWNERSHIP, TITLE AND AUTHORITY:** Owner warrants that: (i) Owner is the legal owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Owner has the authority to both execute this Agreement and lease or rent the Property. Exceptions to ownership, title and authority: _____.
- 10. **LEAD-BASED PAINT DISCLOSURE:** The Premises were were not constructed prior to 1978. If the Premises were constructed prior to 1978, Owner is required to complete a federally mandated and approved lead-based paint disclosure form and pamphlet, which shall be given to Tenant prior to or upon execution of a lease or rental agreement.
- 11. **OWNER REPRESENTATIONS:** Owner represents that, unless otherwise specified in writing, Owner is unaware of: (i) any recorded Notice of Default affecting the Premises; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Premises; (iii) any bankruptcy, insolvency or similar proceeding affecting the Premises; (iv) any litigation, arbitration, administrative action, government investigation, or other pending or threatened action that does or may affect the Premises or Owner's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Premises. Owner shall promptly notify Broker in writing if Owner becomes aware of any of these items during the Listing Period or any extension thereof.
- 12. **TAX WITHHOLDING:**
 - A. If Owner is not a California Resident or a corporation or LLC qualified to conduct business in California, Owner authorizes Broker to withhold and transmit to California Franchise Tax Board ("FTB") 7% of the GROSS payments to Owner that exceed \$1,500 received by Broker, unless Owner completes and transmits to Broker FTB form 589, nonresident reduced withholding request, FTB form 588, nonresident withholding waiver, or FTB form 590, withholding exemption certificate.
 - B. If Owner is a nonresident alien individual, a foreign entity, or other non-U.S. person, (Foreign Investor) Owner authorizes Broker to withhold and transmit to the Internal Revenue Service (IRS) 30% of the GROSS rental receipts unless Owner elects to treat rental income as "effectively connected income" by submitting to Broker a fully completed IRS form W-8ECI, Certificate of Foreign Person's Claim for Exemption from Withholding on Income Connected With the Conduct of a Trade of Business in the United States. A Foreign Investor Owner will need to obtain a U.S. tax payer identification number and file declaration with the IRS regarding effectively connected income in order to complete the form given to Broker. Further, the Foreign Investor Owner will be responsible for making any necessary estimated tax payments.
- 13. **BROKER'S AND OWNER'S DUTIES:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Owner gives Broker written instructions to the contrary, Broker is authorized to advertise and market the Premises in any medium, selected by Broker including MLS and the Internet and, to the extent permitted by these media, including MLS, control the dissemination of the information submitted to any medium. Owner agrees to consider offers presented by Broker and to act in good faith to accomplish the lease or rental of the Premises by, among other things, making the Premises available for showing at reasonable times and referring to Broker all inquiries of any party interested in the Premises. Owner is responsible for determining at what price and terms to list and lease or rent the Premises. **Owner further agrees, regardless of responsibility, to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney's fees arising from any incorrect information supplied by Owner, whether contained in any document, omitted therefrom or otherwise, or from any material facts that Owner knows but fails to disclose.**
- 14. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.
- 15. **AGENCY RELATIONSHIPS:**
 - A. **Disclosure:** If the Premises includes residential property with one to four dwelling units, and the listing is for a tenancy in excess of one year, Owner acknowledges receipt of the "Disclosure Regarding Agency Relationships" form (C.A.R. Form AD).
 - B. **Owner Representation:** Broker shall represent Owner in any resulting transaction, except as specified in paragraph 3G.
 - C. **Possible Dual Agency With Tenant:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act

Owner acknowledges receipt of a copy of this page.

Owner's Initials (SM) (_____)

Reviewed by _____ Date _____



as an agent for both Owner and Tenant. Broker shall, as soon as practicable, disclose to Owner any election to act as a dual agent representing both Owner and Tenant. If a Tenant is procured directly by Broker or an associate licensee in Broker's firm, Owner hereby consents to Broker acting as a dual agent for Owner and such Tenant.

D. **Other Owners:** Owner understands that Broker may have or obtain listings on other properties and that potential tenants may consider, make offers on, or lease or rent through Broker, premises the same as or similar to Owner's Premises. Owner consents to Broker's representation of owners and tenants of other properties before, during and after the end of this Agreement.

E. **Confirmation:** If the Premises includes residential property with one to four dwelling units, and the agreed-upon lease is for a tenancy in excess of one year, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or coincident with Owner's execution of such lease.

16. **EQUAL HOUSING OPPORTUNITY:** The Premises is offered in compliance with federal, state and local anti-discrimination laws.

17. **ATTORNEY'S FEES:** In any action, proceeding or arbitration between Owner and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Owner or Broker shall be entitled to reasonable attorney's fees and costs from the non-prevailing Owner or Broker, except as provided in paragraph 21A.

18. **ADDITIONAL TERMS:** _____

19. **MANAGEMENT APPROVAL:** If a salesperson or broker-associate enters this Agreement on Broker's behalf, and Broker/Manager does not approve of its terms, Broker/Manager has the right to cancel this Agreement, in writing, within **5 calendar Days** After its execution.

20. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Owner and Owner's successors and assigns.

21. **DISPUTE RESOLUTION:**

A. **MEDIATION:** Owner and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 21C.

B. **ARBITRATION OF DISPUTES:**

Owner and Broker agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 21C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Owner's Initials DW / _____ Broker's Initials JR / _____

C. **ADDITIONAL MEDIATION AND ARBITRATION TERMS:** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions.

Owner acknowledges receipt of a copy of this page.

Owner's Initials (DW) (_____)

Reviewed by _____ Date _____



1499 Monrovia Avenue

Property Address: Newport Beach,

Date: January 24, 2013

22. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed except in writing. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Owner acknowledges Owner has read, understands, received a copy of and agrees to the terms of this Agreement.

Owner [Signature] Date 2/4/2013

Owner City of Newport Beach
Print Name

Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ Email _____

Owner _____ Date _____

Owner _____
Print Name

Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ Email _____

Real Estate Broker (Firm) ReMax DRE Lic. # 00983568

By (Agent) [Signature] Paul Carrese DRE Lic. # 01356791 Date 2-13-13

Address 450 Silver Spur Road City Rancho Palos Verdes State CA Zip 90275
Telephone (949) 285-4498 Fax (310) 703-1999 Email pcarrese@gmail.com

APPROVED AS TO FORM:

[Signature]
City Attorney KSA
1/30

Attest: [Signature]
City Clerk 

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Reviewed by _____ Date _____





DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Listing Firm to Seller) (As required by the Civil Code) (C.A.R. Form AD, Revised 11/12)

(If checked) This form is being provided in connection with a transaction for a leaseholder interest in a dwelling exceeding one year as per Civil Code section 2079.13(j) and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller.

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer. (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

Buyer Seller Landlord Tenant City of Newport Beach Date 2/4/2013

Buyer Seller Landlord Tenant Date

Agent ReMax Real Estate Broker (Firm) DRE Lic. # 00983568

By Paul Carrese (Salesperson or Broker-Associate) DRE Lic. # 01356791 Date 2/8/13

Agency Disclosure Compliance (Civil Code §2079.14): When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant. When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here: (SELLER/LANDLORD: DO NOT SIGN HERE)

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Reviewed by Date



CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE, SAMPLE ONLY) _____ is the agent of (check one): the seller exclusively; or both the buyer and seller.
 (Name of Listing Agent)

(DO NOT COMPLETE, SAMPLE ONLY) _____ is the agent of (check one): the buyer exclusively; or the seller exclusively; or both the buyer and seller.
 (Name of Selling Agent if not the same as the Listing Agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.





CANCELLATION OF LISTING
(C.A.R. Form COL, Revised 4/11)

Coldwell Banker Commercial NRT ("Broker") has entered into a written Residential Listing Agreement (or, if checked, Lease Listing, Other _____) dated November 27, 2012 ("Listing"), with _____ ("Principal"), regarding the real property or manufactured home described as: 1499 Monrovia Avenue, Newport Beach, _____ ("Property").

Broker and Principal agree to cancel the Listing and terminate their agency relationship, duties and responsibilities with and to each other, subject to the terms and conditions specified below.

1. (If checked) Principal agrees to pay Broker the amount of compensation specified in the Listing:
 (A) If, prior to the end of the specified Listing Period or any extension, Principal enters into a contract to sell, convey, lease or otherwise transfer the Property; or
 (B) If, during the period specified after expiration of the Listing Period or any extension, Principal enters into a contract to sell, convey, lease or otherwise transfer the Property to any person named below, or that person's related entity, who, after the commencement of the Listing and prior to this cancellation, (i) physically entered and was shown the Property by Broker or a cooperating broker, or (ii) submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property:

- (C) In the event of a transaction specified in A or B above, Broker has no obligation to represent Principal in such transaction.
 (D) Compensation is payable on close of escrow or, if completion of the transaction is prevented by default of Seller, on Seller's default.

- OR 2. (If checked) Principal agrees to pay Broker _____ % of the compensation specified in the Listing:
 (A) If: (i) prior to the end of the specified Listing Period or any extension, Principal enters into a listing agreement for the sale or lease of the Property with another real estate broker; and (ii) Principal enters into a contract to sell, convey, lease or otherwise transfer the Property during the specified Listing Period.
 (B) Principal agrees to notify the other real estate broker of the compensation obligation of this paragraph and to pay Broker such compensation upon close of escrow.
 (C) Compensation is payable on close of escrow or, if completion of the transaction is prevented by default of Seller, on Seller's default.

- OR 3. (If checked) Principal agrees to pay Broker \$ _____, for out-of-pocket expenses, costs incurred and services rendered in marketing the Property prior to cancellation of the Listing.

- OR 4. (If checked) Principal owes no compensation to Broker.

- OR 5. (If checked) Other _____

Other than as provided herein, Broker and Principal mutually release each other from all obligations under the Listing and from all claims, actions and demands that each may have against the other by reason of the Listing. However, Broker and Principal agree that the dispute resolution and attorney fees provisions of the Listing shall control any dispute arising out of this cancellation of Listing.

I acknowledge that I have read and understand this Cancellation of Listing and have received a copy.

Principal [Signature] Date 01/10/2013

City of Newport Beach

Real Estate Broker (Firm) Coldwell Banker Commercial NRT Date 2-8-13

By (Broker/Office Manager) [Signature]

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COL REVISED 4/11 (PAGE 1 OF 1)

[Signature]
 City Attorney

Reviewed by _____ Date _____



CANCELLATION OF LISTING (COL PAGE 1 OF 1)

Agent: Paul Carrese Phone: 310.544.8449 Fax: 310.544.6353 Prepared using zipForm® software
 Broker: Coldwell Banker 445 Silver Spur Road Rolling Hills Estates, CA 90274



Attest: [Signature]
 City Clerk