

# **AIR COMMERCIAL REAL ESTATE ASSOCIATION**



## **Rules of Professional Conduct**

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# Rules of Professional Conduct

## INTRODUCTION

### THE AIR COMMERCIAL REAL ESTATE ASSOCIATION/THE MULTIPLE

The AIR Commercial Real Estate Association (“AIR”) is a non-profit mutual benefit corporation, formed under the laws of the State of California for the purpose of providing superior information, industry standards, services, and education by mutual cooperation among its Members in the field of industrial and non-residential commercial real estate brokerage. As one means of furthering its purpose and objectives, the AIR has established a subsidiary, The MULTIPLE.

### PURPOSE OF THE MULTIPLE.

The MULTIPLE is a for-profit corporation formed to foster and promote Broker cooperation and to provide Brokers an effective market for the sale and leasing of industrial and non-residential commercial property for the benefit of Owners/Sublessors and Buyers/Lessees. The Rules of Professional Conduct of The MULTIPLE are to be interpreted as having the dual goals of protecting the consuming public and affording the Owners/Sublessors and Buyers/Lessees of industrial and non-residential commercial property the maximum opportunity in their real estate transactions, together with maximizing competition within the brokerage community in a framework of fair play and professional standards.

### PARTICIPATION IN THE MULTIPLE.

Only Accredited Firms which are in good standing with the AIR are eligible to participate in The MULTIPLE. Only those Accredited Firms approved by the Board of Directors may use the name “MULTIPLE”, which is a registered trademark.

Inasmuch as (a) a thorough understanding of the complexities of Agency law and practice is fundamental to the competent and ethical practice of real estate brokerage; and (b) an agent’s independence is also fundamental to the competent and ethical practice of real estate brokerage, since the agent is an entity or person acting on behalf of another, Accredited Firm status in the AIR Commercial Real Estate Association is reserved for entities which qualify by virtue of their knowledge of the complexities of Agency law the practice of industrial and office real estate brokerage, and their independence as agents.

### RULES AND REGULATIONS/BINDING EFFECT.

These Rules of Professional Conduct (“Rules”) govern the participation in The MULTIPLE by Associates. All Associates agree to abide by and adhere to the Rules. The Rules have been established by the Board of Directors of The MULTIPLE and are subject to interpretation, addition, amendment and revision by the Board of Directors of The MULTIPLE.

## ARTICLE I DEFINITIONS

### 1.1 “Accredited Firm”

shall mean a firm actively engaged in the third party brokerage of industrial and/or non-residential commercial real estate which has met and maintains the qualifications under the Bylaws of the AIR.

### 1.2 “Active Member”

shall mean a licensed industrial and/or non-residential commercial real estate broker or salesperson who has granted Active Membership status in AIR under the Bylaws of AIR and who is in good standing with AIR.

### 1.3 “AIR”

shall mean the AIR Commercial Real Estate Association, a California non-profit mutual benefit corporation.

### 1.4 “Associate”

shall mean any individual licensed to sell real estate in the State of California who is an employee of or an independent contractor with an Accredited Firm, whether or not that individual is an Active Member or Supervisory Management Member of the AIR.

### 1.5 “Broker”

shall mean any individual licensed to sell real estate in the State of California, whether or not that individual is associated with an Accredited Firm.

### 1.6 “Bulletin”

shall mean the periodic publication of any changes, modifications or additions to the terms and/or status of the properties offered through The MULTIPLE and/or other matters such as special requirements for showing the properties or special commission arrangements.

### 1.7 “Buyer/Lessee”

shall mean the buyer, lessee or sublessee as the case may be.

### 1.8 “Buyer/Lessee-Agency Agreement”

shall mean an agreement that is defined in ARTICLE V of these Rules.

### 1.9 “Excluded Party”

shall mean any prospective Buyer/Lessee which by mutual agreement of the Offering Accredited firm and the Owner/Sublessor shall not entitle the Offering Accredited Firm to a commission upon the consummation of a Real Estate Transaction under the Owner Agency/Sublessor Agency Agreement.

### 1.10 “Lease Transaction”

shall mean an agreement concerning the lease or sublease of industrial or commercial real estate.

### 1.11 “Lockbox”

shall mean either the Lockbox which is distributed by The MULTIPLE to its members, OR a similar type of Lockbox which the majority of Accredited Firms in a given marketplace elect to use, providing all members of The MULTIPLE are readily provided the means of accessing the Lockbox.

**1.12 “Supervisory Management Member”**

shall mean a licensed real estate broker or salesperson who has met the qualifications and been granted Supervisory Management Membership status under the Bylaws of the AIR and who is in good standing with AIR.

**1.13 “Mandatory Property”**

shall mean a property that is defined in ARTICLE II of these Rules.

**1.14 “MULTIPLE”**

shall mean, where the context refers to an organization, The MULTIPLE of the AIR Commercial Real Estate Association, a California corporation, which is a wholly-owned subsidiary of AIR, or alternatively, where the context refers to the dissemination of information concerning properties, the system or methodology used in gathering, publishing and distributing information concerning properties among Accredited Firms.

**1.15 “Multiple Director”**

shall mean the person described in ARTICLE VIII of these Rules.

**1.16 “Offering”**

shall mean information about an available property submitted to the e-MULTIPLE, including all information required by The MULTIPLE for publication.

**1.17 “Offering Accredited Firm”**

shall mean the Accredited Firm which has entered into an Owner Agency/Sublessor Agency Agreement with the Owner/Sublessor of the property.

**1.18 “Offering Associate”**

shall mean the Associate who has entered into an agency relationship with the Owner/Sublessor under an Owner Agency/Sublessor Agency Agreement.

**1.19 “Owner/Sublessor”**

shall mean the seller, lessor or sublessor as the case may be.

**1.20 “Owner Agency/Sublessor Agency Agreement”**

shall mean an agreement that is defined in ARTICLE II of these Rules.

**1.21 “Posting”**

shall mean publishing on the computerized e-MULTIPLE system.

**1.22 “Real Estate Transaction”**

shall mean an agreement concerning a Lease Transaction or a Sale

Transaction.

**1.23 “Registration”**

shall mean either the extended commission protection provided under an Owner Agency/Sublessor Agency Agreement as described in Paragraph 5.6(a), or the agreement by the Offering Accredited Firm to honor the representation of a Buyer/Lessee by a cooperating Accredited Firm, as set forth in Paragraph 5.7.

**1.24 “Rules”**

shall mean these Rules of Professional Conduct of The MULTIPLE as they now exist and as amended from time to time.

**1.25 “Sale Transaction”**

shall mean an agreement concerning the sale of industrial real estate.

**1.26 “Submitted”**

shall mean sending information about an Offering to The MULTIPLE either by mail, fax, e-mail, or by telephone.

**ARTICLE II**

**OWNER AGENCY/SUBLESSOR AGENCY AGREEMENTS**

**2.1 OWNER AGENCY/SUBLESSOR AGENCY AGREEMENTS.**

All Offerings to be accepted in The MULTIPLE must have an “AGENCY AGREEMENT”, in writing, supporting the Offering. It is the responsibility of all firms to sign a representation and warranty document (Warranty) upon becoming a member of the AIR, and from time to time as required by the Board of Directors, confirming that all transactions in The MULTIPLE are backed by this “AGENCY AGREEMENT”. The AIR reserves the right to ask for a copy of any of the Accredited Firm’s Agency Agreements at any time. If one cannot be produced promptly, the firm may be subject to sanctions as approved by the Board of Directors.

**2.2 AGENCY AGREEMENT.**

An Agency Agreement shall mean an agreement in writing between an Owner/Sublessor and an Accredited Firm concerning a Real Estate Transaction, whereby the Accredited Firm has become the sole agent of the Owner/Sublessor and been employed to locate another party to consummate the Real Estate Transaction, which meets the following requirements:

(a) The term of the Agency Agreement shall be for a period of not less than 90 days, and may not contain any provision for a cancellation which takes effect prior to the 90th day of the agency period, except for a cancellation resulting from a sale or lease of the property to an Excluded Party as provided for in Paragraph 2.2(c).

(b) The Agency Agreement must be taken on the AIR Standard Agency Agreement Form or a substantially similar, legally

sufficient contract which expressly:

(1) authorizes the submittal of the Offering to The MULTIPLE, subject to Paragraph 2.5(g);

(2) authorizes the distribution of information concerning the property to the Accredited Firms and seeks the cooperation of other Brokers, except as provided in Paragraph 2.5(g), and reflects the understanding that the Offering Accredited Firm will share commissions with cooperating Brokers as provided in Paragraph 6.3 hereof;

(3) authorizes the installation of a Lockbox if the property includes a vacant building, except in the situation governed by Paragraph 4.2;

(4) establishes a contractual obligation of the Owner/Sublessor to pay the commission not only for the benefit of the Offering Accredited Firm but also for the benefit of any cooperating Broker as provided in Paragraph 6.3 hereof;

(5) specifies a time period for the duration of the Owner/Sublessor-Agency relationship, with a date certain for the expiration;

(6) provides that the Offering Accredited Firm is the agent of the Owner/Sublessor, and may also be the agent of the Buyer/Lessee and therefore be a dual agent, provided that both the Owner/Sublessor and the Buyer/Lessee consent in writing to that dual agency;

(7) specifies that cooperating Accredited Firms and other cooperating Brokers are not and may not be the agents of the Owner/Sublessor and are not and may not be the agents of the Offering Accredited Firm (i.e., there shall be no offering of subagency to any cooperating Accredited Firm or other Broker);

(8) provides that the Owner/Sublessor indemnify against loss the Offering Accredited Firm, The MULTIPLE and anyone else who may rely upon any representations made by the Owner/Sublessor which are not accurate; and

(9) provides for an affirmative disclosure by the Owner/Sublessor of whether there are any current option rights, rights of first refusal, rights of first offer, registrations from a prior Agency Agreement or other limitations which would limit the capacity of the Owner/Sublessor to offer or deliver the property in its offered form or which would impact the position or interest of a Buyer/Lessee.

(c) The Agency Agreement may, at the discretion of the Owner/Sublessor and the Offering Accredited Firm, provide for the exclusion of one or more Excluded Parties from the agreement for the entire period that the property is offered or for a por-

tion thereof.

(d) At the time an Agency Agreement is entered into, the Offering Associate shall determine to the best of such Associate's ability if there are any current option rights, rights of first refusal, rights of first offer or other limitations which would either limit the capacity of the Owner/Sublessor to offer or deliver the property in its offered form or which would impact the position or interest of a Buyer/Lessee. If any such rights or limitations exist, it shall be the affirmative duty of the Offering Accredited Firm to publish this information at the same time the brochure is published and distributed.

(e) Offerings of existing buildings or vacant land must contain a specific price for a Sale or Lease Transaction. Offerings of build-to-suit facilities, or buildings in the planning process or under construction, may be made with the prices specified as "To Be Determined" or "Submit", but must be updated with a specific price not later than upon completion of construction.

### **2.3 MANDATORY PROPERTY.**

"Mandatory Property" shall mean any property which has the following characteristics:

(a) Size. The Property is a building or land that meets either of the following size specifications:

(1) Industrial. Any building having a minimum area under roof of 5,000 sq. ft.

(2) Office. Any space having a minimum area of 1,000 sq. ft.

(b) Locations. The submittal of an Offering in The MULTIPLE must comply with the requirements of the jurisdiction in which the property is located, subject at all times to the right and ability of The MULTIPLE to do business in such jurisdiction.

(c) Zoning/Use. The Property is zoned for and/or used in one of the following ways:

(1) Is industrially zoned;

(2) Is master-planned for industrial use;

(3) Has a variance for industrial use which can be utilized by the next user;

(4) Has a conditional use permit allowing an industrial use which can be utilized by the next user; or

(5) Will have a reasonable probability of being zoned for industrial use in the opinion of the Multiple Director.

(d) Exception. In the event that an otherwise Mandatory Property is currently being used primarily for non-industrial or non-commercial purposes and/or has little probability of being used as an industrial facility its publication in The MULTIPLE is prohibited.

## 2.4 OTHER OFFERINGS.

Alternative Properties. Any other property that meets one or more of the special circumstances described in clauses (a) through (d) below and meets all of the requirements for submittal of an Agency Agreement on a Mandatory Property under Paragraph 2.5, and is the subject of an Agency Agreement, may be submitted for publication in The MULTIPLE, subject to the approval of the Multiple Director:

(a) Property which is or has a reasonable probability of being zoned for industrial use as described in Paragraph 2.3(c) and which is not a Mandatory Property, but is not otherwise prohibited;

(b) Existing office space;

(c) Existing retail space; or

(d) Vacant land where there is a high probability that the land will be developed for industrial or office use (vacant land which is not zoned for industrial or commercial use will generally not be accepted for publication in The MULTIPLE).

Co-Agency. If an Accredited Firm enters into a co-agency agreement with a non-Accredited Firm, the Agency Agreement must meet all of the criteria set forth in Paragraphs 2.2, 2.3 and 2.5 and the Accredited Firm must be responsible for all aspects of the offering of the property, including installation of a Lockbox, setting up appointments to show the property, being able to answer questions of inquiring cooperating Associates, and handling negotiations with cooperating Associates. In accordance with Paragraph 2.5(h), neither the name of the non-accredited co-agency firm or its offering associate(s) shall appear on any MULTIPLE material. However, the fact of the co-agency shall be published in the camera-ready and/or the Bulletin.

## 2.5 SUBMITTALS.

(a) All Mandatory Property must be submitted to The MULTIPLE within 10 business days after execution by the Owner/Sublessor.

(b) Information concerning all properties subject to an Agency Agreement, which are to be offered through The MULTIPLE, may be submitted on an unaltered camera-ready form, telephonically, by fax or e-mail.

(c) Each individual building, parcel of land or prop-

erty being offered by an Offering Accredited Firm in a Real Estate Transaction must be submitted as a separate Offering and with its actual or estimated address, except where the physical space being offered is part of a larger building, in which case a single Listing may be used which reflects the total space and the divisible portions offered. For example, in the case of two or more separate legal lots in an industrial park, each separate legal lot shall be a separate Offering, and the Offering Accredited Firm may, in addition, publish a "master" Offering showing the overall project. In the case of a single legal lot which is potentially divisible, a single Offering may be used. In the event that two or more parcels of land or buildings are offered as a unit, a single Offering may be used.

(d) All offerings of property through The MULTIPLE must be submitted with the proper AIR requirements as modified from time to time:

(e) Offerings of property involving a sublease must be clearly stated and, unless the Offering Accredited Firm has a written Agency Agreement with the Owner of the property, only the sublease period may be offered through The MULTIPLE, whether or not the Owner may be willing to grant an additional term. A statement that the term of the sublease can be extended beyond the term of the master lease (e.g. "Longer Term Available") or any similar statement, may not be made unless there is also a written Agency Agreement in force with the Owner of the property. The statement "Option to Extend Available" or any similar statement may only be made if (i) the sublessor has expressly agreed in the Agency Agreement to offer the property for sublease for a term which exceeds the term of the master lease and to exercise an option to extend the term of the master lease, (ii) the sublessor has the right to extend the term under the master lease, and (iii) the Agency Agreement provides for the payment of a commission for the extended term.

(f) All information, including any information required to be disclosed by the Owner/Sublessor or as provided under these Rules (for example, rights of other parties to the property, departures from standard Offerings) must be maintained on file at the Offering Accredited Firm and subject to AIR review.

(g) Where the Owner/Sublessor expressly forbids the publishing of the property in The MULTIPLE, the Offering Accredited Firm shall nonetheless submit a letter from the Owner/Sublessor forbidding the publication. The Multiple Director shall have the authority to investigate and determine whether there is a substantial and reasonable basis for the Owner's/Sublessor's request not to have the property published in The MULTIPLE. If the Multiple Director determines that a substantial and reasonable basis for such request for non-publication does not exist, then such request shall be denied. Further, if the Multiple Director has reason to believe that such request is evidence of an intent by the Offering Associate to restrict or deny access to information about the offered

property to other Associates, The Multiple Director shall take such actions as are reasonably necessary to effect compliance with these Rules.

(h) No Accredited Firm may submit offerings of property for publication in the MULTIPLE on properties located within an area normally served by another branch office of that Accredited Firm, if that other branch office is not a separate Accredited Firm, nor may an associate of that non-accredited branch office publish that associate's name on any MULTIPLE material. Each branch office of a multi-office firm (in which all branch offices are not Accredited Firms) shall submit, with its application for Accredited Firm status, a map delineating the area that the branch office applying for accreditation normally serves. It shall be the responsibility of each Accredited Firm in this category to have on file at all times in the office of the MULTIPLE a map reflecting its current territorial boundaries.

(i) The MULTIPLE will accept for publication or dissemination of information any Offering of a property which is located outside of the State of California provided that the offering is in compliance with the laws of the jurisdiction in which the property is located.

(j) It is the affirmative duty of an Offering Accredited Firm to submit to The MULTIPLE all information required to be in compliance with these Rules.

(k) The Multiple Director shall determine if each submittal complies with the requirements of these Rules. If the Multiple Director does not approve the submittal, the submittal shall not be published by The MULTIPLE. In the event that a submittal of a Mandatory Property is rejected by the Multiple Director, the Offering Accredited Firm shall terminate or modify the Agency Agreement with the Owner/Sublessor in order to be in compliance with these Rules. If the Agency Agreement is modified, the Offering Accredited Firm shall resubmit it to The MULTIPLE in a timely fashion.

## 2.6 PUBLICATION AND POSTING STANDARDS.

The following standards shall govern the publication of properties offered through The MULTIPLE:

(a) Any Associate who is an Active Member of AIR, and who is responsible for an Agency Agreement, may have such Associate's name listed on any Bulletin, camera-ready form, or the e-MULTIPLE system published by The MULTIPLE.

(b) Any Associate who is not an Active Member of AIR, and who is responsible for an Agency Agreement, may have such Associate's name published on any Bulletin, camera-ready form, or the e-MULTIPLE system published by The MULTIPLE after attending an orientation course, passing an orientation test, signing an "Agreement to Abide by the Rules of Professional Con-

duct" (including an agreement to submit to binding arbitration), and payment of appropriate fees.

(c) Any published offering of a property through The MULTIPLE by any person affiliated with an Accredited Firm not covered by (a) or (b) above, will be published under the name of that person's head of firm or supervising manager, and the head of the firm or supervising manager shall assume responsibility for providing information and assistance to inquiring cooperating Associates as needed.

## 2.7 MODIFICATIONS TO OFFERINGS/ CHANGES OF STATUS.

(a) Any modification(s) or change(s) in the status of an offering published by The MULTIPLE may be in writing, mailed, faxed, e-mailed or given telephonically to The MULTIPLE and shall be communicated within 10 business days after any of the following:

(1) Receipt by the Offering Accredited Firm of authorization from the Owner/Sublessor of any modification or change;

(2) Opening of escrow;

(3) Cancellation of escrow;

(4) Close of escrow (see Paragraph 2.7(b) below); or

(5) Execution of the final lease or sublease documents by all parties (see Paragraph 2.7(b) below).

(b) All changes affecting any offered sales price or rental, availability, or other terms, must be submitted within 10 business days after the opening or closing of any sale escrow or the execution of any lease or sublease involving a property offered through The MULTIPLE. The Offering Accredited Firm shall notify The MULTIPLE of the consummation of a lease or sublease, the opening of a sale escrow, the closing of a sale escrow, and of the sale price and terms or the lease or sublease price and terms (at the close of escrow or consummation of a lease or sublease), together with such other information as required under The MULTIPLE policy as established by the Board of Directors from time to time, unless the buyer, seller, owner, sublessor or sublessee has expressly prohibited in writing the release of such information. In the event of such prohibition, The MULTIPLE shall be notified within 10 business days of such prohibition being imposed.

(c) The withdrawal from market of a property offered through The MULTIPLE, other than as the result of a consummated sale, lease or sublease or listing expiration, must be submitted by the Accredited Firm within 10 business days of such

withdrawal.

(d) Minor changes for publication, such as location of lockbox, new completion date for construction, corrected power panel information, etc., shall be initiated by the Offering Accredited Firm's instructions to The MULTIPLE.

## **2.8 EXPIRATION AND EXTENSIONS.**

(a) At such time as an Offering is Submitted to The MULTIPLE, the Offering Accredited Firm shall specify the date on which its Owner/Agency Agreement shall expire.

(b) Any offering of a property posted or published by The MULTIPLE shall automatically terminate on the expiration date previously specified at the time of Submittal, unless extended. Accredited Firms will be notified upon expiration.

(c) An offering of a property through The MULTIPLE may be extended by notifying The MULTIPLE.

(d) Notification of an extension of the term of an Agency Agreement or Exclusive Agency Agreement received by The MULTIPLE within the same week it expires will not be published in the BULLETIN as having expired. There will be no requirement to republish the listing in The MULTIPLE. All other expired listings will be published as expired in the BULLETIN. An extension will be accepted, and published in the BULLETIN without the requirement to republish in The MULTIPLE, for up to 30 days after the expiration of the listing in WinAIR.

(e) An extension will be accepted for any listing that has been expired more than 30 days as long as the extension provides a minimum duration of 90 days. It is required that the listing be republished in The MULTIPLE as a **NEW** Listing, at full charge.

(f) No Associate may ask an Owner/Sublessor, another Associate or any other person connected with an Accredited Firm, when an Agency Agreement of another Accredited Firm will expire.

(g) No solicitation of an Owner/Sublessor for an Agency Agreement, where an Agency Agreement is currently in effect with another Accredited Firm, shall be made by any Associate with regard to that offered property, except with the consent of the Accredited Firm with the current Agency Agreement.

(h) If an Associate is contacted by the Owner/Sublessor of a property currently under an Agency Agreement with another Accredited Firm, without solicitation of any kind by the Associate, such Associate is free to engage in negotiations with the Owner/Sublessor with respect to a new Agency Agreement to commence after the expiration or other termination of the then current agreement.

(i) If an Agency Agreement has expired and the former Offering Associate receives an inquiry from another Associate on the subject of the expired agreement, it is the absolute duty of the former Offering Associate to promptly inform the inquiring Associate that the Agency Agreement has expired, whether asked or not.

## **2.9 DISCLOSURES.**

(a) The Offering Associate must disclose any and all known material facts relating to the property upon any inquiry from a cooperating Associate, whether solicited or not.

(b) If an Offering Associate has an interest in and is acting as a principal involving a property offered in The MULTIPLE, such Offering Associate must disclose such interest in the property whether requested or not.

(c) If an Accredited Firm has placed a sign on a property and an Associate from another Accredited Firm has reasonable doubts that there is an Agency Agreement in effect, such inquiring Associate may call the Offering Associate whose name appears on the sign and ask the Offering Associate to review the Agency Agreement to be certain it is in effect. If the inquiring Associate proceeds to complete a transaction involving such property in cooperation with the Associate who claimed to have such an Agency Agreement, or if any cooperating Associate negotiates a transaction with an Offering Associate who failed to disclose voluntarily that such Offering Associate did not have an Agency Agreement while fostering or allowing the impression that such Offering Associate did have a current Agency Agreement, and if later it comes to light that no such Agency Agreement was in force at the time of inquiry or other conversation, then the Accredited Firm shall fully indemnify the inquiring Associate and pay to the inquiring Associate the entire portion of the commission that the inquiring Associate would have otherwise been paid had the Agency Agreement been validly created and in effect. Further, any such false claim or failure to disclose shall subject the Offering Associate making such claim to a charge of violation of professional conduct, which charge shall result in a hearing by the Professional Conduct and Arbitration Committee of the AIR.

(d) Each Associate shall disclose to all other cooperating Associates the nature of that Associate's agency relationship with the Owner/Sublessor, Buyer/Lessee or any other Associate concerning a Real Estate Transaction at the earliest possible time, but in no event later than the time that an offer is initially presented on the subject property.

## **ARTICLE III SIGNS**

### **3.1 OBLIGATION TO INQUIRE.**

The presence of the sign of an Accredited Firm on a property,

whether or not the sign includes any reference to an Agency Agreement, shall obligate the inquiring Associate to conduct inquiries about that property through the Offering Associate whose name appears on the sign, except as otherwise provided in Paragraph 5.1(k)(2). If informed that there is no Agency Agreement in effect, the inquiring Associate shall have no obligation to the Accredited Firm or Offering Associate whose sign occasioned the inquiry.

### **3.2 “EXCLUSIVE” ON SIGN.**

No Accredited Firm shall place the wording “Exclusive”, “Owner’s Sole Agent”, or other similar language on a sign or as a rider to a sign on a property without a current Agency Agreement in effect.

### **3.3 REMOVAL-EXPIRATION.**

When an Agency Agreement expires, the Offering Accredited Firm must remove from the property any sign(s) or rider(s) indicating that the property is under an Agency Agreement within 14 days after the expiration of the Agency Agreement.

### **3.4 REMOVAL-SALE/LEASE.**

Within 14 days after a property has been sold (close of escrow), leased or subleased (documents have been executed by both parties and all contingencies have been eliminated), the Offering Accredited Firm shall remove its sign(s) or place “sold” or “leased” rider(s) on all sign(s) remaining on the property. Under no circumstances shall any such sign remain on the property after the new occupant has taken possession without permission from the new occupant and the Owner/Sublessor, and in no event for more than 60 days after the consummation of such sale, lease or sublease.

### **3.5 EXCLUSIVE SIGN RIGHTS.**

No Accredited Firm, other than the Offering Accredited Firm, may place a “sold” or “leased” sign on a property without the express written consent of the Offering Accredited Firm. Such right belongs solely to the Offering Accredited Firm unless waived or shared at such Offering Accredited Firm’s discretion.

### **3.6 SIGNS-UNAVAILABLE PROPERTIES.**

An Accredited Firm shall not place or maintain signs on buildings or land unless the property is actually available for a Real Estate Transaction, except:

(a) An Accredited Firm may place sign(s) on unavailable properties clearly indicating that the sign refers to some other property which is actually available.

(b) An Accredited Firm may maintain sign(s) on multi-tenant projects or industrial parks on which the Accredited Firm has in effect a current Agency Agreement or written management contract or equivalent (subject to approval of the Multiple Director) provided that, if there are no vacancies:

(1) The sign shall not indicate “For Lease”, “For Sale”, “Available”, “For Information . . .” or any other phrase

which may imply the property’s availability; or

(2) The sign shall clearly indicate “No Vacancy” or a similar phrase to indicate that no space is available.

## **ARTICLE IV LOCKBOXES**

### **4.1 LOCKBOXES MANDATORY.**

Any vacant building offered through The MULTIPLE must have a Lockbox, unless specifically excepted from this requirement.

### **4.2 EXCEPTIONS.**

The following exceptions shall be subject to the prior approval of the Multiple Director:

(a) Where the building contains items of value, hazardous materials or hazardous conditions and must be shown by the Owner/Sublessor or by the Offering Accredited Firm by appointment only;

(b) Where the property offered is a multi-tenant office building. In this case, a key must be available in the building or conveniently nearby;

(c) Where a Lockbox is specifically prohibited by the Owner/Sublessor. However, the desire to know who has shown the building shall not be considered a sufficient reason not to install a Lockbox; or

(d) For other good reasons substantiated by Owner/Sublessor and approved by the Multiple Director.

### **4.3 LOCKBOX/SHOWING OF PROPERTY INFORMATION.**

An individual at the Offering Accredited Firm, who may be a member of the clerical staff, must be able to provide information to cooperating Associates at all reasonable times during normal business hours about how to show the building if it does not have a lockbox and/or confirm the presence and/or location of a lockbox at the building.

## **ARTICLE V SELLING, LEASING AND SUBLEASING PROCEDURES**

### **5.1 CONTACTS AND NEGOTIATIONS.**

One of the purposes of The MULTIPLE is to foster integrity and fair competition in the field of industrial and commercial real estate Brokerage. One of the basic tenets of The MULTIPLE is that the Owner/Sublessor-Broker relationship must be respected. The Owner/Sublessor, by voluntarily entering into the Agency Agreement, has placed his trust in the Offering Accredited Firm and Offering Associate to represent the Owner’s/Sublessor’s best interests in marketing the property, and to provide the Owner/Sublessor

with accurate information regarding the property and the marketplace. Accordingly:

(a) All contacts, negotiations and discussions regarding a property offered under an Agency Agreement are to be conducted solely through the Offering Associate, unless the Offering Associate has given the cooperating Associate explicit authority to negotiate directly, excepting only a cooperating Associate's right to contact the Owner/Sublessor under the circumstances described in Paragraphs 5.1(c) or 5.1(k)(2).

(b) If a property is being offered by an Offering Associate "For Lease" only or "For Sale" only, and a cooperating Associate has a prospect for a transaction on the property other than what is being offered ("Alternative Transaction"), such Associate shall contact the Offering Associate to confirm whether an Agency Agreement is currently in effect which covers the Alternative Transaction. If the Alternative Transaction is covered, the cooperating Associate shall continue to have all dealings respecting the property through the Offering Accredited Firm.

(c) If the Alternative Transaction is not covered, the cooperating Associate and the Offering Associate shall attempt to reach a mutually agreeable resolution regarding representation and commissions PRIOR TO proceeding with negotiations. If they cannot reach an agreement, then the cooperating Associate shall proceed to handle the negotiation and attempt to close the transaction. After the close of the transaction, if the cooperating Associate and the Offering Associate are still not able to reach an agreement on commissions, then either party may institute an arbitration proceeding with the AIR to resolve the dispute.

(d) If the Alternative Transaction is not covered, the Offering Associate may attempt to obtain coverage for it. However, if such coverage is obtained after an offer for an Alternative Transaction is actually received by the Owner/Sublessor of the property from a cooperating Associate, that specific Alternative Transaction shall be excluded from such coverage.

(e) To avoid having unsolicited, misleading or inaccurate information communicated to an Owner/Sublessor, any Associate other than the Offering Associate is explicitly prohibited from making contact (intentional or inadvertent) with such Owner/Sublessor on the grounds that an Alternative Transaction is not covered by the Offering Associate's Agency Agreement, except when the cooperating Associate represents a specific Buyer/Lessee as to a particular Alternative Transaction.

(f) In the case in which the Offering Accredited Firm claims to have a written agreement with the Owner/Sublessor which purportedly includes the Alternative Transaction, if the cooperating Associate proceeds to complete an Alternative Transaction involving this property based on the Offering Associate's representation that its Agency Agreement covers the Alternative Transac-

tion, and it later comes to light that this was not the case, then the Accredited Firm which received a portion of the commission based upon such false claim shall pay all such portion of the commission to the cooperating Accredited Firm, including any portion that otherwise would have been paid to the Offering Associate. Any such false claim shall subject the Associate making such claim to a charge of unprofessional conduct, resulting in a hearing by the Professional Conduct and Arbitration Committee of the AIR.

(g) In the event a cooperating Associate is in direct contact with the Owner/Sublessor of a property pursuant to Paragraph 5.1(c) above:

(1) Such cooperating Associate shall keep the Offering Associate fully informed concerning the negotiation of the Alternative Transaction;

(2) Such cooperating Associate shall do nothing which might jeopardize the Offering Associate's ability to collect any fee which would be due as a consequence of the withdrawing of the property from the market in connection with the Alternative Transaction; and

(3) Such cooperating Associate shall not have the right to enter into any negotiation or conversation with the Owner/Sublessor of the property during the period of the Offering Associate's Agency Agreement concerning the cooperating Associate obtaining an Agency Agreement on the property, either for an Alternative Transaction or for the marketing of the property on behalf of the Owner/Sublessor at the expiration of the term of the Offering Associate's Agency Agreement, as provided in Paragraph 2.8(f). In the event of the failure of the negotiation which the cooperating Associate engaged in directly with the Owner/Sublessor for an Alternative Transaction, should that cooperating Associate have a subsequent prospect for a separate Alternative Transaction on the same property, before re-contacting the Owner/Sublessor directly to discuss any such separate Alternative Transaction, the cooperating Associate shall reinstitute the procedures set forth above for working through the Offering Associate.

(h) It is the obligation of every Accredited Firm to have a person or persons, in the absence or unavailability of the Offering Associate, in the office at all reasonable times during normal business hours capable of handling the following matters in response to the request of a cooperating Associate:

(1) Arranging for access to any property offered in The MULTIPLE.

(2) Affirming the availability and published price and terms of any property offered in The MULTIPLE.

(3) Confirming that an Agency Agreement is currently in effect or disclosing that the Agency Agreement has

expired.

(4) Arranging for the delivery of any offers and/or counter-offers in a timely manner as provided for in Paragraph 5.3.

(i) No Associate (“A”) shall seek to obligate any other Associate (“B”) by gratuitously supplying information concerning any property on which Associate “A” does not have a current Agency Agreement. If Associate “B” elects to cooperate with Associate “A” on a specific property, with full knowledge that Associate “A” does not have an Agency Agreement on the property, Associate “B” is free to do so. However, the burden is on Associate “A” to establish a clear understanding with Associate “B”, prior to identifying the property, concerning whether the acceptance of the information on the property obligates only Associate “B” individually or the entire office or firm of Associate “B”. Once the prerequisite understanding is reached and Associate “A” has furnished information concerning the property to Associate “B”, in the absence of any other agreement, the obligation of Associate “B” and/or the Accredited Firm of Associate “B”, if applicable, to negotiate through Associate “A” does not expire until and unless the Owner/Sublessor:

(1) Puts up the Owner’s/Sublessor’s personal sign on the property (e.g., For Sale or Lease or Sublease by Owner/Sublessor), mails information to other Associates, independently advertises the property or otherwise makes the availability of the property generally known to the general public and/or real estate Brokerage community; or

(2) Enters into an Agency Agreement with a third Associate or other Broker; or

(3) Without solicitation by Associate “B” directly or indirectly, enters into an Agency Agreement regarding the property with Associate “B” or another associate of Associate “B”’s firm.

(j) In the event that any of the circumstances specified in 5.1(i)(1), (2) or (3) occurs, Associate “B” shall notify Associate “A” immediately of the facts which caused a change in their relationship concerning the property; in any event, Associate “B” must so notify Associate “A” before proceeding with any negotiations on the property. And Associate “B” shall not divulge any information received from Associate “A” to anyone except qualified Buyers/Lessees, and not to Associates from other firms.

(k) When an Accredited Firm has a Sublessor-Agency Agreement of a property, but has no Agency Agreement with the Owner:

(1) Associates are obligated to cooperate with the Offering Accredited Firm only for the sublease term, in-

cluding any option to extend the term of the sublease as provided for under the Offering Accredited Firm’s Sublessor-Agency Agreement. The Offering Associate must inform other Associates that the offering is for only a stated sublease period.

(2) Associates, at their option, may contact the Owner (unless there is also an Owner-Agency Agreement with the Owner in effect concurrently with the Sublessor-Agency Agreement, either with the sublease Offering Accredited Firm or another Accredited Firm) regarding a new lease or possible sale of the property, and in this regard are not obligated to the Accredited Firm with the Sublessor-Agency Agreement. The Associate with the Sublessor-Agency Agreement may, at such Associate’s discretion, contact the owner periodically to keep informed on the current status of any negotiations. The Associate dealing directly with the owner shall do nothing which might jeopardize the sublease Offering Associate’s position with such Associate’s principal or the sublease Offering Associate’s ability to collect a commission in connection with the Sublessor-Agency Agreement.

(l) When an Offering Associate receives an offer from a cooperating Associate, all contacts, negotiations and discussions with the offeror respecting the offer and subsequent negotiations are to be conducted solely between the cooperating Associate and such Associate’s principal, unless the cooperating Associate has given the Offering Associate explicit authority to negotiate directly with the offeror.

(m) When a transaction is consummated on a property in which one Accredited Firm represented the Owner/Sublessor and a cooperating Accredited Firm represented the Buyer/Lessee, each Associate’s obligation to refrain from contacting the other Associate’s principal shall terminate upon the consummation of the transaction, except in those cases in which a continuing written contractual relationship exists.

## **5.2 EXCLUSIONS RESULTING FROM A PRIOR OWNER AGENCY/SUBLESSOR AGENCY AGREEMENT.**

To avoid future misunderstanding and possible controversy between Accredited Firms, and prior to the signing of an Owner Agency/Sublessor Agency Agreement with an Owner/Sublessor, the Associate preparing to enter into an Owner Agency/Sublessor Agency Agreement shall ascertain from the Owner/Sublessor whether there are any Excluded Parties that should not be covered under the Agency Agreement by reason of a former Owner Agency/Sublessor Agency Agreement which granted the former agent certain commission rights extending for a period of time past the expiration of the former Owner Agency/Sublessor Agency Agreement regarding certain potential Buyers/Lessees who were negotiated with during the term of former Owner Agency/Sublessor Agency Agreement; and if so, such Excluded Parties and the time period thereof shall be specified in the new Owner Agency/Sublessor Agency Agreement. Any form of publication through The MULTIPLE of the fact that there are some Excluded Parties from the Owner

Agency/Sublessor Agency Agreement or the actual names of such Excluded Parties is expressly prohibited.

### 5.3 TIMELY DELIVERY.

It is the duty of any Accredited Firm or Associate with an Owner Agency/Sublessor Agency Agreement to accept and submit to the Owner/Sublessor in a timely manner any written offer procured by a cooperating Associate in accordance with California law. Copies of executed lease proposals, counter-offers, leases, purchase contracts or escrow instructions shall be delivered to the cooperating Associate as soon as possible and such delivery shall constitute "timely" delivery of documentation by and between all parties, providing the deadlines for delivery set forth in all such offers and agreements have been observed.

### 5.4 BROKER/CLIENT REPRESENTATION.

The basic concept to be followed is that an Associate ("Second Associate") shall not insert himself/herself into a transaction or potential transaction initiated by another Associate ("First Associate"). Consequently, it is the obligation of the Second Associate, at the outset of a relationship with a prospective client, to determine what properties that client has seen and all of the pertinent circumstances associated with that client's current and/or past involvement with the First Associate concerning such properties. When it is evident as a result of such inquiry that the client has a current involvement with a property through the First Associate with a substantial possibility of a transaction being initiated or consummated, the Second Associate shall not use tactics calculated to interfere with the First Associate's relationship with the client. However, the First Associate having shown a property, in and of itself, does not constitute a right to be involved in a transaction on that property.

(a) There are certain circumstances where it may be permissible for the Second Associate to become involved in a transaction on which the First Associate has had some limited involvement (e.g., has shown the property), such as:

(1) Where there has been a sufficient break in continuity due to passage of time between contacts regarding the particular property. The time will vary according to the nature of the transaction.

(2) Where the First Associate has failed to act in accordance with generally recognized professional standards.

(3) Where the Second Associate can supply an ingredient (e.g., new concept) which has the effect of materially changing the nature of the transaction or the probability of a transaction being consummated on that property.

(4) Where there has been a change in ownership, leasehold interest in the property, or the failure of the First Associate to communicate major changes in the offering within a

reasonable time period.

(5) Where the client absolutely refuses to work with the First Associate, based on sound and objective reasons.

(b) Where Second Associate involves himself/ herself in a transaction or potential transaction initiated by First Associate as provided for in subparagraph (a) above, and it is clear, in the judgment of the Second Associate, that the client is not going to proceed with the transaction with the First Associate, the Second Associate shall immediately contact the First Associate and attempt to reach a mutually agreeable resolution regarding commissions prior to proceeding with negotiations. If they cannot reach agreement, then the Second Associate shall proceed to handle the negotiation and attempt to close the transaction, in which event either party may institute an arbitration proceeding.

(c) When contacting a new prospective client, it is the responsibility of each Associate to inquire of the prospective client whether that client has any current written Buyer/Lessee-Agency Agreement, or other continuing obligation(s), with another Associate. A careful inquiry before becoming involved with the prospective client will be the surest means of avoiding controversy.

(d) No Associate shall initiate contact with a prospective client whom such Associate became aware of through an offer or formal inquiry from a cooperating Associate. The burden is on the Associate receiving such an offer or formal inquiry to maintain the confidentiality of the identity of such prospective client, and to demonstrate that such Associate's subsequent contact with the prospective client did not originate from such offer or inquiry.

(e) Associates shall not allow clients to dictate their professional behavior, nor lower their professional standards for monetary gain even when invited by a client to do so. Under no circumstances shall an Associate insert himself/herself into a transaction or accept the invitation by a client to become involved in a transaction started by another Associate merely for such reasons as:

(1) Friendship, social, business or family relationship;

(2) Repayment of obligation, such as for other services or for another transaction;

(3) A client's desire to deal directly with the Owner's/Sublessor's agent because such agent is "best equipped" to consummate the transaction and will "work harder" if such agent does not have to share a commission with another party; or

(4) A client's expectation of remuneration not customary in such transactions (e.g., hidden payment, kick-backs, or participation in the commission).

### **5.5 BUYER/LESSEE-AGENCY AGREEMENT.**

Just as the Owner-Agency/Sublessor Agency Agreement concerning property which is available for sale, lease or sublease is the highest expression of the professional service of an Associate to the Owner/Sublessor, the Buyer/Lessee-Agency Agreement is the highest expression of an Associate's professional service to the Buyer/Lessee. The Buyer/Lessee-Agency Agreement is intended to provide a distinct service to the exclusive client.

(a) A Buyer/Lessee-Agency Agreement is an agreement between a Buyer/Lessee and an Accredited Firm, under which the Accredited Firm is employed as the Buyer's/Lessee's sole agent to locate suitable property for and negotiate any proposed Real Estate Transaction for the Buyer/Lessee. To be a Buyer/Lessee-Agency Agreement, the agreement must:

- (1) Be in writing;
- (2) Be for a specified time period with a specific expiration date (or be mutually cancelable upon certain specific acts);
- (3) Recite the responsibilities of the Accredited Firm ("Buyer's/Lessee's Agent");
- (4) State how and by whom the Buyer's/Lessee's Agent is to be paid; and
- (5) Specify that an agency relationship has been established between the Buyer's/Lessee's Agent and the Buyer/Lessee and what agency relationships the Buyer's/Lessee's Agent is authorized to establish with the Owner/Sublessor.

(b) Any Associate who has entered into a Buyer/Lessee-Agency Agreement shall be accorded the same rights by all cooperating Associates as in the case of an Owner Agency/Sublessor Agency Agreement. Once the Buyer/Lessee-Agency Agreement has been executed and a Buyer's/Lessee's Agent has been appointed, all other Associates who become aware of the Buyer/Lessee-Agency Agreement shall immediately cease all contact with the Buyer/Lessee and shall deal solely through the Buyer's/Lessee's Agent.

(c) A Buyer's/Lessee's Agent shall not use the fact of such Buyer/Lessee-Agency Agreement to demand a commission in excess of the commission being offered by an Offering Accredited Firm as set forth in Paragraph 6.3 (a) hereof. However, by prior notice to the Offering Accredited Firm, and with the written consent of the Buyer/Lessee, a Buyer's/Lessee Agent may ne-

gotiate for an increase in the amount of commission to be paid in a specific transaction, providing it shall deliver to the Offering Accredited Firm a copy of the Buyer's/Lessee's written consent to such increase no later than the date of submission of the Buyer's/Lessee's offer or proposal or its Request for Proposal on behalf of the Buyer/Lessee.

(d) Any Associate negotiating to be appointed as a Buyer's/Lessee's Agent has a duty, prior to accepting such appointment, to do the following:

- (1) Inquire about all pertinent details concerning the Buyer's/Lessee's previous dealings on properties through other Accredited Firms;
- (2) Evaluate the Buyer's/Lessee's needs relative to all available properties, including those on which there have been previous dealings; and
- (3) Provide the Buyer/Lessee with a clear understanding of the restrictions all other Associates will be under as a result of the exclusive appointment, together with instructions concerning how to communicate to inquiring Associates or other Brokers during the term of the Buyer/Lessee-Agency Agreement that the Buyer/Lessee has an agent and wants all contacts to be made solely through that Buyer's/Lessee's Agent. The Buyer's/Lessee's Agent shall instruct the Buyer/Lessee to notify all key employees of the existence of the Buyer/Lessee-Agency Agreement and the identity of the Buyer's/Lessee's Agent, and shall clarify the scope of the Buyer/Lessee-Agency Agreement (e.g., does it pertain to only one division or subsidiary vs. an entire multi-division/multi-subdivision corporation, and is it limited or broad in geographical boundaries).

(e) If in the course of accepting the appointment as the Buyer's/Lessee's Agent, an Associate determines that an Associate of another Accredited Firm has conducted substantial negotiations on behalf of the Buyer/Lessee with respect to particular properties, the inquiring Associate shall contact the first Associate and attempt to reach a mutually agreeable resolution regarding commissions prior to proceeding with negotiations on any such property, and in the event that a transaction is subsequently concluded on such property by the inquiring Associate, the first Associate shall have the right to institute an arbitration proceeding for the purpose of determining if the first Associate has a claim to any part of the commission in that transaction.

(f) When the term of a Buyer/Lessee-Agency Agreement has expired or otherwise terminated, the former Buyer's/Lessee's Agent shall no longer claim or imply, directly or indirectly, that such agent is still the sole agent of the former Buyer/Lessee, and in the course of any conversation with an Associate of another firm in reference to such a former Buyer/Lessee, must make the disclosure, whether asked or not, that the Buyer/Lessee-Agency

Agreement is no longer in effect.

#### **5.6 REGISTRATIONS WITH THE OWNER/SUBLESSOR.**

(a) If an Offering Associate's Owner Agency/Sublessor Agency Agreement with the Owner/Sublessor has upon its expiration the right of extended commission protection with regard to those prospective Buyers/Lessees with whom the Offering Associate has negotiated during the term of the Owner Agency/Sublessor Agency Agreement, the Offering Associate shall register the name(s) of the prospective Buyers/Lessees with the Owner/Sublessor in writing in accordance with the provisions of the Owner Agency/Sublessor Agency Agreement at its expiration, provided that (1) the cooperating Associate who represents the prospective Buyers/Lessees requests such registration; OR (2) there were written negotiations between the Owner/Sublessor and such prospective Buyers/Lessees during the term of the Owner Agency/Sublessor Agency Agreement. In either event, the cooperating Associate shall continue dealing through the former Offering Accredited Firm after the expiration of the Owner Agency/Sublessor Agency Agreement with respect to any prospective Buyers/Lessees so registered. In the absence of (1) or (2) above, the cooperating Associate shall (i) deal through the Offering Accredited Firm who has the Owner Agency/Sublessor Agency Agreement with the Owner/Sublessor (unless the transactions with the prospective Buyers/Lessees have been registered under the terms of the prior agreement), (ii) deal through the former Offering Accredited Firm, if the transaction with the prospective Buyer/Lessee has been registered under the terms of the prior agreement with the Owner/Sublessor, or (iii) have the option to continue dealing through the former Offering Accredited Firm after the expiration of the Owner Agency/Sublessor Agency Agreement. Failure of a cooperating Associate to request registration by the Offering Associate shall relieve the Offering Associate of all responsibility regarding the registration of such prospective Buyers/Lessees with the Owner/Sublessor.

(b) Only the Accredited Firm with an Owner Agency/Sublessor Agency Agreement may register prospective Buyers/Lessee with the Owner/Sublessors of the offered property.

#### **5.7 REGISTRATIONS FROM BROKER TO BROKER.**

The acceptance of a registration of another Accredited Firm's prospective Buyer/Lessee by an Associate with an Owner Agency/Sublessor Agency Agreement shall generally be in accord with the following:

(a) Registrations should be avoided and only requested by a cooperating Associate after a prospective Buyer/Lessee has personally inspected and shown substantial interest in a property and the cooperating Associate has good reason to believe that such prospective Buyer/Lessee may contact the Offering Associate or the Owner/Sublessor. The registration applies only to the properties to be registered under Paragraph 5.6 above, and, if after a registration, the prospective Buyer/Lessee initiates contact with the Offering Associate on another property, the Offering As-

sociate is free to work with the prospective Buyer/Lessee without obligation to the cooperating Associate with respect to any property other than the one which was the subject of the registration.

(b) When seeking to register a prospective Buyer/Lessee with another Accredited Firm, the registering Associate shall be bound by the customary practice of the Offering Accredited Firm, who shall not be obligated to accept registrations except as provided in Paragraph 5.6(a). This customary practice shall be fully explained to the registering Associate prior to acceptance of any registration.

(c) When a cooperating Associate seeks cooperation with an Offering Associate with respect to a property, the cooperating Associate shall not name the prospective Buyer/Lessee, and shall in general endeavor not to "gratuitously register" the prospective Buyer/Lessee. To do so shall be construed as an unacceptable attempt to inhibit the Offering Associate, or other Associates, from rendering services to that prospective Buyer/Lessee in connection with the property by merely mentioning that prospective Buyer's/Lessee's name.

(d) When an Offering Accredited Firm or Offering Associate accepts the registration of a prospective Buyer/Lessee, or a prospective Buyer/Lessee registers himself/herself inadvertently (for example, as in the case of having to disclose his/her identity when inspecting the property, or in the course of social interaction), that prospective Buyer/Lessee shall not be solicited by the Offering Accredited Firm or Offering Associate who has received the registration unless and until the prospect initiates contact as provided in Paragraph 5.7(a) above.

(e) Registration should be accepted by the Offering Accredited Firm or Offering Associate only when justified by the circumstances described in Paragraphs 5.7(a) and (d) above.

(f) Registration of a prospective Buyer/Lessee only protects the registering cooperating Associate against a transaction with respect to the Offering Accredited Firm. An Offering Accredited Firm cannot protect a cooperating Associate against another Associate who obtains an offer from the same prospective Buyer/Lessee.

(g) If another Associate of the Offering Accredited firm is in contact with the registered prospective Buyer/Lessee with respect to property which is not the subject of the registration, and such contact did not arise out of the Associate's knowledge of the registration, the other Associate of the Offering Accredited Firm is free to work with the prospective Buyer/Lessee without obligation to the cooperating Associate. However, the Offering Associate receiving the registration has the affirmative duty to maintain the confidentiality of the identity of any prospective Buyer/Lessee who is registered with such Offering Associate.

## **ARTICLE VI COMMISSIONS**

### **6.1 SCHEDULES.**

The MULTIPLE does not suggest or recommend any commission schedule. Each Accredited Firm shall independently determine its own schedule of commissions.

### **6.2 DISCLOSURE.**

The basis for the calculation and payment of the commission (plus additional compensation, if any) applicable to an anticipated transaction in which a cooperating Associate is involved shall be disclosed by the Offering Accredited Firm to the Cooperating Accredited Firm. It shall also be disclosed in writing, if so requested.

### **6.3 DIVISION.**

(a) Upon the publication of the availability of an Offering through The MULTIPLE, the Offering Accredited Firm shall submit to The MULTIPLE for publication, in the manner prescribed by The MULTIPLE from time to time, the percentage of the total rental/sale consideration (plus additional compensation, if any), to be paid to a cooperating Accredited Firm upon the consummation of a transaction.

(b) If an Associate has an interest in the property as an Owner/Sublessor as well as an Offering Associate in a transaction involving a property offered through The MULTIPLE, such Associate shall make known such interest to the other parties. Further, such Associate shall be responsible for the payment of the portion of the total commission due the cooperating Accredited Firm, in accordance with the Customary Commission Schedule of the Offering Accredited Firm (including expansions and extensions), except as provided in Paragraph 6.4(d). If such Associate participates as a Buyer/Lessee, such Associate's firm shall receive the total commission due the cooperating Accredited Firm. This rule is not intended to affect any agreement which may exist between the principal Associate and such Associate's Accredited Firm as to the division of commissions.

(c) In the event that an Associate or an Accredited Firm disagrees as to any aspect of a commission, such party shall put the Offering Accredited Firm on notice as to the disagreement and the grounds for such disagreement. All money-related disputes between Associates and/or Accredited Firms shall be submitted to binding arbitration pursuant to these Rules.

### **6.4 PAYMENT AND COLLECTION.**

(a) Commissions must be billed promptly upon the consummation of a transaction and due diligence must be exercised by the Offering Accredited Firm in collecting all amounts billed.

(b) Both the Offering Accredited Firm and the cooperating Accredited Firm shall be named in all documents to fa-

ilitate collection of commissions by the cooperating Accredited Firm, if that becomes necessary.

(c) In the event a commission is not paid in accordance with the agreement between the Offering Accredited Firm and the Owner/Sublessor, the cooperating Accredited Firm and the Offering Accredited Firm shall cooperate in the collection of the commission and share the cost(s) of collection, if any. If the Offering Accredited Firm shall elect not to pursue legal remedies, at the request of the cooperating Accredited Firm it shall assign its contractual rights to the cooperating Associate/Accredited Firm to take effective legal action for the collection of its share of the commission.

(d) Any departure from the Offering Accredited Firm's compensation agreement with the Owner/Sublessor which occurs in the course of a negotiation, including terms other than commission rates, must be with the prior agreement of the cooperating Accredited Firm, unless the variation from the compensation agreement of the Offering Accredited Firm was announced through The MULTIPLE and applies to any transaction. If there is a prior agreement or prior announcement of payment in installments, each installment paid shall be divided in the same manner as otherwise agreed between the Accredited Firms involved in the transaction. In addition, the Offering Associate is obligated to keep the cooperating Associate fully informed concerning any departure from its compensation agreement or the previously agreed upon and/or announced fee schedule which arise in the course of the negotiations. The Offering Associate shall use all due diligence to ensure the payment of the commission in accordance with the agreement in effect with the Owner/Sublessor as a result of the original Owner Agency/Sublessor Agency Agreement, and shall do nothing to interfere with the cooperating Accredited Firm's right to collect the full fee to which such firm is entitled.

(e) In the event a Real Estate Transaction is not completed, any settlement sums received and/or legally retained shall be divided in the same manner as otherwise agreed between the Accredited Firms participating in the transaction had the transaction been completed, after deducting the costs of collection actually incurred in connection with the settlement or retention.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

### **7.1 INTERFERENCE.**

When any Owner Agency/Sublessor Agreement or Buyer/Lessee Agency Agreement is in force, no Associate or Accredited Firm shall engage in any practice, or take any action inconsistent with the agency of the Associate or Accredited Firm under such agreement, nor shall any Associate or Accredited Firm take any action which could jeopardize the ability of the Offering Associate or Offering Accredited Firm to fulfill such agency contract and/or collect a commission thereunder.

**7.2 NONETOFFERING**

No Accredited Firm shall enter into or be permitted to take a “net” Owner Agency/Sublessor Agency Agreement that is, an exclusive offering in which the commission is equal to that portion of the purchase/lease/sublease price in excess of a specified net amount to be received by the Owner/Sublessor.

**7.3 NO ADVERTISING OTHER BROKERS’ LISTINGS.**

An Accredited Firm and its Associates are only permitted to offer the property on which another Accredited Firm has an Owner Agency/Sublessor Agency Agreement to a specific prospective Buyer/Lessee, and shall not promote such offering of another Accredited Firm in any form of advertising or mailing to the public. This provision includes the presentation of the offerings of another Accredited Firm in a manner which in any way states or implies that the presenting Associate has the Owner Agency/Sublessor Agency Agreement for such property.

**7.4 NO UNAUTHORIZED DISSEMINATION OF MULTIPLE INFORMATION.**

(a) An Accredited Firm and its Associates shall not disseminate information in bulk or on a recurring basis concerning any property offered in The MULTIPLE, other than those properties for which it has an Owner Agency/Sublessor Agency Agreement, to any non-Accredited Firm, including to other divisions at the same location, or other offices or divisions at other locations, of the company of which the Accredited Firm is a part, which are not Accredited Firms of the AIR. An Accredited Firm shall not provide MULTIPLE information or materials (other than such materials as The MULTIPLE may offer for sale to the general public from time to time) either directly or indirectly, to any other non-MULTIPLE firm or office, whether such non-MULTIPLE firm or office is under common ownership with the Accredited Firm or not.

(b) No information published or posted through The MULTIPLE or contained in the Bulletin may be disseminated to the public or to any non-Accredited Firm.

**7.5 NO “PRINCIPALS ONLY”.**

No Associate or Accredited Firm shall advertise “principals only” with respect to any property.

**7.6 SHOWING OF OFFERINGS.**

No Associate or Accredited Firm may refuse to allow its offered property to be shown by a cooperating Associate.

**7.7 NON-COOPERATION.**

No Associate or Accredited Firm shall maintain any policy of non-cooperation with other Associates or Accredited Firms.

**7.8 NO FALSE CLAIMS.**

No Associate or other person connected with an Accredited Firm

shall claim to have an Owner Agency/Sublessor Agency Agreement or Buyer/Lessee-Agency Agreement, or give the impression of having an Owner Agency/Sublessor Agency Agreement or Buyer/Lessee-Agency Agreement, without a written Owner Agency/Sublessor Agency Agreement or Buyer/Lessee-Agency Agreement being in full force and effect.

**ARTICLE VIII  
ADMINISTRATION**

**8.1 MULTIPLE DIRECTOR.**

The MULTIPLE shall be operated under the direction of the Multiple Director who shall be appointed by, and responsible to, the Board of Directors. The responsibilities of the Multiple Director shall include the following:

(a) Interpreting these Rules in accordance with the policies established by the Board of Directors.

(b) The administration and enforcement of the Rules, including the power to fine and/or suspend any Accredited Firm, subject to 8.4(a).

(c) The selection of, and contract negotiations with, the firm(s) to provide the electronic processing, printing and photographic services for MULTIPLE brochures and the Bulletin, subject to the approval of the Board of Directors.

(d) Establishing practices for the operation of The MULTIPLE, including the form and substance of documents appropriate to the operation of The MULTIPLE, subject to approval of the Board of Directors.

**8.2 ASSOCIATE DIRECTOR(S).**

The Multiple Director may appoint Associate Director(s), at the Multiple Director’s option, subject to the approval of the President and the Board of Directors, who shall undertake the following responsibilities under the direction of the Multiple Director:

(a) Answer questions from Accredited Firms regarding offerings and the interpretation of the Rules.

(b) Administer and enforce the Rules with respect to any of the provisions contained therein.

(c) Any other assignments or duties delegated to the Associate Director(s) by the Multiple Director.

**8.3 MULTIPLE STANDING COMMITTEE.**

The Multiple Director may appoint, at the Multiple Director’s option, a committee consisting of Associates, active in different geographical areas served by The MULTIPLE, to assist in administering and enforcing the Rules.

#### **8.4 ENFORCEMENT.**

Accredited Firms which violate, or whose Associates violate, these Rules may be subject to:

(a) Fines and/or suspension from participation in The MULTIPLE, in accordance with policies adopted by the Board of Directors from time to time, which include, but are not limited to, the following:

(1) A schedule of fines proposed by the Multiple Director with respect to violations, subject to the approval of the Board of Directors. Such fines may be assessed for whatever violations of these Rules the Board of Directors determine, including but not limited to the failure to observe the time requirements of Paragraphs 2.5(a) and 2.7(a), (b) and (c).

(2) Any fine in excess of \$500.00 or suspension longer than 30 days for any reason (other than non-payment of dues, fines or other monetary obligations) shall require the express approval of the Board of Directors before being administered.

(3) In the event fines are not paid within 60 days, the delinquent Accredited Firm shall be automatically suspended as a participant from The MULTIPLE until such time as all fines and a reinstatement fee, if any, have been paid. Failure to cure the delinquency within 90 days shall result in an automatic termination of the delinquent firm's "Accredited Firm" status in accordance with the AIR Bylaws.

(4) Consequences of suspension of any Accredited Firm may include, but not be limited to, return of MULTIPLE lockbox keys by all Associates, denial of the right to publish materials in The MULTIPLE and/or receive the published material of The MULTIPLE, striking of the Accredited Firm's name from the membership roster, and denial of the right to use of the logo(s) of AIR and/or The MULTIPLE.

(b) If any Associate or any Accredited Firm shall have been determined by the Professional Conduct and Arbitration Committee to have violated any provisions hereof, and/or whose membership or Accredited Firm status shall have been suspended or terminated, such Associate's or Accredited Firm's name may be published by the AIR and/or The MULTIPLE in any publication of AIR or The MULTIPLE which is circulated to Associates. The owners, officers, partners and managers of Accredited Firms agree by the participation of their Accredited Firm in The MULTIPLE or by their individual membership in the AIR, to save and hold the AIR and The MULTIPLE, and its officers, directors, employees, agents, committee chairs, and committee members acting on behalf of the AIR and/or The MULTIPLE, free and harmless of any and all liability arising out of such publication.

#### **8.5 FINANCIAL OBLIGATIONS.**

Each Accredited Firm shall have the following financial obliga-

tions:

(a) Each Accredited Firm shall pay costs and fees annually or more frequently, as determined by the Board of Directors from time to time.

(b) Each Accredited Firm shall be responsible for the payment of fines, if any, levied against the Accredited Firm or any of its Associates, and for the payment of awards, if any, granted as the result of arbitration judgments.

(c) Any Accredited Firm which fails to pay its fees, costs, fines and/or arbitration judgments shall be subject to suspension from participation in the MULTIPLE, as provided for in the AIR Bylaws and these Rules.

#### **ARTICLE IX ARBITRATION OF DISPUTES**

Any money-related dispute between Accredited Firms, or between Accredited and non-Accredited Firms, or Associates, not purely a matter of professional conduct, shall be submitted to binding arbitration upon written application of either or both parties to the dispute, subject to the willingness of the AIR to hear the arbitration, in accordance with the Bylaws of the AIR and The MULTIPLE. Every Accredited Firm, on behalf of all licensees at that location including associates of the same brokerage company who are not associated with an industrial division, and whether such licensees are members of the AIR or not, shall be bound to submit to such binding arbitration with respect to any property offered through The MULTIPLE. The decision of the arbitration panel shall be final. The party against whom the decision is made shall comply promptly with any arbitration award made by the panel.