



**CONFIDENTIALITY AGREEMENT AND AGENCY DISCLOSURE FORM**

**AVISON YOUNG COMMERCIAL REAL ESTATE (SASK) INC**

300 2550 12<sup>th</sup> Avenue

Regina, SK S4P 3X1

Fax: 306 559 9016

Email: jeremy.schick@avisonyoung.com and hali.lawrence@avisonyoung.com

Attention: Jeremy Schick and Hali Lawrence

For the purpose of evaluating 2703 Avonhurst Drive (Towers Mall) (hereinafter referred to as the "**Property**"),

I/We \_\_\_\_\_ (hereinafter referred to as the "**Buyer**"),

warrant and confirms that \_\_\_\_\_ (hereinafter referred to as the "**Buyer Broker**") is representing the Buyer under a Buyer agency agreement and has introduced said Buyer to the Property.

The Buyer and Buyer's Broker request the **AVISON YOUNG COMMERCIAL REAL ESTATE (SASK) INC** (hereinafter referred to as "**Avison Young**"), the Seller's Agent, provide the Buyer and Buyer's Broker with confidential information relating to the Property.

In consideration of Avison Young agreeing to provide the Buyer with such information, the Buyer agrees with MELCOR REIT LIMITED PARTNERSHIP (the "**Seller**") as follows:

- (1) To treat confidentially, such information and any other information that Avison Young or the Seller or any of their advisors furnishes to the undersigned, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered by inspection, and regardless of whether specifically identified as "confidential" (collectively, the "**Evaluation Material**").
- (2) Not to use any of the Evaluation Material for any purpose other than the exclusive purpose of evaluating the possibility of a purchase and sale transaction relating to the Property. The Buyer agrees that the Evaluation Material will not be used in any way detrimental to the Property, the Seller, or Avison Young and that such information will be kept confidential by the undersigned, its directors, officers, employees and representatives and these people shall be informed by the undersigned of the confidential nature of such information and shall be directed to treat such information confidentially.
- (3) That if at any time, the undersigned considers a transaction which would involve a third party either purchasing the Property or any interest therein or evaluating the possibility of a purchase and sale transaction relating to the Property, the Buyer must receive the prior written approval by Avison Young or the Seller of such third party as a Buyer, which approval may be unreasonably withheld, furthermore the undersigned agrees to obtain from said third party a confidentiality agreement in a form satisfactory to

Avison Young or the Seller prior to disclosure to such party of any Evaluation Material relevant to this transaction.

- (4) The undersigned and its directors, officers, employees and representatives will not, without the prior written consent of Avison Young or the Seller, disclose to any persons either the fact that discussions or negotiations are taking place concerning a possible transaction between the Seller and the undersigned, nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- (5) The term "**person**" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company partnership or individual or any combination of one or more of the foregoing.
- (6) Not to have any contact with any tenant or tenants, nor enter into any discussion with any tenant or tenants, at the Property without the express written permission of the Seller, as such contact may cause irreparable harm to the Seller.
- (7) That any time, at the request of Avison Young or the Seller, the undersigned agrees to promptly return all Evaluation Material without retaining any copies thereof (including any electronic copies) or any notes relating thereto. The undersigned will certify as to the return of all Evaluation Material and related notes.
- (8) That in the event the undersigned is required or requested by legal process to disclose any of the Evaluation Material, the undersigned will provide Avison Young or the Seller with prompt notice of such requirement or request so that Avison Young or the Seller may take appropriate actions.
- (9) That the undersigned agrees that neither Avison Young nor the Seller make any representations or warranties, expressed or implied, as to the accuracy or completeness of the Evaluation Material. The undersigned further agrees that neither Avison Young nor the Seller, nor any other author of or person providing Evaluation Material shall have any liability to the undersigned or any of its representatives arising from the use of the Evaluation Material by the undersigned or its representatives.
- (10) Upon successful closing of an agreement of purchase and sale to the Buyer, the Buyer's Broker's commission of **0.75%** of the closing sale price shall be paid by Avison Young as per the buyer's broker and conditions governed by the Listing Agreement between Avison Young and the Seller and (if applicable) as per Saskatchewan Real Estate Commission guidelines.
- (11) The Buyer hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the Personal Information Protection and Electronic Documents Act (Canada) with respect to personal information which may be contained in the Evaluation Material.
- (12) This Agreement shall be governed and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein and shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- (13) This Agreement shall enure to the benefit of Avison Young and the Seller, their respective successors and assigns and shall be binding upon the undersigned and its heirs, executors, administrators, and their successors and assigns.

(14) ***Representation and Customer Service***: The Code of Ethics for the Saskatchewan Real Estate Commission requires Commercial Agents (e.g., Sales Representatives, Agents, Brokers) to disclose in writing the nature of their relationship and services they are providing. The Buyer acknowledges that Avison Young has provided the Buyer with written information explaining agency relationships (attached hereto as Schedule "A" – Working with a Commercial Agent"). The Buyer acknowledges that the Buyer is being represented by the Buyer's Broker, and that Avison Young is the agent, and represents the interests, of the Seller and has a fiduciary and primary duty to protect and promote the interests of the Seller-Client.

**DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

\_\_\_\_\_  
Buyer's Name (Please Print)

\_\_\_\_\_  
Buyer's Broker Name (Please Print)

\_\_\_\_\_  
By (Authorized Signing Office Signature)  
I have authority to bind the company

\_\_\_\_\_  
By (Authorized Signing Office Signature)  
I have authority to bind the company

\_\_\_\_\_  
(Officer's Name and Title)

\_\_\_\_\_  
(Officer's Name and Title)

\_\_\_\_\_  
(Officer's Address)

\_\_\_\_\_  
(Officer's Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Email Address: Buyer)

\_\_\_\_\_  
(Email Address: Co-operating Broker)

## **SCHEDULE "A"**

### **Working With a Commercial Agent The Agency Relationship**

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#### **Who's working for you?**

- It is important that you understand who the Commercial Agent is working for. For example, both the seller and the buyer may have their own agent which means they each have a Commercial Agent who is working for them
- Or, some buyers choose to contact the seller's agent directly. Under this arrangement, the Commercial Agent is working for the seller, and must do what is best for the seller, but may provide many valuable customer services to the buyer.
- A Commercial Agent working with a buyer may even be a "sub-agent" of the seller. Under sub-agency, both the listing brokerage and the co-operating brokerage must do what is best for the seller even though the sub-agent may provide many valuable customer services to the buyer.
- If the brokerage represents both the seller and the buyer, this is limited dual agency.

#### **In real estate, there are different possible forms of agency relationships:**

##### **1. Seller's Agency**

- When a real estate brokerage represents a seller, it must do what is best for the seller of a property.
- A written contract, called a listing agreement, creates an agency relationship between the seller and the brokerage and establishes seller representation. It also explains services the brokerage will provide, establishes a fee arrangement for the Commercial Agent services and specifies what obligations a seller may have.
- A seller's agent must tell the seller anything known about a buyer. For instance, if a seller's agent knows a buyer is willing to offer more for a property, that information must be shared with the seller.
- Confidences a seller shares with a seller's agent must be kept confidential from potential buyers and others
- Although confidential information about the seller cannot be discussed, a buyer working with a seller's agent can expect fair and honest service from the seller's agent and disclosure of pertinent information about the property.

##### **2. Buyers Agency**

- A real estate brokerage representing a buyer must do what is best for the buyer.
- A written contract, called a buyer representation agreement, creates an agency relationship between the buyer and the brokerage, and establishes buyer representation. It also explains services the brokerage will provide, establishes a fee arrangement for the Commercial Agent's services and specifies what obligations a buyer may have.
- Typically, buyers will be obliged to work exclusively with that brokerage for a period of time.
- Confidences a buyer shares with the buyer's agent must be kept confidential.
- Although confidential information about the buyer cannot be disclosed, a seller working with a buyer's agent can expect to be treated fairly and honestly.

##### **3. Limited Dual Agency**

- Occasionally a real estate brokerage will represent both the buyer and the seller. The buyer and seller must consent to this arrangement in writing. Under this limited dual agency arrangement, the brokerage must do what is best for both the buyer and the seller.

- Since the brokerage's loyalty is divided between the buyer and the seller who have conflicting interests, it is absolutely essential that a limited dual agency relationship be properly documented. Representation agreements specifically describe the rights and duties of everyone involved and any limitations to those rights and duties.

#### 4. **Customer Service**

- A real estate brokerage may provide services to buyers and sellers without creating buyer or seller representation. This is called "customer service."
- Under this arrangement, the brokerage can provide many valuable services in a fair and honest manner. This relationship can be set out in a buyer or seller customer service agreement
- Real estate negotiations are often complex and a brokerage may be providing representation and/or customer service to more than one seller or buyer. The brokerage will disclose these relationships to each buyer and seller.

#### **Code of Ethics**

- Commercial Agents believe it is important that the people they work with understand their agency relationship. That's why requirements and obligations for representation and customer service are included in a Code of Ethics which is administered by the Saskatchewan Real Estate Commission.
- The Code requires Commercial Agents to disclose in writing the nature of the services they are providing, and encourages Commercial Agents to obtain written acknowledgement of that disclosure. The Code also requires Commercial Agents to submit written representation agreements for any sellers or buyers they are representing.

#### **Acknowledgement by Buyers**

I/we have read and understand the Working with a COMMERCIAL AGENT - The Agency Relationship form.

As Buyer(s), I/we understand that **Avison Young Commercial Real Estate (Sask) Inc.** is not representing my interest, but will only be providing a Customer Service as outlined in clause 14 of the attached Confidentiality Agreement and Agency Disclosure Form.

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(Buyer's Signature)

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(Buyer's Name)

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(Date)