

LISTING AGREEMENT  
FOR SALE AND LEASE

**The City of Franklin** ("Owner") appoints Cushman & Wakefield U.S., Inc. ("C&W") as its sole agent and grants to C&W the exclusive right to sell and lease the real property located at **40 Linville Way, Franklin, IN 46131** (the "Property") as provided below.

1. Term. The term of this agreement will commence on **June** \_\_\_\_\_, **2020** and will expire on **June** \_\_\_\_\_, **2021**.

2. Services. C&W will use its efforts to obtain a satisfactory purchaser and tenant(s) for the Property at a sale price and lease rate to be determined by Owner and on such other terms as are acceptable to Owner. C&W will negotiate the business terms of any purchase and sale agreement and lease on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. C&W will cooperate with other licensed real estate brokers.

3. Marketing. Owner authorizes C&W to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. C&W, at its own expense, will place its standard sign on the Property and will prepare and distribute a standard brokerage flyer. All advertising whether prepared or issued by C&W or by Owner will identify C&W as Owner's exclusive agent for the Property.

4. Referrals. During the term of this agreement, Owner will refer to C&W all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.

5. Commission. If, during the term hereof, Owner sells and/or leases any interest in the Property, Owner will pay to C&W a commission in accordance with the attached Schedule of Commissions. Within 10 days after the end of the term, C&W will provide to Owner a list of prospective purchasers and tenants to whom the Property was submitted by any party during the term. If a prospective purchaser or tenant, appearing on the list, enters into a purchase and sale agreement or lease within 90 days after the end of the term, and thereafter the sale is closed or the lease is fully executed and delivered, Owner will pay a commission to C&W as provided above. Owner agrees that such 90-day period will be extended for so long as negotiations with a prospective purchaser and tenant are continuing.

6. Outside brokers. If C&W recognizes an outside broker authorized to represent the purchaser or tenant in a transaction for which a commission is payable hereunder, C&W will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay C&W the commission computed and payable in accordance with the annexed Schedule out of which C&W will pay to such other broker its agreed upon commission and retain the balance of the commission as C&W's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. The term "outside broker" means a broker other than **Fritz A. Kauffman, SIOR or Donald A. Treibic**.

7. Representation of Purchasers and Tenants. Owner acknowledges and agrees that C&W may represent potential purchasers and tenants and consents to such dual representation, provided C&W timely discloses any such dual representation to Owner.

~~8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.~~

9. Authority. Owner represents that it is in fact the owner of the Property and has the right to lease and sell the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.

10. Professional Advice. C&W recommends that Owner obtain legal, tax or other professional advice relating to this agreement and the proposed sale and lease of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and C&W. Owner further agrees that in determining the financial soundness of any prospective purchaser or tenant, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding C&W's assistance in gathering any financial information.

11. OFAC. Each party represents and warrants to the other that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Anti-Bribery & Corruption. Each party represents and warrants to the other that it (and any party acting on its behalf) has not, in order to enter into this agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this agreement.

In the event of any violation of this section, the non-offending party shall be entitled to immediately terminate this agreement and take such other actions as are permitted or required to be taken under law or in equity.

13. Miscellaneous. This agreement shall be governed by the laws of the State of Indiana, without giving effect to principles of conflicts of law. **Any action or proceeding brought by either party arising out of or relating to this agreement shall be instituted in a federal or state court in the State of Indiana, County of Marion Johnson, and each party waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such action or proceeding.** This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns **provided however, C&W shall have no right to assign or otherwise transfer this Agreement without first obtaining the written consent of Owner to such assignment or transfer.** This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

#### THE CITY OF FRANKLIN

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

#### CUSHMAN & WAKEFIELD U.S., INC.

By: \_\_\_\_\_  
 Name: Timothy Michel  
 Title: Managing Principal  
 Date: \_\_\_\_\_

[Schedule of Commissions Follows]

## SCHEDULE OF COMMISSIONS FOR SALE AND LEASE

**SALES OR EXCHANGE**

**Rate:** ~~Seven percent (7%) of the first \$500,000.00 and~~ Six percent (6%) ~~thereafter~~ of the gross sales price or exchange value.

**Time of Payment:** The commission shall be paid in full at the time of the closing or transfer of title to the Property, except in the case of an installment purchase contract, in which case the commission shall be paid in full at the time of full execution and delivery of the installment purchase contract between Owner and purchaser.

**Computation of Total Sales Price:** The commission shall be computed in accordance with the above rates based upon the gross sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by purchaser or which purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Owner.

**Purchase Option:** If Owner grants a purchase option, C&W will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale, C&W will be paid a commission at the above rate on the total sales price (excluding any amount paid for the option and applied to the sales price).

**LEASES**

**Rates:** Four percent (4%) of the gross rental contracted to be paid under the lease but in no event less than \$1,500.00. As to month-to-month tenancies, the commission shall be the greater of one month's rent or \$1,500.00. If a cooperating broker is involved in the lease transaction, Owner shall pay a Commission of seven percent (7%) of the gross rental contracted to be paid under the lease, but in no event less than \$1,500. For purposes of this section, C&W may be a cooperating broker as well as the listing broker.

**Renewals; Extensions; Expansions:** If a lease contains an option or other right to renew or extend the term or to lease additional space, and if the lease is renewed or extended or if a tenant leases additional space, whether or not strictly pursuant to the option or right contained in the lease, Owner shall pay to C&W, at the time of the renewal, extension or lease of additional space, an additional commission at the above rate for the renewal or extension term, or for such additional space.

**Cancellation Clauses:** C&W will be paid a commission based upon the entire lease term notwithstanding any right of Owner to cancel the lease. If a tenant has a right to cancel the lease after the term has commenced (and for reasons unrelated to casualty, condemnation, default and the like), the commission will initially be based upon the noncancelable portion of the lease term plus the amount of any cancellation payment payable by tenant; if such right is not thereafter exercised, Owner will promptly pay C&W the balance of the commission. A lease will be deemed canceled only if tenant vacates the premises. If a lease is terminated or amended and tenant remains under a new or different arrangement, C&W shall be paid the balance of its commission. If a cancellation payment includes the unamortized commission, then C&W will be paid a full commission as if no right of cancellation existed.

**Computation of Commissions:** If a rental concession is made by Owner allowing a tenant not to pay rent for the initial months of the lease term, then the commission shall be calculated on the entire term with the first year being deemed to commence on the first day of the lease term whether or not rent is payable. If rental concessions are granted in lieu of Owner performing construction or alteration work and with respect to any other allowances or concessions granted to a tenant whether in the form of a credit against rent, construction, decoration or otherwise, there shall be no deduction from the commission calculation above.

**Time of Payment:** Commissions on leases shall be earned, due and paid in full upon execution and delivery of the lease between Owner and tenant.

**Sale by Owner:** In the event of a sale, conveyance or other disposition of all or any portion of Owner's interest in the Property at which the lease is made, Owner shall remain responsible to pay C&W the commissions due and/or which may become due hereunder, unless Owner shall obtain from the grantee of its interest and deliver to C&W an agreement whereby the grantee assumes Owner's commission obligations hereunder.

**Exceptions:** In the event Owner enters into a binding agreement with Amayzing Foods, Radwell International or Artica (Exceptions) within 30 days from the date of this agreement, no commission shall be due to C&W. However, Owner agrees to reimburse C&W for all out-of-pocket expenses not to exceed \$1,500. If Owner enters into a binding agreement with one of the Exceptions between 31-60 days from the date of this agreement, Owner shall pay a commission equal to fifty percent (50%) of the amount outlined above to C&W. After 60 days from the date of this agreement, any binding agreement with the Exceptions shall be paid at the full rate outlined above.

**Initial Asking Price:** The initial asking price for the property what be \$3,595,000.