



Colliers International  
Commercial Real Estate Services  
**EXCLUSIVE RIGHT TO REPRESENT CLIENT**

1. **EXCLUSIVE RIGHT.** The undersigned, **Tomball Economic Development Corporation** (hereinafter designated as "Client"), hereby grants to Colliers International Houston, Inc. d/b/a **Colliers International** (hereinafter designated as "Broker"), the exclusive right and authority to represent Client, for the purpose of assisting Client in locating real property of a nature outlined in paragraph 3, or such other real property as may be acceptable to Client, and to negotiate terms and conditions acceptable to Client for the acquisition or leasing of such real property and any personal property (the "Agreement"). **This Agreement supersedes and replaces any similar such agreements between the parties.**
2. **TERM.** The term of this Agreement shall commence as of November 10, 2020 and terminate at midnight on November 30, 2021.
3. **PROPERTY DESCRIPTION:** Any and all Real Property located within the city limits of the City of Tomball, its Extra Territorial Jurisdiction or adjacent areas thereto.
4. **BROKER'S OBLIGATIONS.** During the term of this Agreement, Broker agrees to:
  - A. Become well-informed in Client's objectives pursuant to paragraph 3;
  - B. Assist Client with researching financing alternatives;
  - C. Assist Client in locating and arranging showings of available properties in accordance with paragraph 3;
  - D. Assist Client in obtaining available information relative to desired properties;
  - E. Assist Client in preparing offers to acquire property and in negotiating favorable terms;
  - F. Assist Client in obtaining financing and monitoring closing procedures and deadlines.
5. **DISCLAIMER.** Client understands that a real estate broker is qualified to provide advice on matters concerning real estate, but is not an expert in matters of law, tax, financing, surveying, structural conditions, hazardous materials, or engineering. Client acknowledges it has been advised by Broker to seek expert assistance for advice on such matters. In the event Broker provides names or sources for such advice or assistance, Client understands and acknowledges that Broker does not warrant the services of such experts or their products and cannot warrant the condition of property to be acquired, or guarantee that all property defects are disclosed by the seller. Broker does not investigate the status of permits, zoning, location of property lines, and/or code compliance and Broker does not guarantee the accuracy of square footage of a structure; Client is to satisfy itself concerning these issues.
6. **CLIENT'S OBLIGATIONS.** During the term of this Agreement, Client agrees to:
  - A. Provide upon request:
    - (1) General nature, location, requirements, and preferred terms and conditions relating to the acquisition of desired property;
    - (2) Relevant financial information, to assure Client's ability to obtain financing;
  - B. Work exclusively with Broker and not with other real estate brokers, salespersons, or owners, with respect to viewing properties and to refer to Broker all inquiries in any form from any other real estate brokers, salespersons, prospective sellers, or any other source;
  - C. Conduct in good faith all negotiations for property, described in paragraph 3, exclusively through Broker;
  - D. Hold Broker harmless from any claims resulting from incomplete or inaccurate information provided by Client.
7. **Agency/Dual Agency.** Client hereby acknowledges receipt from Broker of the agency disclosure form entitled "Information on Brokerage Relationships." Client acknowledges that Broker is a national brokerage firm and that in some cases it may represent prospective sellers. Client desires that the Property be presented to such persons or entities, and hereby consents to, and authorizes, Broker to act as an intermediary in the event of a transaction involving Client and a

prospective seller also represented by Broker. If Broker acts as an intermediary in a transaction involving Client, Broker shall:

- A. Not disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord;
- B. Not disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by the buyer or tenant;
- C. Not disclose any confidential information or any information a party specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose such information by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the Property;
- D. Treat all parties to the transaction honestly; and
- E. Comply with The Texas Real Estate License Act.
- F. If Broker acts as an intermediary, Broker may appoint (i) one or more licensees associated with Broker to communicate with, carry out the instructions of, and provide options and advice to Client, and (ii) one or more other licensees associated with Broker to provide similar services for the other party to the transaction. Client's appointed agent(s) shall be Tom Condon, Jr..
- G. ("Client's Agent"). Broker reserves the right to change or appoint additional agents for Client if, in Broker's sole discretion, same becomes necessary. In the event that Client's Agent also represents the seller in a prospective transaction with Client, both Broker and Client's Agent may act in the capacity of an intermediary, rather than as the sole representative of either party to the transaction.

8. OTHER POTENTIAL CLIENTS. Client understands that other potential clients may consider, make offers on, or acquire through Broker the same or similar properties as Client is seeking to acquire. Client consents to Broker's representation of such other potential clients before, during and after the term of this Agreement.

9. COMPENSATION TO BROKER. Broker will attempt to collect its commission for a purchase or lease transaction through the cooperating broker of the seller/landlord. Client shall cooperate with Broker in Broker's securing payment of commissions. Upon Broker's request, Client will execute and deliver to Broker an authorization letter for a particular transaction or property in the form of the authorization letter attached as Exhibit "A". In the event that Broker is unable to obtain a commission agreement with the seller/landlord or the seller/landlord's broker, Client and Broker shall negotiate the compensation to be paid to Broker by Client.

10. PROTECTION PERIOD. Client further agrees that Client shall be obligated to pay Broker a commission equal to three percent (3.0%) of the gross purchase price or four percent (4.0%) of the Total Rental paid by Client if, within one hundred eighty (180) days after the expiration of the Term, any of the following occur:

(a) The Client closes on the purchase or lease of any property to which Broker introduced the Client during the term of this Agreement or Client closes on the purchase or lease of any property owned by any person or entity with whom Broker has negotiated (either directly or indirectly through another broker or agent) during the term of this Agreement in an effort to effect a purchase or lease transaction for the benefit of Client (hereinafter referred to as "Prospect");

(b) Client enters into a contract for the purchase or lease of real property with a Prospect, which contract or lease agreement later closes or is executed; or

(c) Client commences, continues, or resumes negotiations with a Prospect, which thereafter continues leading to a purchase or lease of property from a Prospect.

Broker agrees to submit a list of Prospects to Client no later than 15 days following the expiration of the Term; provided, however, if a written offer or proposal has been submitted to a Prospect, it shall not be necessary to include the Prospect's name on the list.

11. **ATTORNEY'S FEES.** In the event that Client or Broker files a legal action for interpretation or enforcement of this exclusive right to represent client, the prevailing party shall be entitled to recover his, her, or its attorney's fees and costs from the losing party or parties, including legal assistant fees and any attorney's fees and costs incurred with respect to any appellate or bankruptcy proceedings.

12. **TIME IS OF THE ESSENCE.** Time is of the essence of this agreement.

13. **GOVERNING LAW AND VENUE.** The rights and obligations of the parties hereunder shall be governed by the laws of the State of Texas. Venue for any legal proceeding arising from or related to this Agreement shall be Harris County, Texas.

14. **ENTIRE AGREEMENT.** This document and any addendum hereto, initialed by the parties, contain the entire agreement of the parties and supersede all prior agreements or representations which are not expressly set forth herein. This Agreement may be modified only by a writing signed by both parties. Client acknowledges that it has not relied on any statements of the Broker which are not expressed herein.

16. **SEVERABILITY.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

17. **DATA DISCLOSURE.** Broker is authorized to provide closed transaction information to third party data sources.

The undersigned hereby acknowledge that it has thoroughly read and approved each of the provisions contained herein and acknowledges receipt of a copy hereof.

**BROKER:**

**CLIENT:**

**Colliers International Houston, Inc.  
d/b/a Colliers International**

**Tomball Economic Development Corporation**

By: \_\_\_\_\_  
J. Patrick Duffy, MCR, President

By: \_\_\_\_\_  
Kelly Violette, Executive Director

**DATED:**

**DATED:**

Address: 1790 Hughes Landing Blvd, Suite 250  
The Woodlands, TX 77380

Address: 29201 Quinn Rd, Suite B  
Tomball, TX 77375

AUTHORIZATION LETTER FORM

[to be typed on Client's letterhead]

[addressed to prospective seller]

Re: [particular transaction]

Dear [seller]:

\_\_\_\_\_[Client name]\_\_\_\_\_, has engaged Colliers International to act as its exclusive real estate representative with respect to \_\_\_\_\_[identify particular purchase transaction or property]\_\_\_\_\_. This letter will confirm that you are authorized to pay to Colliers International a real estate commission on any lease or purchase transaction that \_\_\_\_\_[Client name]\_\_\_\_\_ consummates with you. Before Colliers International issues any proposals on our behalf or commences negotiations on our behalf, it will be necessary for you to enter into a written commission agreement with Colliers International. We appreciate your cooperation.

[Client name]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_



## Information About Brokerage Services

*Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.*

### TYPES OF REAL ESTATE LICENSE HOLDERS:

- A **BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- A **SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

### A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

### A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

**AS AGENT FOR OWNER (SELLER/LANDLORD):** The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

**AS AGENT FOR BUYER/TENANT:** The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

**AS AGENT FOR BOTH - INTERMEDIARY:** To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - that the owner will accept a price less than the written asking price;
  - that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

**AS SUBAGENT:** A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

### TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

**LICENSE HOLDER CONTACT INFORMATION:** This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

#### Colliers International

##### Houston, Inc.

Licensed Broker/Broker Firm Name or  
Primary Assumed Business Name

29114

License No.

houston.info@colliers.com

Email

(713) 222-2111

Phone

##### Gary Mabray

Designated Broker of Firm

138207

License No.

gary.mabray@colliers.com

Email

(713) 830-2104

Phone

##### Patrick Duffy, MCR

Licensed Supervisor of Sales Agent/  
Associate

604308

License No.

patrick.duffy@colliers.com

Email

(713) 830-2112

Phone

##### Tom Condon, Jr.

Sales Agent/Associate's Name

419324

License No.

tom.condon.jr@colliers.com

Email

(713) 830-4007

Phone

\_\_\_\_\_  
Buyer/Tenant/Seller/Landlord Initials

\_\_\_\_\_  
Date