

# 5928

## PASCAL COURT

CARLSBAD, CA 92008

CBRE



### PROPOSAL TO LEASE



**KnowledgeCity<sup>®</sup>**  
Learning Solutions





Bob Cowan  
5780 Fleet Street  
Suite 100  
Carlsbad, CA 92008  
  
www.cbre.com

April 21, 2023

Hank Jenkins  
Colliers  
Sent via email

RE: KnowledgeCity, a \_\_\_\_\_ company, – Proposal to lease Suites 200 & 300 at 5928 Pascal Court in Carlsbad, CA 92008

Dear Hank:

On behalf of AAE Pacific Park Associates, LLC, I am pleased to submit this proposal for KnowledgeCity to lease suite 200 & 300 at 5928 Pascal Ct in Carlsbad.

The Terms and Conditions of our proposal are as follows:

1. **TENANT:** KnowledgeCity, a \_\_\_\_\_ company ("Tenant")
2. **LANDLORD:** AAE Pacific Park Associates, LLC ("Landlord")
3. **PROJECT / BUILDING:** 5928 Pascal Court in Carlsbad, California ("Building")
4. **PREMISES:** Tenant shall lease Suite 200 (12,670 SF) and Suite 300 (12,671 SF), consisting of approximately 25,341 total rentable square feet on the second and third floor within the building ("Premises").
5. **INITIAL LEASE TERM:** Initial Lease Term shall be:

<u>Suite</u>	<u>Term</u>	<u>Approximate Commencement Date</u>
200	66 months	September 1, 2023
300	60 Months	March 1, 2024

6. **COMMENCEMENT DATE:** Commencement Date to be upon substantial completion of tenant improvements, estimated to be September 1, 2023 for Suite 200 and March 1, 2024 for Suite 300 ("Commencement Date").
7. **BASE TERM MONTHLY RENTAL RATE:** The Base Rent for the Premises for the first twelve months of the Lease Term shall be \$2.20 per rentable square foot, per month, plus electricity. The rent shall increase by a fixed 3% on each anniversary of the Lease Commencement Date.
8. **RENTAL ABATEMENT:** Landlord shall abate two (2) months of the initial Lease Term in months two (2) through three (3). Tenant shall be responsible for utilities during Rental Abatement months.

- 9. PRIOR OCCUPANCY:** Tenant and its contractors, subcontractors, agents, etc. will be permitted to enter the Premises fifteen (15) days prior to the Lease Commencement Date with no obligation to pay the Base Rent or any Occupancy Costs upon mutual execution of a lease document, presentation of a valid certificate of insurance, receipt of deposits for the purpose of installing furniture, fixtures, equipment, and leasehold improvements.
- 10. OPTION TO EXTEND:** Tenant shall have one (1) option to extend the term of the Lease for all space then demised under the Lease. The option terms shall be for a period of five (5) years each. Tenant's exercise of any option shall be upon first giving Landlord written notice of its intention to exercise any such option no sooner than 12 months but no later than 9 months prior to the expiration of the then-current term. Such extension shall be upon the same terms and conditions as the Lease, except that the base rent, base year and other economic concessions will be adjusted to the then-prevailing fair market rental rate for comparable Class "A" steel framed office buildings constructed in Carlsbad since 2004. In the event the parties cannot agree on a Fair Market value, the lease shall provide for baseball arbitration. In no event shall the new starting monthly rent be less than 103% of the last month's rent.
- 11. BASE YEAR AND OPERATING EXPENSES:** The Base Year shall be calendar year. Tenant shall be responsible for its proportionate share of operating expenses over a base year of 2024 ("Additional Rent"). Operating Expenses are based on normal business hours of Monday through Friday 8:00 a.m. to 6:00 p.m. and Saturdays 8:00 a.m. to 12:00 p.m. Additional Rent will be calculated on a grossed-up basis reflecting operating expenses as if the building were 95% occupied.
- 12. TENANT IMPROVEMENTS:** Landlord shall improve the Premises to be constructed in accordance with a mutually acceptable space plan and tenant improvement plan using building standard tenant improvements ("Tenant Improvements") at a cost not to exceed twenty (\$20/rsf) per rentable square foot ("tenant improvement allowance"). This shall include the cost of design, architect and engineer's fees, cost of permits, materials, labor, general contractor's fees, Landlord supervision, and construction. Tenant shall be allowed to hire its own supervision at Tenant's sole cost. Landlord shall forward, at Landlord's earliest opportunity, autoCAD as-builts of the Premises for Tenant's commencement of space planning.
- Any improvement costs over and above the tenant improvement allowance (\$20/rsf) shall be at the sole cost and expense of the tenant.
- 13. BUILDING HOURS/ HVAC:** Landlord, as an operating expense of the Building, shall furnish common area lighting and shall operate the main cooling tower HVAC equipment Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturdays from 9:00 a.m. to 1:00 p.m. ("Building Hours"), except for normal recognized holidays. After hours HVAC is available on demand by Tenant at the rate of \$35.00 per hour per zone.
- 14. FIRST MONTH'S RENT & SECURITY DEPOSIT:** Upon lease execution, Tenant to pay (i) a security deposit in an amount TBD upon review of the tenant's last three years financial statements and (ii) the first month's Base Rent.
- 15. PARKING:** Tenant shall have the right to use not more than 4.0 parking spaces per 1,000 (4.0/1,000) usable square feet of office space.

- 16. USE:** The Premises may be used for office or other use permitted under applicable laws and zoning.
- 17. SIGNAGE:** Landlord, at Landlord's expense, shall furnish Tenant with Building standard suite signage and Building directory signage on the building directory board in the lobby of the Building. That the tenant shall be granted a building top sign position at their own cost and expense.
- 18. RIGHT TO SUBLEASE OR ASSIGN:** With Landlord's reasonable prior written consent.
- 19. JANITORIAL SERVICES:** Landlord shall be responsible for five (5) day per week janitorial services to the Premises, except on National and State Holidays.
- 20. ACCESS:** Tenant shall have access to the Building and Premises 24 hours a day, 7 days per week.
- 21. BROKERAGE:** CBRE represents Landlord ("Landlord's Broker") and Colliers International (Hank Jenkins) represents the Tenant ("Tenant's Broker"). Upon full execution of a lease, Landlord will owe ("Tenant's Broker") through Landlord's Broker a commission equal to 4% of the total consideration for the first five (5) years and 2% for each year thereafter of the Initial Lease Term. Said commission shall be payable fifty percent (50%) upon lease execution and fifty percent (50%) upon Commencement Date
- 22. CONFIDENTIALITY:** Landlord, Tenant, Landlord's Real Estate Broker(s), and Tenant's Broker(s), agree not to disclose any terms and conditions of this Letter of Intent to any non-affiliated third parties.
- 23. CONTINGENCIES:** This Proposal is subject to and contingent upon the following approvals:
- a) The execution of Landlord's Lease agreement consistent with this letter in a form and substance satisfactory to both parties;
  - b) The understanding that neither party may claim any legal rights against the other by reason of the signing of this letter or by taking any action in reliance thereon and that no obligation whatsoever between them shall arise until a lease has been fully executed by both parties;
  - c) Landlord's review and approval of Tenant's financial statements, including but not limited to two (2) years prior Income Statement and Balance Sheets along with current year-to-date Income Statement and Balance Sheet, other related documents as requested and documentation of legal entity;
  - d) Availability of the subject premises

**LANDLORD AND TENANT ACKNOWLEDGE THAT THIS PROPOSAL IS NOT A LEASE AND IS NOT BINDING ON EITHER PARTY. THIS PROPOSAL IS INTENDED AS THE BASIS FOR PREPARATION OF A LEASE. THE LEASE SHALL BE SUBJECT TO LANDLORD'S AND TENANT'S APPROVAL, AND ONLY A FULLY EXECUTED LEASE SHALL CONSTITUTE A BINDING AGREEMENT. BROKER MAKES NO WARRANTY OR REPRESENTATION TO LANDLORD OR TENANT THAT ACCEPTANCE OF THIS PROPOSAL WILL GUARANTEE THE EXECUTION OF A LEASE.**

The parties to this letter agree that this letter only describes some of the important terms of a lease that the parties may elect to enter into, and that the parties have not agreed on all of the important terms and conditions of the lease. The parties agree that this letter does not constitute a binding agreement, and that the parties will only be bound by an agreement if and when a final written lease agreement acceptable to both parties is executed and delivered by both parties. All of the terms and conditions of the final lease agreement shall be acceptable to both parties in each of their sole and absolute discretions. This letter shall not constitute an agreement to negotiate, and it is the intention of the parties that either party shall have the right to elect at any time for any reason or no reason not to proceed with

further negotiations. The parties expressly disclaim any legal obligation to negotiate in good faith. The parties each acknowledge and agree that they are proceeding with the lease negotiations at their sole cost and expense, and that a they may incur substantial transaction costs (e.g., attorneys fees, lost opportunity costs etc.) (the "Costs") if the other party terminates negotiations. The parties agree that under no circumstances will a party be liable to the other party for Costs due to that parties election to terminate the negotiations. The parties acknowledge that future negotiations may occur concerning the terms of the lease, drafts of the lease may be prepared, correspondence and e-mails concerning the terms of the lease may be exchanged and that changes may be made to a draft lease agreement based on the future negotiations of the parties (collectively, "Future Negotiations"). The parties agree that the terms and conditions of this paragraph will apply to and be deemed a part of all Future Negotiations, and that Future Negotiations are not intended to modify the intentions of the parties as expressed in this paragraph.

This proposal shall expire five (5) days after delivery to Tenant. Should you have any questions on the aforementioned, please feel free to contact me at (760) 840-7664.

Sincerely,  
**CBRE**

A handwritten signature in black ink that reads "Bob Cowan". The signature is written in a cursive, flowing style.

**Bob Cowan**  
First Vice President  
bob.cowan@cushwake.com  
+1 760 438 8510  
LIC# 01838109

The undersigned has read the foregoing, understands that this letter is completely non-binding and desires to pursue further discussions with Landlord regarding a possible lease in this property.

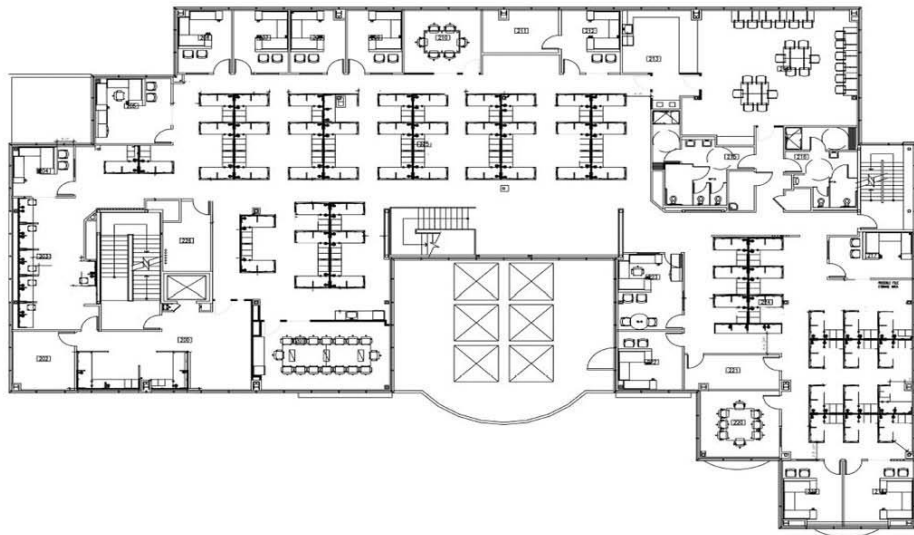
TENANT: KnowledgeCity, a \_\_\_\_\_ company

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

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

**EXHIBIT A**  
5928 Pascal Ct, Carlsbad CA 92008

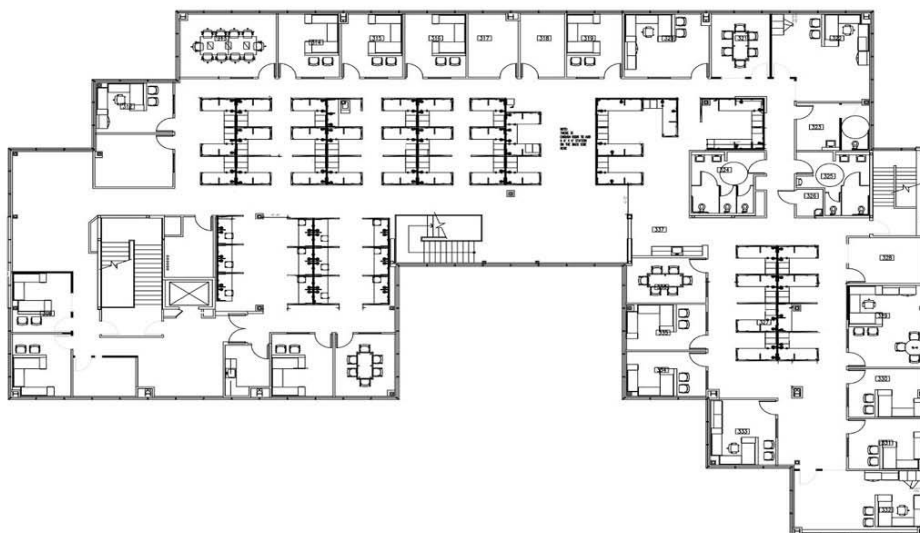
**FLOOR PLAN**  
**SUITE 200**  
12,670 RSF



# FLOOR PLAN

## SUITE 300

12,671 RSF





# HIGHLIGHTS

High-end office building located in the Carlsbad Research Center

Plug-and-play fully-furnished opportunity

Convenient access to the I-5 Freeway, Palomar Airport Road and El Camino Real

Walking distance to multiple cafes, with close proximity to an abundance of retail/service amenities

Beautifully landscaped with outdoor collaboration seating area

Building and monument signage available

Ample parking (4.0 spaces per 1,000 square feet)



**NOTICE TO OWNERS, BUYERS AND TENANTS REGARDING ENVIRONMENTAL MATTERS,  
AMERICANS WITH DISABILITIES ACT AND RELATED LAWS, FLOOD DISCLOSURE, ZONING/USE DISCLOSURE AND ALQUIST-PRIOLO  
SPECIAL EARTHQUAKE FAULT ZONING ACT**

**ENVIRONMENTAL MATTERS**

It is essential that all parties to real estate transactions be aware of the health, liability and economic impact of environmental factors on real estate. Cushman & Wakefield does not conduct investigations or analyses of environmental matters and, accordingly, urges the parties to a real estate transaction to retain qualified environmental professionals to determine whether hazardous or toxic wastes or substances (such as asbestos, PCBs and other contaminants or petro-chemical products stored in underground tanks) or other undesirable materials or conditions are present at the property and, if so, whether any health danger or other liability exists. Such substances may have been used in the construction or operation of buildings or may be present as a result of previous activities at the property.

Various laws and regulations have been enacted at the federal, state and local levels dealing with the use, storage, handling, removal, transport and disposal of toxic or hazardous wastes and substances. Depending upon past, current and proposed uses of the property, it may be prudent to retain an environmental expert to conduct a site investigation and/or building inspection. If hazardous or toxic substances exist or are contemplated to be used at the property, special governmental approvals or permits may be required. In addition, the cost of removal and disposal of such materials may be substantial. Consequently, legal counsel and technical experts should be consulted where these substances are or may be present.

**AMERICANS WITH DISABILITIES ACT AND RELATED LAWS**

As an Owner or tenant of real property, you may be subject to the Americans with Disabilities Act (the ADA), a Federal law codified at 42 USC Section 12101 et seq. Among other requirements of the ADA that could apply to your property, Title III of the ADA requires Owners and tenants of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons by January 26, 1992. The regulations under Title III of the ADA are codified at 28 CFR Part 36.

We recommend that you and your attorney review the ADA and the regulations, and, if appropriate, your proposed lease or purchase agreement, to determine if this law would apply to you, and the nature of the requirements. These are legal issues. Cushman & Wakefield cannot give you legal advice on these issues.

Furthermore, all California commercial leases regardless of size executed on or after July 1, 2013 must contain a provision disclosing whether the premises have been inspected by a government-approved Certified Access Specialist (CASP) and if so, whether the premises have been determined to be in compliance with all applicable construction-related disability accessibility standards. The law (California *Civil Code* §1938) does not require a landlord to conduct a CASp inspection of the property; however, it does require that the landlord disclose whether or not an inspection has been completed and if so, whether the property meets the applicable accessibility standards.

**FLOOD DISCLOSURE**

If the premises is located in a Federally Designated Flood Zone, the Tenant's real and personal property situated on or in the premises is not protected by the hazard insurance policy for the property carried by the Owner. The Tenant is responsible for investigating the Flood Zone status of the premises and obtaining insurance to cover the Tenant's property if it so desires.

**ZONING/USE DISCLOSURE**

Prior to executing a lease, the Tenant is responsible for determining that the zoning applicable to the property allows the Tenant to use the premises for the Tenant's intended use, and that all building codes, parking requirements, and other governmental requirements, improvements required, and permits necessary have been met or are available to Tenant. Cushman & Wakefield has made no representations, except in writing, if any, concerning the zoning and allowable use of the premises and any requirements that may be imposed upon the Tenant by any governmental agency. If the Tenant's use of the premises requires a Use Permit or other permits from a governmental authority it could take several months to obtain same, and Tenant may still be responsible for the payment of rent and other charges whether or not such permits are ultimately obtained.

**ALQUIST-PRIOLO SPECIAL EARTHQUAKE FAULT ZONING ACT**

The property may be situated in an Earthquake Fault Zone as designated under the Alquist-Priolo Earthquake Fault Zoning Act, Sections 2621-2630 inclusive, of the California Public Resources Code; and, as such the construction of development on the property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered with the State of California, unless such report is waived by the city or county under the terms of that Act. No representations on this subject are made by Cushman & Wakefield or its agents or employees, and the Tenant/Purchaser is advised to make its own inquiry into this situation prior to entering into a lease or sale agreement.

By your signature below, you acknowledge that you have read and understand this disclosure and have received a copy:

Received on \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**DISCLOSURE REGARDING  
REAL ESTATE AGENCY RELATIONSHIP**  
(As required by the Civil Code)

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

**SELLER/LESSOR'S AGENT**

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

To the Seller/Lessor:

A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller/Lessor.

To the Buyer/Lessee and the Seller/Lessor:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

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

**BUYER/LESSEE'S AGENT**

A Buyer/Lessee's agent can, with a Buyer/Lessee's consent, agree to act as agent for the Buyer/Lessee only. In these situations, the agent is not the Seller/Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller/Lessor. An agent acting only for a Buyer/Lessee has the following affirmative obligations:

To the Buyer/Lessee:

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

To the Buyer/Lessee and the Seller/Lessor:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**AGENT REPRESENTING BOTH SELLER/LESSOR AND BUYER/LESSEE**

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller/Lessor and the Buyer/Lessee in a transaction, but only with the knowledge and consent of both the Seller/Lessor and the Buyer/Lessee.

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

(a) A fiduciary duty of utmost care, integrity, honesty, and loyalty in the dealings with either the Seller/Lessor or the Buyer/Lessee.

(b) Other duties to the Seller/Lessor and the Buyer/Lessee as stated above in their respective sections.

In representing both Seller/Lessor and Buyer/Lessee, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer/Lessee's or Seller/Lessor's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller/Lessor's willingness to accept a price less than the listing price or the Buyer/Lessee's willingness to pay a price greater than the price offered.

**SELLER/LESSOR AND BUYER/LESSEE RESPONSIBILITIES**

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller/Lessor or Buyer/Lessee from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer/Lessee, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Seller/Lessor and Buyer/Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

[Acknowledgement Follows]

CBRE Inc

00409987

Agent

CA License

**Salesperson or Broker Associate, if any:**

Bob Cowan

CA License # 01838109

Signature

Date

**Seller/Lessor:**

AAE Pacific Park Associates, LLC

Signature

Date

**Buyer/Lessee:**

KnowledgeCity

Signature

Date

**2079.13.** As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.

The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any Buyer/Lessee or Seller/Lessor who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions.

(b) "Buyer/Lessee" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a Seller/Lessor through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer/Lessee" includes vendee or lessee of real property.

(c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29.

(d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the Seller/Lessor and the Buyer/Lessee in a real property transaction.

(e) "Listing agreement" means a written contract between a Seller/Lessor of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a Buyer/Lessee, including rendering other services for which a real estate license is required to the Seller/Lessor pursuant to the terms of the agreement.

(f) "Seller/Lessor's agent" means a person who has obtained a listing of real property to act as an agent for compensation.

(g) "Listing price" is the amount expressed in dollars specified in the listing for which the Seller/Lessor is willing to sell the real property through the Seller/Lessor's agent.

(h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.

(i) "Offer to purchase" means a written contract executed by a Buyer/Lessee acting through a Buyer/Lessee's agent that becomes the contract for the sale of the real property upon acceptance by the Seller/Lessor.

(j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.

(k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a Buyer/Lessee, Seller/Lessor, or both a Buyer/Lessee and Seller/Lessor to act in that transaction, and includes a listing or an offer to purchase.

(l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the Seller/Lessor to the Buyer/Lessee and includes exchanges of real property between the Seller/Lessor and Buyer/Lessee, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration.

(m) "Seller/Lessor" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller/Lessor" includes both a vendor and a lessor of real property.

(n) "Buyer/Lessee's agent" means an agent who represents a Buyer/Lessee in a real property transaction.

**2079.14.**

A Seller/Lessor's agent and Buyer/Lessee's agent shall provide the Seller/Lessor and Buyer/Lessee in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that Seller/Lessor and Buyer/Lessee, except as provided in Section 2079.15, as follows:

(a) The Seller/Lessor's agent, if any, shall provide the disclosure form to the Seller/Lessor prior to entering into the listing agreement.

(b) The Buyer/Lessee's agent shall provide the disclosure form to the Buyer/Lessee as soon as practicable prior to execution of the Buyer/Lessee's offer to purchase. If the offer to purchase is not prepared by the Buyer/Lessee's agent, the Buyer/Lessee's agent shall present the disclosure form to the Buyer/Lessee not later than the next business day after receiving the offer to purchase from the Buyer/Lessee.

**2079.15.**



In any circumstance in which the Seller/Lessor or Buyer/Lessee refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

**2079.17.**

(a) As soon as practicable, the Buyer/Lessee's agent shall disclose to the Buyer/Lessee and Seller/Lessor whether the agent is acting in the real property transaction as the Buyer/Lessee's agent, or as a dual agent representing both the Buyer/Lessee and the Seller/Lessor. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the Seller/Lessor, the Buyer/Lessee, and the Buyer/Lessee's agent prior to or coincident with execution of that contract by the Buyer/Lessee and the Seller/Lessor, respectively.

(b) As soon as practicable, the Seller/Lessor's agent shall disclose to the Seller/Lessor whether the Seller/Lessor's agent is acting in the real property transaction as the Seller/Lessor's agent, or as a dual agent representing both the Buyer/Lessee and Seller/Lessor. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the Seller/Lessor and the Seller/Lessor's agent prior to or coincident with the execution of that contract by the Seller/Lessor.

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

**Name of Seller/Lessor Agent:**

CBRE, Inc.  
CA License #00409987  
Bob Cowan

is the agent of (check one):

- ☒ the seller / lessor exclusively; or  
☐ both the buyer / lessee and the seller / lessor.

**Name of Buyer/Lessee Agent:**

Colliers  
Hank Jenkins  
CA License #01981328

is the agent of (check one):

- ☐ the buyer / lessee exclusively; or  
☐ both the buyer / lessee and the seller / lessor.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

**2079.19.**

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

**2079.20.**

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

**2079.21.**

(a) A dual agent may not, without the express permission of the Seller/Lessor, disclose to the Buyer/Lessee any confidential information obtained from the Seller/Lessor.

(b) A dual agent may not, without the express permission of the Buyer/Lessee, disclose to the Seller/Lessor any confidential information obtained from the Buyer/Lessee.

(c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the Seller/Lessor is willing to accept a price less than the listing price or the Buyer/Lessee is willing to pay a price greater than the price offered.

(d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

**2079.22.**

Nothing in this article precludes a Seller/Lessor's agent from also being a Buyer/Lessee's agent. If a Seller/Lessor or Buyer/Lessee in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

**2079.23.**

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

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

**2079.24.**

Nothing in this article shall be construed to either diminish the duty of disclosure owed Buyer/Lessee's and Seller/Lessor's by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.