

Edward S. Gordon Company

JBO

Brokerage
Agreement

November 25, 1980

Edward S. Gordon Company Incorporated
405 Lexington Avenue
New York, New York 10017

Gentlemen:

1. The undersigned, ("Owner"), the owner of that certain leasehold interest in the real property located at ~~405~~ Madison Avenue, New York, New York (the "Leasehold"), and the office building ("Building"), to be constructed thereon, hereby grants Edward S. Gordon Company Incorporated ("Gordon") the exclusive right (except as otherwise provided herein and in a separate letter of even date) to obtain tenants for, and negotiate leases for, all or any portion of the space in the Building available for rental, and in connection therewith Gordon shall conduct the following activities:

(a) advise Owner in the promotion and advertising of the Building, including the development and implementation of marketing strategies;

(b) assist Owner in the development of the business terms of a standard lease form;

(c) assist Owner in the negotiation of leases including the preparation of tenant improvement work letters; and

(d) undertake such other activities as is customary for a leasing agent in the leasing of a first class office building in the City of New York.

2. (a) The initial term of this Agreement ("Initial Term") shall commence on the date hereof and shall expire on June 30, 1982. After the expiration of the Initial Term, the term of this Agreement shall be automatically extended for successive periods of six months each, commencing July 1, 1982 upon all of the terms and conditions of this Agreement. Notwithstanding anything herein to the contrary, Owner or Gordon may cancel this Agreement at any time, whether during the Initial Term or any renewal period, upon 30 days written notice given by one to the other; provided, however, that no cancellation notice given by Owner shall have the effect of

cancelling this Agreement on a date earlier than the earlier of (x) June 15, 1981 or (y) the date which is five months after the earlier of (i) the date on which the first promotional advertisement, issued by Gordon, appears in any advertising media offering space in the Building for rent or (ii) the date on which leasing brochures, issued by Gordon, are distributed to the real estate brokerage community.

(b) Upon the cancellation or termination of this Agreement, Gordon shall promptly deliver to Owner copies of all files, books, records, documents, prospect lists, and other matters relating to the Building in Gordon's possession.

(c) Gordon agrees that it shall not accept or maintain any funds, whether by deposit or otherwise, paid by tenants or prospective tenants and shall direct that such funds be paid to Owner.

3. A. If, during the term of this Agreement, any space in the Building is leased to any person, firm or entity other than as set forth in Paragraphs 10 and 11 below, Owner agrees to pay Gordon and Gordon agrees to accept in full payment for all services rendered, whether or not Gordon is the procuring cause of such leasing, a commission computed as follows:

- (a) for each lease of which no other broker is a procuring cause, a commission equal to 28% of the average annual fixed rent under such lease, such commission to be payable whether or not Gordon is a procuring cause of such lease;
- (b) for each lease of which one or more brokers other than Gordon are procuring causes, a commission equal to 7% of the average annual fixed rent under such lease.

In the event of a net lease of the entire Building, the commission payable shall be based only upon the net rent (exclusive of percentage rents) actually payable to Owner.

As used in this Paragraph 3 the terms "average annual fixed rent" and "fixed rent" shall have the meanings specified in Paragraphs 4 and 5D of this Agreement.

B. (i) No commission or compensation shall be payable to Gordon for any increase in space or rental agreed upon with any tenant after the expiration or earlier termination of this Agreement or by reason of any renewals or extensions of the term of any lease; and

(ii) Commissions shall be paid to Gordon at the rates hereinabove set forth for any increases of space or rentals which are agreed upon with any tenant prior to the expiration or earlier termination of this Agreement.

C. Any commission paid pursuant to this Agreement shall be considered to cover any and all out-of-pocket administrative and overhead expenses incurred by Gordon in connection with the leasing of the space in the Building and the performance of its obligations hereunder. Unless otherwise agreed to by the parties, and except as provided herein with respect to advertising and publicity approved by Owner, Gordon will not be entitled to receive reimbursement from Owner for any expense incurred by Gordon whatsoever.

4. For the purposes of this agreement, "fixed rent" shall mean the aggregate basic rental payable to Owner by the tenant under a lease over the shorter period of (i) the initial term of the lease or (ii) the first ten years of the term of the lease (the "Commission Period"), exclusive or net of the following amounts (if specifically stated in the lease or in any other agreement entered into in connection with or as an inducement to the lease): (a) amounts payable, by reason of rent inclusion or otherwise, for electricity, or after hours utilities, utilities services, heat and/or air-conditioning or other services; (b) real estate tax escalation adjustments, whether or not Owner is obligated to make payments for real estate taxes to the City of New York or is excused therefrom pursuant to an abatement of tax payments, in whole or in part, granted by the City of New York or any agency thereof; (c) operating expense or wage rate escalation adjustments, cost of living increases or any other escalation adjustments or lease cancellation payments; (d) any rent paid or credited by Owner to a tenant by reason of Owner's retaining as subtenant or otherwise any portion of the premises demised to such tenant; (e) with respect to construction work, repairs and/or decorating (or other work) which Owner has agreed to perform for such tenant, any amounts (i) undertaken to be paid by Owner to the tenant, or given as an allowance to the tenant (either by way of a credit against rentals or in a lump sum) or (ii) undertaken to be paid by the tenant to Owner (either by way of increased rentals or in a lump sum; provided, that in either event, there is a specific statement in the lease that such increased rental or lump sum is by reason of Owner's agreement to perform construction work, repairs and/or decorating or other work); (f) any moving costs of tenant paid by Owner or credited to tenant; and (g) any other credits given by Owner to tenant against rent for any reason, including but not limited to, rent

concessions. The "average annual fixed rent" shall be determined by dividing the fixed rent for the Commission Period (exclusive of renewal terms or lease extensions whether or not a renewal term or option is contained in the lease) by the number of years (and fractions thereof) in the Commission Period; provided, however, that (x) with respect to any lease which provides for adjustments in "fixed rent", if the "fixed rent" payable during any portion of the Commission Period is not determinable on the date the Conditions (as defined in Paragraph 5) have been fulfilled, the "fixed rent" during such portion of the Commission Period shall be deemed to be at the annual rate payable during the year immediately preceding such portion of the Commission Period and (y) with respect to any lease which provides for the payment of percentage rentals, Owner and Gordon shall agree, prior to the date on which the Conditions have been fulfilled, as to the value during the Commission Period of such percentage rental and if the parties are unable to agree thereon, the determination of such value shall be submitted to a third party to be agreed upon by Owner and Gordon.

5. A. Subject to the provisions of subparagraph D below, any commission due Gordon shall be deemed earned in full only upon the satisfaction of all of the following conditions ("Conditions"):

(a) (i) a written lease for the applicable space in form satisfactory to Owner and Owner's attorneys is (x) unconditionally executed and delivered by Owner and the tenant and (ii) the security deposit, if any, and advance rent required to be paid under such lease at the time of its execution is paid by the tenant;

(b) the term of the lease commences; and

(c) the tenant (or a permitted assignee or subtenant of tenant) under said lease unconditionally (in all respects other than the right to submit a punch list in respect of Landlord's construction, and finishing, of the leased premises) accepts and enters into possession of the leased premises and thereafter pays the first installment of the annual rent required to be paid pursuant to said lease after entering into possession.

B. Owner agrees to pay each commission, if earned as hereinabove provided, in installments as follows:

(a) Twenty (20%) percent thereof on the date ("First Payment Date") which is thirty (30) days after the date on which the Conditions have been fulfilled (as hereinabove provided);

(b) Twenty (20%) percent thereof on the date which is one (1) year after the First Payment Date; provided that either tenant is not then in default, beyond any applicable grace period, in payment of rent under the lease or such default is due to an act or failure to act of Owner;

(c) Thirty (30%) percent thereof on the date which is two (2) years after the First Payment Date; provided that either tenant is not then in default, beyond any applicable grace period, in payment of rent under the lease or such default is due to an act or failure to act of Owner; and

(d) Thirty (30%) percent thereof on the date which is three (3) years after the First Payment Date; provided that either tenant is not then in default, beyond any applicable grace period, in payment of rent under the lease or such default is due to an act or failure to act of Owner.

If on the date on which any commission installment in respect of a lease is payable to Gordon the tenant is in default, beyond any applicable grace period in the payment of rent and such default is not due to an act or failure to act of Owner, then one-half of the commission installment payable on such date shall be paid by Owner and the balance of the installment shall be paid by Owner on such date as the rent default has been cured. If any commission installment due in respect of a lease is not paid by Owner within thirty (30) days after notice from Gordon to Owner in writing that such installment is past due then, if not paid within 30 days after a second notice given by Gordon to Owner, any installment in respect of such lease not yet payable pursuant to this Agreement shall thereupon, at the option of Gordon, be accelerated and become due and payable in full.

C. If (a) for any reason whatsoever, including Owner's failure to complete the premises demised by the lease because of inability to finance such construction, acts of God, strikes or other labor difficulties, governmental restrictions, acts of the public enemy, Owner's fault, casualty, or causes beyond Owner's control the tenant does not take possession of the demised premises and commence the payment of rent (other

than deposits of rental called for under the lease prior to the commencement of the regular periodic installments of rental), or (b) for any reason whatsoever, including but not limited to, acts, omissions, negligence or the willful default of Owner, its agents, employees or representatives, a lease shall not be entered into between the Owner and a tenant, then, in any such event, no commission or brokerage, or any portion thereof, shall be deemed to be due, payable or earned, or shall be paid to Gordon or any other broker by the Owner, and the Owner is and shall be relieved from liability for the payment of any and all commissions, claims or charges whatsoever in respect of such transaction. It is expressly agreed that Owner shall have the unqualified right, in its sole and absolute discretion, to refuse to enter into any lease with a tenant for any reason whatsoever without incurring any obligation to Gordon or any other broker for the payment of commissions or otherwise.

D. The "fixed rent" payable by a tenant shall be deemed to be (x) reduced by, (i) an amount (a) equal to any credits allowed to the tenant by Owner against rentals under the lease for payments made by the tenant to its landlord in another building to satisfy, cancel or discharge its obligations under its existing leases or agreements, and/or (b) paid by or on behalf of Owner to any landlord, in another building, of the tenant to satisfy, cancel or discharge the tenant's obligations under its existing leases, (ii) any expense paid by or on behalf of Owner for a tenant's space in another building ("take-over space") if Owner is required to pay such expense pursuant to a lease or separate agreement entered into and affecting the Building, (iii) the amount of any redecorating and legal expense and brokerage commissions paid by Owner to relet such take-over space, (iv) the amount of any loss incurred by Owner in assigning a lease of takeover space or subletting such takeover space, and (v) the amount of the "fixed rent" for any portion of a Commission Period remaining with respect to a lease under which tenant has ceased paying rent and (y) increased by any rent paid, or payments made, to Owner for the take-over space. All adjustments to "fixed rent" and consequent adjustments in commissions payable to Gordon, pursuant to the application of the provisions of this subparagraph D., shall be made as the amounts referred to in this subparagraph D are determined and shall not be based on estimates. If any overpayment in commissions shall have been made by Owner, such overpayment shall be repaid promptly to Owner and if not so repaid Owner may deduct the same from any other amounts due to Gordon. Any underpayment to Gordon shall be reimbursed over the balance of the Commission Period.

6. Gordon shall not employ or use co-brokers or sub-brokers to obtain tenants for the Building without Owner's prior written consent first obtained in each instance; however, the sending of brochures referred to in Paragraph 2(a)(ii) shall not be deemed a violation of this Paragraph 6. With respect to any prospective lease or tenant Owner may enter into agreements directly with any other brokers and at Owner's written request, Gordon, as agent for Owner (or in such other capacity as the parties may agree), will enter into agreements directly with such brokers on terms reasonably approved in advance in writing by Owner. Such co-brokers or sub-brokers shall be paid by Owner upon terms and conditions agreed to by Owner and such co-brokers or sub-brokers. Owner may retain co-brokers (on a non-exclusive basis) at its sole option at any time it desires with respect to one or more prospective leases or tenants but no such engagement shall be in the form of a general leasing agency. The fact that Owner may retain one or more co-brokers is not intended to derogate from the provisions of Paragraphs 1 and 3A hereof and notwithstanding such engagement by Owner, Gordon shall be entitled to the payment of commissions in accordance with the applicable provisions of Paragraphs 1 and 3A hereof.

7. Gordon shall use the best efforts (consistent with practices in the leasing and brokerage business in New York City) of itself and Edward S. Gordon, Henry Gallin, Carol Nelson and others in its organization to negotiate and consummate leases for all available space in the Building at rentals and upon other terms and conditions acceptable to Owner, in its sole discretion. Gordon agrees that Henry Gallin, Executive Vice President, shall be the senior officer in charge of this account and that Edward S. Gordon will assume an active role in the promotion of the Building and the negotiation and consummation of leases for space therein. Owner acknowledges that both Edward S. Gordon and Henry Gallin are senior executives of Gordon and necessarily involved in many projects at the same time and agrees that neither shall be required to devote himself exclusively to this project but only to devote such time as Messrs. Gordon and Gallin determine, in their reasonable judgment, is appropriate under all of the circumstances. Owner shall have the absolute right to approve all other employees selected by Gordon to work on this account. The leasing of such space shall be done as expeditiously as possible, consistent with sound business practices under all of the circumstances relating thereto and the Gordon organization shall actively and diligently promote the Building and the space therein.

8. Owner hereby authorizes Gordon to obtain, prepare and secure, subject to Owner's prior written approval but at Owner's expense, renting signs, renting plans, circular matter and other forms of advertising and promotion for the Building and portions thereof. Owner agrees in each such instance to promptly pay such expenses or reimburse Gordon in the event that Gordon has paid such expenses.

9. Owner shall promptly inform Gordon of all inquiries which Owner may receive relating to space in the Building and the names of any brokers with whom Owner is dealing and Owner shall promptly advise Gordon of the status of all pending negotiations known to Owner with respect to the leasing of space within the Building. Gordon shall promptly submit all inquiries, offers and applications which it receives for space in the Building to Owner, setting forth all details with respect thereto, and will keep Owner advised, in writing, on a semi-monthly basis, of all inquiries, applications and offers which it has received or is soliciting with the names and addresses of prospective tenants involved, and the names and addresses of any inquiring brokers. Gordon shall not execute any lease on behalf of Owner or commit Owner to make any lease. Negotiations with respect to the leasing of space in the Building may be conducted through and/or in conjunction with Gordon or by Owner independently. Gordon shall supply Owner with such other reports and information with respect to the leasing program as Owner may reasonably request. The fact that Owner retains the right to negotiate leases independently of Gordon is not intended to derogate from the provisions of Paragraphs 1 and 3A hereof and notwithstanding such independent negotiation, or participation in negotiations, Gordon shall be entitled to payment of commissions in accordance with the applicable provisions of Paragraphs 1 and 3A hereof (i.e., in accordance with subparagraph (a) if no other broker is a procuring cause and in accordance with subparagraph (b) if one or more brokers other than Gordon are procuring causes).

10. Owner shall not be required to pay any commission with respect to any lease of space in the Building for the use of Owner, Gordon, the owner of the fee estate, or any affiliate or successor of any of them.

11. Gordon agrees that with respect to takeover space from a proposed tenant of the Building Owner shall be free to engage brokers of Owner's choosing, and that no commission shall be due or payable to Gordon on account of (i) the lease, sub-lease, release, surrender or other disposition of any such takeover space or (ii) the sale, in whole or in part, syndication, net sub-lease (except as otherwise provided in Paragraph 3A

hereof with respect to a net lease of the entire Building), financing, refinancing, or other disposition, in whole or in part, of the fee estate, the Leasehold and/or Building, whether or not such disposition arises as a result of an option or right granted to a tenant of the Building pursuant to its lease.

12. Gordon shall submit semi-monthly (and within ten days after the date of expiration or earlier termination of this Agreement) to Owner a written list of all prospective tenants for the Building with whom Gordon certifies it has conducted active negotiations on specific terms. Such list shall set forth the dates, times and location of such negotiations, all details with respect to the subject matter thereof, the proposed space to be leased, the name of the person with whom such negotiations were conducted and the outcome of such negotiations. If within five months after the expiration or earlier termination of this Agreement, Owner shall lease any space within the Building to any tenant(s) whose name appears on the list furnished within ten (10) days after the expiration or earlier termination of this Agreement and with whom Gordon was in active negotiation on such date Owner shall pay Gordon a commission computed as if this agreement had not expired or been terminated, except that Owner shall not, in any event, pay any commission on account of any tenant referred to in Paragraphs 10 or 11 above.

13. Owner and Gordon covenant to treat this agreement as confidential and each agrees not to disclose the contents of this agreement to any party, except as may be required by law or by any proposed lender or mortgagee of the Leasehold or the fee estate.

14. During the Initial Term of this Agreement (or until termination hereof by either party) Gordon will not, without the prior approval of the Owner, act as the exclusive leasing agent for all of the rentable space in any office building now or hereafter under construction (except that Gordon shall be permitted to act as exclusive leasing agent for the office building to be constructed on Third Avenue by a joint venture consisting of Cohen Brothers and Cadillac Fairview Corporation) and located in the area of Manhattan bounded on the West by Seventh Avenue, bounded on the East by the East River, bounded on the South by Forty-Second Street and bounded on the North by Fifty-Ninth Street (except that such northerly boundary shall be Sixty-Second Street on Park Avenue, Madison Avenue and Fifth Avenue), except after such time as leases have been executed for 60% of the rentable area in the Building. The provisions of this Paragraph

14 are not intended to affect or require termination of any exclusive leasing agency presently held by Gordon and Gordon represents and warrants to Owner that it holds no exclusive leasing agency with respect to any building now under construction in the geographic area described in this Paragraph 14.

15. Gordon agrees to indemnify Owner and hold it harmless from any liability, cost or expense including reasonable attorney's fees incurred by reason of any claim made against the Owner by any person or entity for commission, compensation or damages for loss of commission by reason of any act or statement claimed to be made by Gordon. Gordon's total liability hereunder shall be limited to the commission received by Gordon on the particular lease transaction with respect to which such claim is made except that with respect to claims arising out of written agreements between Gordon and a claiming broker other than agreements entered into by Gordon, as Owner's agent or with Owner's approval, pursuant to Paragraph 6 hereof, the limit of Gordon's liability shall be the aggregate amount of commissions paid to or payable to Gordon under the particular lease transaction with respect to which such claim is made. In the event any claim is made or suit instituted on a particular lease transaction under which the Owner claims the benefit of the foregoing indemnification, then

- (a) The Owner shall give Gordon immediate notice thereof in writing;
- (b) Gordon shall have the right to defend against such claim or action by counsel of its own choosing (and reasonably satisfactory to Owner for claims in excess of Gordon's liability hereunder), the total cost of such defense to be included in the foregoing limitation of Gordon's liability;
- (c) Owner shall not settle any claim without Gordon's written consent. Gordon, in its sole discretion, may settle any claim without Owner's consent unless the claim exceeds the foregoing limitation of liability, in which event, such claim or action shall not be settled without the mutual consent of Gordon and the Owner in writing (which consent neither party will unreasonably withhold).

16. Gordon shall not have the right, at any time, whether during negotiations or after consummation of a lease, to release or otherwise disseminate any information or publicity in connection with any lease which may be signed for space in the Building without obtaining the prior written

consent of Owner to each such release and Gordon agrees to hold all such information in confidence and to use the same only in connection with the leasing of the Building.

17. This Agreement sets forth the entire understanding between the parties hereto and cannot be changed except in writing signed by both parties.

18. In the enforcement of its rights hereunder Gordon agrees that it shall not seek or obtain a money judgment or any other right or remedy against any general or limited partners or disclosed or undisclosed principals of Owner. The rights and remedies of Gordon shall be enforced solely against the estate of Owner (or any successor Owner) in the Leasehold (or, in the event of a Tax Free Exchange, Owner's estate in the property received) or the proceeds of any sale of all or any portion of Owner's (or any successor Owner's) interest therein.

19. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that Gordon shall have no right to assign this Agreement without the written consent of Owner.

20. Any notices required or permitted to be given by either party under this Agreement shall be in writing and sent by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Gordon at:

405 Lexington Avenue
New York, New York 10017

To Owner at:

405 Park Avenue
New York, New York 10022

Notices shall be deemed given when so mailed. Either party may change its address for notices by giving notice thereof to the other party pursuant to this Paragraph 20.

If the foregoing is in accordance with your understanding, kindly so indicate by signing and returning a duplicate ori-

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ginal of this letter whereupon the same shall constitute an agreement between Owner and Gordon.

Very truly yours,



By _____
General Partner

Accepted and agreed:

EDWARD S. GORDON COMPANY, INCORPORATED

By _____
President