

# MANDATE

given by

**Strive Real Estate Specialists Proprietary Limited  
hereinafter the “Principal”**

to

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**hereinafter the “Property Practitioner”**

## 1 INTRODUCTION

- 1.1 This Mandate sets out the terms and conditions when commission shall become due and payable to the registered Property Practitioner by the Principal pursuant to such Property Practitioner being the effective cause of the successful conclusion of a lease or sale agreement between the Principal (or its nominee appointed in writing) and a tenant or purchaser so introduced by the Property Practitioner.
- 1.2 One of the purposes of setting out these terms and conditions is to ensure that the relevant broker (property practitioner) is paid its due commission and to avoid situations wherein multiple brokers (property practitioners) claim commission on the same transaction.
- 1.3 By signing this Mandate, you confirm that you are lawfully entitled to earn commission and have read and understood these terms and conditions and that you agree to be bound by them.
- 1.4 Reference to “Principal” in this Mandate shall include, where applicable, any of the landlords which the Principal represents.

## 2 MANDATE

- 2.1 The Property Practitioner agrees that -
  - 2.1.1 the providing of, sending of, making available or reference to marketing material, brochures, fact sheets, vacancy schedules, development concepts and plans and/or proposal documents does not automatically

create a mandate by the Principal to the Property Practitioner to lease or sell any premises and/or property;

- 2.1.2 any introduction by the Property Practitioner to the Principal, in relation to any property does not give rise to any right or entitlement to commission unless the conditions set out in this Mandate are fulfilled;
  - 2.1.3 this Mandate is not given on a sole or exclusive basis and furthermore that no sole or exclusive mandates are granted by the Principal;
  - 2.1.4 an introduction alone is not enough to establish effective cause for the payment of commission. The Property Practitioner must play an active role in all the material steps, including but not limited to the negotiations and must see the lease or sale agreement to its conclusion and final signature in order to be the effective cause of the transaction and as a result entitled to commission;
  - 2.1.5 where following an introduction by one property practitioner, another property practitioner ("second property practitioner") produces an acceptable binding offer, letter of intent, lease and/or sale agreement, or some other written form of commitment to complete a transaction in the discretion of the Principal, then the Principal reserves its right to recognise the second property practitioner as the effective cause of the transaction without any obligation to pay commission to the first introducing property practitioner. The overarching principle is that it is the property practitioner who can demonstrate that he or she was the effective cause of a transaction, as distinct from the introduction, is the property practitioner who is entitled to a commission);
  - 2.1.6 for it to be entitled to commission, he or she must at all relevant times be in possession of a valid and binding Fidelity Fund Certificate issued by the Board of the Property Practitioners Regulatory Authority ("PPRA").
- 2.2 Should the Property Practitioner not be able to arrange an initial meeting (being a first physical or virtual meeting with the Principal or its representative, the Property Practitioner and the potential tenant/ purchaser/ buyer, all present) between a potential tenant/ purchaser/ buyer and the Principal within a period of 30 (thirty) calendar days from the date of the initial introduction by the Property Practitioner to the Principal, then the introduction will be deemed to be of no further effect and will not be recognised by the Principal, unless the Principal, in its sole discretion, extends the period within which the initial meeting must take place by notice in writing to the Property Practitioner.
  - 2.3 For any introduction, the Property Practitioner must confirm in writing to the Principal (i) that they represent the potential tenant/ purchaser/ buyer; and (ii) the particulars of the introduction, including but not limited to referencing the nature of the transaction (lease or sale) and the premises and/or the property it relates

to.

- 2.4 Should the Property Practitioner be unable to bring negotiations regarding the transaction to conclusion within a further 45 (forty five) calendar days from the date of the initial meeting referred to in clause 2.2 above, then the introduction will be deemed to be of no force or effect and will not be recognised by the Principal, unless the Principal, in its sole discretion, extends the period within which the Property Practitioner must conclude such negotiations, including the conclusion of a valid lease/sale agreement, by notice in writing to the Property Practitioner.
- 2.5 The obligation rests on the Property Practitioner to provide written proof that the Property Practitioner has been appointed as the exclusive representative of the potential tenant/ purchaser/ buyer. In the absence of such written proof, the Property Practitioner acknowledges that he or she is not the exclusive agent as aforesaid and therefore that any alternate property practitioner that can conclude a transaction with such potential tenant/ purchaser/ buyer by obtaining an acceptable binding agreement with such alternate property practitioner being entitled to the commission in respect thereof, irrespective of how much time or effort has been expended in attempts to conclude a transaction by the Property Practitioner who made the initial introduction to the Principal.
- 2.6 For the avoidance of doubt, the Parties record that the property practitioner that can provide an acceptable binding agreement from the potential tenant/ purchaser/ buyer will be regarded as the effective cause and as such be the only property practitioner qualifying and entitled to commission.
- 2.7 An introduction by a property practitioner must be in respect of a specific potential tenant/purchaser/buyer. Any associated companies, holding companies, or subsidiaries of the potential tenant/ purchaser/ buyer will not be automatically considered as having been introduced by the property practitioner.
- 2.8 An introduction by a property practitioner must be in respect of a specific premises and/or property. No commission will be payable in respect of any introduction relating to any other premises and/or properties that the potential tenant/ purchaser/ buyer may consider that were not introduced by the property practitioner.
- 2.9 The Property Practitioner must act, in the utmost good faith, for both parties in the negotiation and comply with all Laws, including but not limited to the Property Practitioners Act 22 of 2019 in conclusion of any agreement.
- 2.10 The Principal reserves the right to revive negotiations with a potential tenant/ purchaser/ buyer, without the continued involvement of the Property Practitioner, where such negotiations have been terminated at the election of the potential tenant/ purchaser/ buyer prior to the conclusion of a binding lease or sale agreement, in which case no commission will be due to the Property Practitioner.

### 3 OFFER

Any binding offer from a potential tenant/ purchaser/ buyer that is delivered by a property practitioner to the Principal must be on terms and conditions that are provided by or agreeable to the Principal, to entitle the Property Practitioner to claim commission.

### 4 EFFECTIVE CAUSE

- 4.1 The effective cause of a transaction is achieved only when the Property Practitioner provides the Principal with an acceptable legally binding offer signed by an authorised and legitimate potential tenant/ purchaser/ buyer that is acceptable in the discretion of the Principal .
- 4.2 The Property Practitioner must have complied with the following terms of the mandate in order to be considered the effective cause of the transaction –
- 4.2.1 the Property Practitioner must be actively involved in every material step of the negotiations and must engage meaningfully with the decision makers of the Principal and the potential tenant/ purchaser/ buyer;
  - 4.2.2 the Property Practitioner must use his or her best endeavours, diligently, whilst being committed to identify and resolve, through investigation, research and negotiation, the respective needs of the potential tenant/ purchaser/ buyer in relation to the property leading to the successful conclusion of a transaction;
  - 4.2.3 the Property Practitioner will be expected to, where necessary or appropriate, liaise with any and all professional advisors of either or both parties;
  - 4.2.4 the Property Practitioner is required to record his or her activities in relation to all negotiations and interactions, in regular emails circulated to the relevant parties and forwarded to the Principal;
  - 4.2.5 the Property Practitioner is required to remain fully transparent and demonstrate the utmost level of good faith in terms of the status of the transaction by keeping the Principal informed of all developments in relation to the transaction, including, but not limited to, full disclosure of the potential tenant/ purchaser/ buyer level of interest in the property introduced and the potential tenant/ purchaser/ buyer intention, as far as the Property Practitioner knows, to conclude a transaction. Should the potential tenant/ purchaser/ buyer interest reduce, diminish or cease, the Property Practitioner is to inform the Principal of this change of heart immediately upon the Property Practitioner becoming aware of this;

- 4.2.6 the Property Practitioner is to remain in good favour with all parties to the transaction. If, for any reason, the potential tenant/ purchaser/ buyer ceases or refuses to deal with the Property Practitioner, then any possible entitlement to a commission claim relating to such transaction will fall away;
- 4.2.7 the Property Practitioner must produce a binding agreement that is acceptable to the Principal in order to be entitled to any commission;
- 4.2.8 the Property Practitioner must ensure that it supplies the Principal with all of the potential tenant/ purchaser/ buyer FICA documentation as required by Law;
- 4.2.9 the Property Practitioner is to treat all information between the Principal and the potential tenant/ purchaser/ buyer as privileged and confidential and not to disclose such information to any third party;
- 4.2.10 the Property Practitioner shall not conduct him or herself in such manner that it gives rise to a claim for misrepresentation and where any property practitioner is accused of misrepresentation, no commission shall be payable until such misrepresentation claim has been finally resolved.

## **5 COMMISSION STRUCTURES**

- 5.1 Unless otherwise agreed in writing by the Principal, the following commission payment structure will apply in relation to:
  - 5.1.1 Lease Agreements -
    - 5.1.1.1 5.0% of the gross rental for years 1 to 2
    - 5.1.1.2 2.5% of the gross rental for years 3 to 5
    - 5.1.1.3 1.5% of the gross rental for years 6 to 8
    - 5.1.1.4 1.0% of the gross rental for years 9 to 10
    - 5.1.1.5 for new monthly leases concluded for 1 to 12 months : a pro rata portion of 1 month's gross rental based on number of months in a 12 month period;
  - 5.1.2 Land Sale Agreements, a commission of 2.5% of the value of the land sold.
  - 5.1.3 Building Sale Agreements, a market related commission to be

negotiated between the parties on a case by case basis.

5.2 Terms of reference for the above scales are as follows:

5.2.1 Gross rental shall include:

5.2.1.1 basic rental;

5.2.1.2 rental in respect of storage, balconies, yards and parking;

5.2.1.3 operating costs.

5.2.2 The following items shall not be included for the purposes of calculating commission due and payable to the Property Practitioner:

5.2.2.1 rentalisation of costs or contributions;

5.2.2.2 rates and taxes (unless otherwise agreed to between the parties);

5.2.2.3 business and/or City Improvement District ("CID") levies, sectional title levies and property owners association levies, and/or levies charged in terms of house rules;

5.2.2.4 variable operating cost recovery;

5.2.2.5 any overruns in respect of tenant installation allowance;

5.2.2.6 costs in respect of standby power/water supply;

5.2.2.7 municipal utilities and charges;

5.2.2.8 future unknown escalations;

5.2.2.9 the exercising of an option to renew by a potential tenant/ purchaser/ buyer or if the potential tenant/ purchaser/ buyer in any way extends the lease period;

5.2.2.10 additional space taken up by a potential tenant/ purchaser/ buyer;

5.2.2.11 the exercising of a right of first refusal or an option to purchase by a potential tenant/ purchaser/ buyer;

5.2.2.12 any turnover rental;

5.2.2.13 any other costs not detailed in clause 5.2.1.

- 5.2.3 “Years” means the calendar years in terms of the lease calculated from the commencement date of any lease.
- 5.2.4 The relevant percentage applicable is calculated on amounts exclusive of VAT.
- 5.2.5 Any amounts granted as concessions in terms of the lease, such as rent-free periods, tenant inducements or financial incentives, are to be deducted from the relevant year’s gross rental, or alternatively from the first year rental, before the calculation of commission.
- 5.2.6 Commission on a land sale is on the nett value of land excluding transfer costs, VAT and the like.

## **6 PAYMENT OF COMMISSION**

### **6.1 Payment terms are as follows in relation to:**

#### **6.1.1 Lease Agreements -**

- 6.1.1.1 100% (one hundred percentum) of the commission is due after the lease is signed by both landlord and tenant, after all suspensive conditions have been fulfilled including the payment of deposits or issuing of guarantees as is required in terms of the lease, and the Property Practitioner has complied with all terms and conditions contained herein;

#### **6.1.2 Land and Building Sale Agreements –**

- 6.1.2.1 100% (one hundred percentum) of the commission is payable upon transfer of the property;

#### **6.1.3 New Developments (Commercial and Industrial), subject to the provisions of clause 6.2, below–**

- 6.1.3.1 50% (fifty percentum) of the commission is due after the lease is signed by both landlord and tenant, after all suspensive conditions have been fulfilled including the payment of deposits or issuing of guarantees as is required in terms of the lease, and the Property Practitioner has complied with all terms and conditions contained herein;

- 6.1.3.2 50% (fifty percentum) of the commission is due after the tenant has taken occupation of the premises and paid the first month’s rental as required in terms of the lease.

### **6.2 The abovementioned percentages of commission and the timing of the payment thereof may be amended at any time depending on the requirements of a specific new development, as communicated by Principal to the Property Practitioner from time to time.**

- 6.3 Commission is not paid for any portion of any lease in excess of 10 (ten) years.
- 6.4 No commission will be payable on any transaction where the potential tenant/ purchaser/ buyer has elected to undertake any form of a tender or RFI/RFP (Request for Information/Proposal), notwithstanding that an earlier introduction may have been made. The point in time at which a potential tenant/ purchaser/ buyer elects to undertake any form of tender or RFP process immediately precludes the Property Practitioner from claiming a commission, as the introduction is considered cancelled. Where the Property Practitioner is appointed to facilitate a tender or RFP of any nature the onus will be on the Property Practitioner to agree with the potential tenant/ purchaser/ buyer any compensation for such processes. Should the payment of commission by the Principal be a requirement of the potential tenant/ purchaser/ buyer as part of the tender cost, then it is to be clearly communicated and agreed to in writing as to what amount is to be provided for as part of the tender. It is essential that all bidders provide the same amount for commission in this eventuality.
- 6.5 If a tenant terminates a Lease Agreement before the expected commencement date (by, for example, not taking beneficial occupation or not paying the first month's rent) while the Principal has fully fulfilled its obligations to the tenant, then:
- 6.5.1 the Property Practitioner shall make every effort to promptly identify a suitable replacement tenant;
  - 6.5.2 if the Property Practitioner does not immediately secure an acceptable replacement tenant, the Property Practitioner shall refund 100% of the commissions received for the leasing transaction with the original tenant;
  - 6.5.3 if the Principal, in its sole discretion, chooses to pursue legal action against the defaulting tenant for damages incurred, the commission paid to the Property Practitioner shall be included in the damages claimed. Should the Principal succeed in its claim, the commission shall be reimbursed to the Property Practitioner.
- 6.6 All payments will be paid on the last day of the month provided that the payment is due and payable on the terms and conditions of this Mandate at that date and that a legally valid tax invoice is received by no later than the 15<sup>th</sup> day of the month and also subject to the requirement that the Property Practitioner have complied with the payee information process so that he/she become loaded on to the Principal's payment system.

## **7 AMENDED OR UPDATED TERMS AND CONDITIONS**

- 7.1 The Principal reserves the right and may periodically update or change these terms and conditions without notice. The Property Practitioner should therefore request updated documents from the Principal and review them from time to time, as any continued use of information and interaction with the Principal will be

taken to mean that you accept any updated or revised terms and conditions as published on the Principal's website.

- 7.2 Accordingly, you agree to review these terms and conditions periodically, and your continued access or use of information supplied to you by the Principal in whatever form, shall be deemed to be your acceptance, from time to time, of the amended standard terms and conditions.

## **8 GENERAL**

- 8.1 These terms and conditions shall commence from the date that this Mandate is signed and thereafter be amended by the Principal from the date any amendments are published on the website and thereafter continue indefinitely, as amended by the Principal from time to time, for so long as the website exists and is operational. The Principal shall also be entitled to unilaterally terminate these terms and conditions by written notice on the website and/or shut down the website at any time.
- 8.2 If any clause in these terms and conditions are declared by any Court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other clause or part of any clause, all of which shall remain in full force and effect, so long as these terms and conditions shall be capable of continuing in effect without the unenforceable term.

## **9 WARRANTIES**

The Property Practitioner warrants that:

- 9.1 it shall at all times comply with all applicable Laws, Rules and Regulations included, but not limited to, complying with (i) the Property Practitioners Act, 22 of 2019, (ii) the Protection of Personal Information Act, 4 of 2013 and (iii) the Financial Intelligence Centre Act 38 of 2001.
- 9.2 its personnel are suitably trained and qualified to provide the services; and
- 9.3 that it will discharge its obligations with care, skill and diligence that can be reasonably expected of it when compared with a level of care, skill, ability and performance acceptable to the Principal and in line with accepted industry standard.
- 9.4 it shall follow the Principal's instruction in relation to the type of signature (wet ink, alternatively electronic, alternatively advance electronic) required by the Principal.
- 9.5 it will not institute any claim for commission against any of the landlords which the Principal represents.

