



WEST SHORES REALTY

## Commercial Disclosure Advisory & Statement

(for Commercial Transactions: multifamily 5+ units, retail, industrial, vacant land, office, etc.)

Date: \_\_\_\_\_ Property Address: \_\_\_\_\_

### **BUYER/TENANT:**

You should conduct thorough investigations of the Property personally and with appropriate professionals. If such professionals recommend further inspections, you should contact qualified experts to conduct such inspections.

You should retain your own professional even if Seller or Broker has provided you with existing reports.

You should read all written reports given to you and discuss those reports with the persons who prepared them.

Brokers do not have expertise in all areas and matters affecting the Property.

The terms of the purchase/lease agreement and any counter offers and addenda establish your rights and responsibilities.

### **SELLER/LANDLORD:**

You have a duty to disclose material facts known to you that affect the value or desirability of the Property.

You may be obligated to make the Property available to the Buyer for inspections based on the purchase/lease contract.

The terms of the purchase/lease agreement and any counter offers and addenda establish your rights and responsibilities.

1. **Statutory Disclosures.** Seller is aware of (mark Yes or No):

- Yes •No - Any death that occurred on or in the Property within the last three (3) years.
- Yes •No - Any order(s) from a government health official identifying the Property as being contaminated by methamphetamine (if yes, attach a copy of the order(s)).
- Yes •No - Any matters affecting title to the Property.
- Yes •No - Any insurance claims made during the past five (5) years, either by Seller or a previous owner.
- Yes •No - Any conditions that may lead to a future insurance claim.
- Yes •No - Any material facts or defects affecting the Property not otherwise disclosed to the Buyer.

If Yes, to any of the above, please describe on an Addendum to this disclosure.

**2. HVAC SEER Rating and Duct Sealing.** In 2008, Federal regulations changed to require manufacturers of heating and air conditioning units (HVAC) to produce only units meeting a new higher Seasonal Energy Efficiency Rating (SEER). This will likely impact repairs and replacements of existing HVAC units. Further, when installing or replacing HVAC units in homes, with some exceptions, duct work must be tested for leaks. Duct work leaking more than 15 percent must be repaired to reduce leaks. The average existing duct work typically leaks 30 percent. More information is available at the California Energy Commission's website, <http://www.energy.ca.gov/title24>. Home warranty policies may not cover such inspection or repairs. If a property owner does not comply with this new regulation and repairs or replaces HVAC equipment without compliance with this regulation, the property owner must disclose this fact to any prospective purchaser in writing. Sellers, who voluntarily agree at the Buyers' request to conduct repairs or change out HVAC equipment, agree to comply with all permit requirements of this regulation. Buyers are advised to have an expert examine the property during the inspection period of the purchase agreement to determine the full effect of this regulation upon the sale and purchase of the specific property in question.

- Seller has complied with these regulations regarding HVAC units and duct sealing.
- Seller is unaware of any work that would have required any compliance with these regulations.

**3. Flood Disaster Insurance.** If the Seller or Seller's predecessor-in-interest has previously received Federal flood disaster assistance and said assistance was conditioned upon obtaining and maintaining flood insurance on the Property, Federal law, i.e. 42 U.S.C. §5154a, mandates that prospective purchasers be advised that they will be required to maintain such insurance on the Property and that if said insurance is not maintained and the Property is thereafter damaged by a flood disaster, the purchaser may be required to reimburse the Federal Government for the disaster relief provided.

**Buyer is hereby informed that to the best of the Seller's knowledge Federal flood disaster assistance ·has OR ·has not been previously received with regard to the Property. Note: if such disaster assistance has been received, the law specifies that the required notice be "contained in documents evidencing the transfer of ownership."**

**4. Inspections:** Buyer and Seller are advised that Buyer may have the right to obtain various inspections of the Property under the purchase agreement. Buyer is advised to have the Property inspected by a professional property inspection service within Buyer's inspection contingency period. A licensed building contractor or other professional may perform these services. A general physical inspection typically will not test for mold, wood destroying pests, lead-based paint, radon, asbestos and other environmental hazards, geologic conditions, age, remaining useful life or water-tightness of roof, cracks, leaks or operational problems associated with a pool or spa or connection of the Property to a sewer system. If Buyer wants further information on any aspect of the Property, Broker recommends that Buyer have a discussion with the professional property inspector and that Buyer hire an appropriate professional for the area of concern to Buyer. Brokers do not have expertise in these areas. Any election by Buyer to waive the right to a physical inspection of the Property or to rely on somebody other than an appropriate professional is against the advice of Brokers. Not all inspectors are licensed and licenses are not available for all types of inspection activities. **BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF BUYER DOES NOT DO SO, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS.**

**5. Square Footage, Lot Size and Boundaries.** Buyer and Seller are advised that only an appraiser or land surveyor, as applicable, can reliably confirm square footage, lot size, Property corners and exact boundaries of the Property. Representations regarding these items that are made in a Multiple Listing Service, advertisements, on LoopNet or from property tax assessor records are often approximations, or

based upon inaccurate or incomplete records. Fences, hedges, walls or other barriers may not represent actual boundary lines. Brokers have not verified any such representations. If Buyer wants information about the exact square footage, lot size or location of Property corners or boundaries, Broker recommends that Buyer hire an appraiser or licensed surveyor to investigate these matters.

**6. Building Permits, Zoning and Code Compliance.** Buyer and Seller are advised that any structure on the Property, including the original structure and any addition, modification, remodel or improvement may have been built without permits, not according to building codes, or in violation of zoning laws. Further, even if such structure was built according to the then-existing code or zoning requirement, it may not be in compliance with current building standards or local zoning. It is also possible that local law may not permit structures that now exist to be rebuilt in the event of damage or destruction. Buyer is advised to check with appropriate government agencies or third party professionals to verify permits and legal requirements and the effect of such requirements on current and future use of the Property, its development and size. If Buyer wants further information Broker recommends that Buyer discuss the issue with an appropriate professional during Buyer's inspection contingency period and closing a transaction without doing an inspection is against Broker's advice.

**7. Future Repairs, Replacements and Remodels.** Buyer and Seller are advised that replacement or repairs of certain systems or remodels of portions of the Property may trigger requirements that property owners comply with laws and regulations that either come into effect after Close of Escrow or are not required to be complied with until the replacement, repair or remodel has occurred. Permit or code requirements or building standards may change after Close of Escrow, resulting in increasing costs to repair existing features. If Buyer wants further information, Broker recommends that Buyer discuss the issue with an appropriate professional during Buyer's inspection contingency period.

**8. Defective Furnaces.** The U.S. Consumer Product Safety Commission (CPSC) has issued a warning regarding certain gas-fired horizontal forced-air furnaces that present a substantial risk of fire. The furnaces in question were manufactured from 1983 through 1994 by Consolidated Industries (formerly Premier Furnace Company) and were marketed under many different brand names. Properties built before 1983 or after 1994 could still have the furnaces in question due to replacements or remodeling. It is recommended that Buyer have this issue investigated by a qualified professional to determine if the furnace in any property you are selling or buying is defective and/or dangerous.

**9. Retrofit.** Buyer and Seller are advised that state and local Law may require the installation of operable smoke alarms and carbon monoxide detectors, bracing or strapping of water heaters. Some city and county governments may impose additional retrofit standards, including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, and tempered glass. Brokers do not have expertise in this area. Broker recommends that Buyer and Seller consult with the appropriate government agencies, inspectors, and other professionals to determine the retrofit standards for the Property, the extent to which the Property complies with such standards, and the costs, if any, of compliance. If the Property contains one or more water heaters, Seller is required by California Health and Safety Code §19211 to certify to the Buyer that all such water heaters have been braced, strapped and/or anchored in accordance with law.

**10. General Recall/Defective Product/Class Action Information.** Buyer and Seller are advised that government entities and manufacturers may at any time issue recall notices and/or warnings about products that may be present in the Property, and that these notices or warnings can change. There is no single, all-inclusive source of information on product recalls, defective products or class actions; however, the U.S. Consumer Product Safety Commission (CPSC) maintains a website that contains useful information. If Buyer wants further information regarding some of these items, Broker recommends that Buyer consult the CPSC website at <http://www.cpsc.gov> during Buyer's inspection contingency period. Broker will not determine if any aspect of the Property is subject to a recall or is affected by a class action lawsuit.

11. **Notice Of Your "Supplemental" Property Tax Bill.** Pursuant to Civil Code § 1102.6(c), Seller or his or her agent is required to provide the following "Notice of Your 'Supplemental' Property Tax Bill" to the Buyer:

"California property tax law requires the Assessor to revalue real property at the time the ownership of property changes. Because of this law, you may receive one or two supplemental tax bills, depending on when your loan closes. The supplemental tax bills are not mailed to your lender. If you have arranged for your property tax payments to be paid through an impound account, the supplemental tax bills will not be paid by your lender. It is your responsibility to pay these supplemental bills directly to the Tax Collector. If you have any questions concerning this matter, please call your Tax Collector's Office."

*Although the notice refers to loan closing as a trigger, it is actually the change of ownership which triggers this reassessment. Therefore, the Property can be reassessed even if there is no loan involved in the purchase of the Property. The purchase agreement may allocate supplemental tax bills received after the Close of Escrow to the Buyer. If Buyer wants further information concerning these matters, Broker recommends that Buyer discuss the issue with the County Assessor or Tax Collector. Brokers do not have expertise in this area.*

12. **Easements, Access and Encroachments.** Buyer and Seller are advised that confirming the exact location of easements, shared or private driveways or roadways, and encroachments on or to the Property may be possible only by conducting a survey. There may be unrecorded easements, access rights, encroachments and other agreements affecting the Property that may not be disclosed by a survey. Representations regarding these items that are made in a Multiple Listing Service, advertisements, on LoopNet or plotted by a title company are often approximations, or based upon inaccurate or incomplete records. Brokers have not verified any such representations. If Buyer wants further information Buyer is advised and Broker recommends that Buyer hire a licensed surveyor during Buyer's inspection contingency period.

13. **Non Confidentiality of Offers.** Buyer is advised that Seller or Listing Agent may disclose the existence, terms, or conditions of Buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the Listing Agent's marketing strategy and the instructions of the Seller.

14. **Historical Designation, Coastal Commission, Architectural, Landscape, Agricultural or Open Space and Other Restrictions on Buildings or Improvements, Water Shortages and Conservation.** Buyer and Seller are advised that the Property may be: (i) designated as a historical landmark, (ii) protected by a historical conservancy, (iii) subject to an architectural or landscaping review process, (iv) within the jurisdiction of the California Coastal Commission or other government agency, (v) subject to a contract preserving use of all or part of the Property for agriculture or open space, or (vi) subject to water shortages or water usage restrictions. If the Property is so designated or within the jurisdiction of any such, or similar, government agency then there may be restrictions on Buyer's ability to develop, remove or trim trees or other landscaping, remodel, make improvements to and build on or rebuild the Property.

15. **Compliance with Local City Ordinances.** Buyer and Seller are advised that various cities have their own local rules, regulations and ordinances that must be complied with when a transfer of real property takes place within that city's limits. Buyer is advised to contact the city in which the real property is located to determine what, if any, additional requirements may exist prior to the closing of the transaction.

16. **Rent Control or Rent Stabilization.** Buyer and Seller are advised that many cities within Southern California have their own local rules, regulations and ordinances concerning the amount of rent that can be charged for rental units. Buyer is advised to contact the city in which the real property is located to determine if the city has their own rules, regulations or ordinances concerning rental property.

**17. Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").**

Federal regulations establish specific requirements for commercial real estate environmental due diligence emphasizing that a comprehensive environmental site assessment (Phase 1) is a necessary part of environmental due diligence efforts when acquiring commercial real estate in order to meet certain CERCLA safe harbors. It is recommended that the Buyer have this issue investigated by an environmental professional qualified under the U.S. Environmental Protection Agency's definition of such a professional and who is familiar with the new CERCLA standards. It is further recommended that the Buyer seek legal advice as to whether there are other steps that will need to be followed to maintain a safe harbor defense against CERCLA liability.

**18. Miscellaneous.** While the information contained in or attached to this Commercial Disclosure Advisory is believed to be accurate as of the date that it was prepared, the applicable laws can change from time to time. Prior to the close of escrow, Buyer may wish to again check the status of the Property. Buyer is advised to check with the appropriate local agency or agencies. The descriptions contained within the above disclosure paragraphs are not intended to be full and complete dissertations of all of the possible ramifications to the Buyer and/or the Property. In the event that this document indicates that the Property is affected by one or more of the disclosures, Buyer is advised to:

1. Review the applicable laws in their entirety.
2. Seek advice of counsel as to the legal consequences of the items disclosed.
3. Retain appropriate consultants to review and investigate the impact of said disclosures.
4. Satisfy him/herself during Buyer's inspection contingency period if any items are of concern to Buyer.

Likewise no representation or recommendation is made by the Broker or agent as to the legal sufficiency, legal effect, or consequences of this document or the Purchase Agreement to which it relates.

Buyer and Seller acknowledge and agree that Broker: **(i)** does not decide what price Buyer should pay or Seller should accept; **(ii)** does not guarantee the condition of the Property; **(iii)** does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; **(iv)** does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; **(v)** shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; **(vi)** shall not be responsible for inspecting public records or permits concerning the title or use of Property; **(vii)** shall not be responsible for identifying the location of boundary lines or other items affecting title; **(viii)** shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; **(ix)** shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and **(x)** shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

All references to Buyer or Seller shall also reference Tenant or Landlord as applicable.

Seller represents that the information herein is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

\_\_\_\_\_ Date: \_\_\_\_\_  
Seller's/Landlord's Signature

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

Buyer's/Tenant's Signature