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DATA LICENSE AGREEMENT

This Data License Agreement together with the "Order Form" attached hereto as Exhibit A (collectively, the "Agreement") is dated as of December 1st, 2024 (the "Effective Date") and is made by and between AIR Commercial Real Estate Association ("AIR CRE") and City of Irvine ("Subscriber"). The AIR CRE and Subscriber are each a "Party"; collectively, the "Parties."

RECITALS

A. AIR CRE owns and/or controls various databases containing data on sales and leasing of real estate throughout Southern California ("Data") and images related thereto ("Images");

B. Subscriber would like to access and use the database set forth in the Order Form for its internal business purposes as more fully set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. LICENSED DATABASE. During the Term (as defined below), AIR CRE shall provide Subscriber access to the AIR CRE database selected by Subscriber in the Order Form (the "Licensed Database") to be used pursuant to the terms of this Agreement.

2. GRANT OF LICENSE.

a. Licensed Rights. Subject to the terms and conditions of this Agreement, in consideration for the Fees set forth herein, AIR CRE hereby grants to Subscriber, during the Term, a non-transferable license to access the most recently-released Licensed Database and use the Data and Images therein for its internal business purposes in accordance with the terms of this Agreement. To the extent the Licensed Database is updated and pushed to Subscriber via an API or FTP download, the foregoing license only applies to the most recent version of the Licensed Database and the Data and Images thereon. The license shall not apply to prior versions of the Licensed Database which Subscriber is expressly prohibited from using after an update. AIR CRE acknowledges that the following activities constitute valid internal business purposes: (i) using the Licensed Database for statistical analysis of data in its market, including vacancy rates, average rental rates, total number of square feet in a given market, total number of square feet that is currently available, etc.; (ii) including Data in marketing pieces that Subscriber or its Sublicensee may publish so long as credit for such Data is given to the AIR CRE in such marketing piece as required by AIR CRE; (iii) running surveys of available properties and providing such Data to third parties solely to allow such third parties to make an informed decision regarding whether or not to locate their business within the

Subscriber's boundaries; and (iv) feeding the Data into Subscriber's own database solely to make the applicable Data and Images available to Subscriber's end users via the Subscriber's website. The foregoing license shall be subject to any "Special Terms" set forth in the Order Form (which will supersede any conflicting terms herein).

b. Sublicensing. AIR CRE acknowledges that if Subscriber is a city or municipality, Subscriber may require the right to sublicense its rights hereunder to its software provider or other technology vendor; in addition, if Subscriber is a software provider/technology vendor, Subscriber may need to sublicense the rights to its client which may be a city or municipality. No matter the situation, Subscriber may only sublicense the rights hereunder to a sublicensee approved by AIR CRE (each, a "Sublicensee"). AIR CRE hereby approves of any Sublicensee included in the Order Form. Subscriber shall be responsible for ensuring that any such Sublicensee fully complies with the terms of this Agreement, including the restrictions set forth in Section 3 below. Subscriber shall at all times remain fully liable for the acts and omissions of its Sublicensees and a breach of any term of this Agreement by a Sublicensee shall be deemed a breach by Subscriber. Without limiting the foregoing, in certain circumstances, Subscriber agrees that AIR CRE may require that a Sublicensee enter into an agreement directly with AIR CRE or agree to certain terms of use relating to the Licensed Database.

c. Accounts. If applicable based on the Licensed Database chosen by Subscriber, AIR CRE will provide Subscriber with the amount of user name(s) and password(s) set forth in the Order Form. Subscriber will register the person(s) who will have access to the Licensed Database by providing their contact information to AIR CRE. User logins provided by AIR CRE are for designated users and cannot be shared or used by more than one user. Subscriber will be responsible for the confidentiality and use of its users' passwords and user names and will remain liable for all activities under any of its user accounts.

d. Equipment. Subscriber will be responsible for providing and maintaining such computer equipment as Subscriber may need to access the Licensed Database.

3. ACKNOWLEDGMENTS/OBLIGATIONS/RESTRICTIONS.

a. AIR CRE IP Ownership. Subscriber acknowledges that, except as specifically granted in this Agreement, as between the Parties, AIR CRE owns and retains all right, title, and interest in and to the Licensed Database. This Agreement does not transfer ownership rights of any kind in the Licensed Database or any Data or Images therein to Subscriber or any third party. Subscriber shall abide by any and all attribution credit requirements of AIR CRE and shall take such other steps as may be reasonably necessary to identify AIR CRE as the source of the Data and to protect AIR CRE's rights in the Licensed Database. Subscriber shall notify AIR CRE promptly in the event it becomes aware of any unauthorized use of the Licensed Database or any use of any Data or Images that violates the restrictions set forth in this Section 3.

b. Prohibited Activities. Subscriber may only utilize the Licensed Database for the purposes set forth herein. Without limiting the foregoing, Subscriber (and any Sublicensee and user) is expressly prohibited from the following actions: (i) archiving, caching, copying, downloading or storing the Data and/or Images from the Licensed Database to create their own database for uses other than those permitted hereunder; (ii) providing access to the Licensed Database, or otherwise providing any of the Data or Images, in any form, to any third party (including other data vendors such as CoStar and Loopnet) other than an approved Sublicensee or as necessary to provide the Data and Images to its end users as permitted herein; (iii) copying, downloading, storing or distributing any Images as separate files or accessing or providing access to such Images in any manner other than through the links provided within the Licensed Database; (iv) making any of the Data or Images

available to end users from any website or system other than Subscriber's website (or any successor website operated by Subscriber); (v) making any of the Data or Images available to end users from

Subscriber's website in a manner that allows the end user to easily export any such Data or Images from Subscriber's system; or (vi) enhancing any non-member listings provided by AIR CRE to Subscriber or its Sublicensee by inserting in the Data the contact information for the non-member broker associated with such listing.

c. Injunctive Relief for Breach. Subscriber acknowledges that any breach of this Section will irreparably harm AIR CRE. Accordingly, in the event of a breach, AIR CRE is entitled to promptly seek injunctive relief in addition to any other remedies that it may have at law or in equity.

4. TERM / TERMINATION.

a. Term. The Term of this Agreement shall commence as of the date hereof and continue for the term set forth in the Order Form (the "Term"), unless earlier terminated pursuant to the terms herein.

b. Renewal. UPON EXPIRATION OF THE INITIAL TERM, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE-YEAR PERIODS. IN THE EVENT THAT EITHER PARTY TO THIS AGREEMENT DOES NOT WANT THE AGREEMENT TO AUTOMATICALLY RENEW THEN SUCH PARTY MUST NOTIFY THE OTHER IN WRITING AT LEAST THIRTY (30) DAYS BUT NOT MORE THAN SIXTY (60) DAYS PRIOR TO THE END OF THE THEN CURRENT CONTRACT PERIOD.

c. Termination for Cause. In addition to any other termination rights described herein, a party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach by the other party, provided such breach remains uncured at the expiration of the notice period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

d. AIR CRE Special Termination Right. AIR CRE may terminate this Agreement immediately upon notice to Subscriber in the event that Subscriber (or its Sublicensee or any of its users) (i) violates the Prohibited Activities in Section 3(b) above and/or (ii) acts as a real estate agent or broker (unless otherwise permitted in an Order Form).

5. FEES.

a. Fees. Subscriber shall pay the fees specified in the initial Order Form ("Fees"). Fees are non-refundable except as otherwise specifically set forth in this Agreement. AIR CRE shall invoice Subscriber for Fees for Licensed Database on a monthly basis in advance and otherwise in accordance with the terms of the relevant Order Form. Charges due shall be payable thirty (30) days from the invoice date unless otherwise stated in the Order Form.

b. Data Feed Set Up Fee. In addition to the monthly charges, if Subscriber licenses the Data Feed, Subscriber shall pay a one-time set-up fee of \$750 upon execution of this Agreement. This setup fee covers setting up the Subscriber with the standard AIR CRE formatting and method of delivery. In the event Subscriber requires or desires changes to the standard format, contents and/or delivery method, Subscriber shall pay \$100 per hour for the time necessary to perform the requested customization. The specifics of any customization will be detailed in writing and agreed upon between AIR CRE and Subscriber.

c. **Overdue Payments.** If any payment is not received by AIR CRE by the due date, AIR CRE shall provide notice to Subscriber. If Subscriber does not pay within five (5) days after such notice, then, without any requirement for notice to Subscriber, in addition to any of its other rights or remedies, AIR CRE can choose, at its discretion, to: (i) charge Subscriber a one-time late charge equal to 10% of such overdue amount or \$100, whichever is greater (the parties hereby agree that such late charge represents a fair and reasonable estimate of the costs AIR CRE will incur by reason of such late payment); (ii) charge Subscriber late charges at the rate of one and a half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid; and/or (iii) suspend Subscriber's access to the Licensed Database until such amounts are paid in full. In the event that any check, draft, or other instrument of payment given by Subscriber to AIR CRE is dishonored for any reason, the Subscriber agrees to pay the sum of \$25 in addition to any late charge. Subscriber shall reimburse AIR CRE for any and all expenses it may incur, including reasonable attorney's fees, in taking action to collect any past due and unpaid balances due to AIR CRE hereunder.

d. **Increases.** After the initial Term, AIR CRE may raise the Fees hereunder. AIR CRE shall give to the Subscriber at least thirty (30) days prior written notice of any such increase in the Subscriber's monthly Fees. If any such increase is not acceptable to the Subscriber, the Subscriber may elect to terminate this Agreement by issuing a notice of non-renewal. If no such notice is received by such deadline, then Subscriber shall be deemed to have approved of the change in pricing.

e. **Billing and Contact Information.** Subscriber shall ensure that AIR CRE has complete, accurate, and up-to-date Subscriber billing and contact information at all times.

f. **Invoice Disputes.** Any invoice submitted by AIR CRE shall be deemed correct unless Subscriber provides written notice within thirty (30) days of the invoice date specifying the nature of the disagreement.

6. DISCLAIMER. Subscriber acknowledges that the Data and Images in the Licensed Database are submitted to AIR CRE by third parties and as such, AIR CRE is providing the Licensed Database (and the Data and Images therein) without any representation or warranty as to the sufficiency, accuracy, completeness and/or validity thereof. In furtherance of the foregoing, Subscriber agrees that THIS LICENSE IS BEING PROVIDED ON AN "AS IS" BASIS AND AIR CRE DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE LICENSED DATABASE, DATA AND IMAGES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (a) ANY WARRANTY THAT THE LICENSED DATABASE SHALL OPERATE ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH SUBSCRIBERS EQUIPMENT; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE; AND (d) ANY AND ALL WARRANTIES OF NON-INFRINGEMENT.

7. INDEMNIFICATION. Subscriber shall indemnify, defend and hold AIR CRE, its officers, directors, employees, members, affiliates, successors, and assigns harmless from and against any and all losses, liability, or damages (including reasonable outside attorneys fees and expenses) arising from any third party claims, actions, or demands relating to a breach by Subscriber of this Agreement or in any other way arising from Subscriber's use of the Licensed Database, Data and/or Images.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL AIR CRE HAVE ANY LIABILITY TO SUBSCRIBER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY WHETHER OR NOT AIR CRE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL AIR CRE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY SUBSCRIBER FOR THE LICENSED DATABASE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

9. MISCELLANEOUS

- a. Assignment. Subscriber may not assign, sublicense, or transfer Subscriber's rights or delegate its obligations under this Agreement without AIR CRE's prior written consent, which will not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.
- b. Entire Agreement. This Agreement (including the Order Form) constitutes the final and complete understanding between the Parties relating to the license of the Licensed Database by AIR CRE to Subscriber and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the Parties with respect to the subject matter contained in this Agreement.
- c. Amendment And Waiver. This Agreement may not be modified or amended except in a writing signed by an authorized officer of each Party. The failure of either Party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such Party thereafter to enforce that or any other provision.
- d. Severability. In case any provision of this Agreement is held to be invalid, unenforceable, or illegal, the provision will be severed from this Agreement, and such invalidity, unenforceability, or illegality will not affect any other provisions of this Agreement.
- e. Governing Law And Jurisdiction. This Agreement shall be governed by and construed under the internal laws of the State of California, without regard to any conflicts of law principles. The federal and state courts located in Los Angeles County, California shall have jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise.
- f. Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

Signed by: AIR COMMERCIAL REAL ESTATE ASSOCIATION (AIR CRE)

By: Joy Pomeroy
795D63574090456...

Name: Joy Pomeroy
(Please Print)

Title: Chief operations officer

Date Signed: 11/20/2024

800 W. 6th Street, Suite 1000
Los Angeles, CA 90017

Subscriber: City of Irvine
Signed by:

By: Peter Carmichael
CE186F82A6F8460...

Name: Peter Carmichael
(Please Print)

Title: Assistant City Manager

Date Signed: 12/2/2024

Address: 1 Civic Center Plaza
Irvine, CA 92606

CITY OF IRVINE

Attest:

DocuSigned by:
By: Carl Petersen
0ECAD91E02E547D
Carl Petersen
City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

DocuSigned by:
By: Jeffrey Melching
DABE8686480C4BB...
Jeffrey Melching

EXHIBIT A

ORDER FORM

LICENSED DATABASE:

☐ Catylist – A database including all of the list and comp Data and Images that AIR CRE collects throughout Southern California via Catylist, an internet-based software application accessed by use of an AIR CRE-issued user name and password. Access thereto shall be provided via the Catylist platform using the Catylist layout.

☐ SiteLinks –A database including Data relating to available buildings. It is a system that is tied into and is then accessible from the Subscriber's website. SiteLinks directs the user to a search screen where the user then enters his or her search criteria. The program then returns Data within the search criteria chosen that is pertinent to the Subscriber (ie. That particular city or county). In other words, if the Subscriber is the City of Ontario, then a person initiating a search through the City of Ontario's website would only get to see buildings that are available in Ontario. SiteLinks provides not only a list of available buildings but also copies of the listing information regarding such buildings and contact information for the real estate broker associated with such listing. The system will deliver both AIR CRE member and non-member information but will not include contact information when a property is listed with a non-member.

☒ AIR CRE Data Feed – A database including all listing and comp Data and Images to which AIR CRE has access, which is made available via an FTP site designated by Subscriber. The Subscriber can then import an extract of the Data into its own database for use in accordance with the terms of this Agreement. The type of Data and the delivery format will be agreed upon between the Parties.

PRE-APPROVED SUBLICENSEE(S) (if any):

GIS Planning

TERM:

One (1) month from the Effective Date with potential renewals as set forth in the Agreement.

FEES:

- | | | |
|-------------------------------------|-----------------------------|-------------------------|
| <input type="checkbox"/> | Catylist | \$_____ per month |
| <input type="checkbox"/> | SiteLinks | \$_____ per month |
| <input type="checkbox"/> | Both Catylist and SiteLinks | \$_____ per month |
| <input checked="" type="checkbox"/> | Data Feed | \$ <u>500</u> per month |

PERMITTED NUMBER OF USERS (if applicable):

SPECIAL TERMS (if any):