



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 18, 2019

Agenda Item 6X
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney _____
Finance [Signature]

Department: Finance & Administrative Services
Prepared By: Michael Johnston, Management Analyst

Subject: *EXCLUSIVE LISTING AGREEMENT FOR THE SOUTHWEST CORNER OF AVENIDA VISTA HERMOSA AND AVENIDA LA PATA*

Fiscal Impact: Yes. It has been estimated by experts in the Southern California real estate market that the sale of the subject property could produce between \$4,000,000 and \$4,500,000 in one-time revenue, and a ground lease could gross anywhere from \$475,000 to \$550,000 in annual revenue.

Summary: During the closed session meeting on March 19, 2019, City Council directed staff to solicit proposals from qualified commercial real estate brokers to aid the City in the sale or lease of city-owned property located at the southwest corner of Avenida Vista Hermosa and Avenida La Pata. The City received three proposals from qualified brokers and staff is recommending an exclusive listing agreement with CBRE, Inc.

Discussion: The City of San Clemente currently owns a vacant 2.29 acre parcel (99,750 SF) of commercial land located at the southwest corner of Ave. Vista Hermosa and Ave. La Pata. This property is a rare development opportunity in South Orange County and presents a source of new revenue for the City. The corridor is experiencing consistent growth from which this parcel is expected to benefit. The La Pata extension connects San Clemente with the Ortega Highway corridor, Rancho Mission Viejo, San Juan Hills High School, and many new residential and commercial developments, which will further increase traffic counts along this intersection. The development of the parcel will also serve the many residents of the Talega Community.

Pursuant to City Council direction, staff solicited proposals from qualified commercial real estate brokers in South Orange County. Interviews were conducted the week of April 8, 2019 at City Hall. Each brokerage was rated on the following criteria: 1) Ability to provide immediate service; 2) Expertise and knowledge of the surrounding area; 3) Proposed fee schedule; and 5) Marketing Strategy.

Based on the information obtained in the interview and through proposal review, CBRE, Inc. was chosen as the most qualified brokerage to handle the City's specific needs. The team at CBRE, Inc. has over 50 years of combined experience in South Orange County, and is one of the leading commercial real estate services firms in terms of revenue and market share. They have represented many of the nation's largest tenants and real estate holding groups. This experience will provide the City with the most comprehensive service available.

In addition to their experience, CBRE, Inc. provided the following competitive fee schedule:

- Sale – 6% of the total consideration
- Ground lease – 6% of capitalized first year's rent at an 8% cap rate

Staff is estimating it will take four to five months to market, field proposals, and make recommendations. Once a list of recommended prospective purchasers and developers is created, staff will come back to the Council for further discussion and direction.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the Mayor, or designee, to execute and enter into an exclusive sales/lease listing agreement with CBRE, Inc.; and
2. Approve and authorize the Mayor, or designee, to execute a Professional Services Agreement with CBRE, Inc.

Attachments:

1. Exclusive Sales/Lease Listing Agreement – CBRE
2. Professional Services Agreement
3. CBRE Proposal

Notifications:

Notifications have been sent to all interested parties



June 5, 2019

BY ELECTRONIC MAIL

City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672
Attention: Mike Johnston

**Re: *Exclusive Sales/Lease Listing Agreement
Appx. 2 ac of land at the Southwest Corner of Avenida Vista Hermosa and Avenida La Pata,
City of San Clemente, Orange County, California ("Property")***

Dear Mike:

Thank you for selecting CBRE, Inc. ("CBRE", "us", "we", "our") to represent the City of San Clemente ("you", "your"). The terms of this engagement are contained in this agreement ("Agreement").

1. This Agreement shall terminate one year after the above date ("Term").
2. During the Term, you appoint us as your agent with the exclusive right to list and market the Property for lease and/or sale and to negotiate lease and/or sale agreements for the Property (which includes portions thereof). If, during the Term, the Property is removed from the market for sale because escrow is opened or an offer to purchase the Property is accepted, and if that sale is not consummated for any reason, then the Term will be extended by the longer of the number of days that (i) escrow was open or (ii) the Property was removed from the market, but in no event more than 180 calendar days in the aggregate.
3. We will commit the appropriate number of qualified and licensed professionals to this engagement. Your "Listing Team" is comprised of Justin McMahon, Tim McMahon, and Candice Desmet. We will have the right to change members of the Listing Team as necessary and appropriate. The Listing Team shall owe you duties of trust, confidence and loyalty.
4. The initial lease offering rate will be (terms acceptable to Owner).

The initial sale listing price will be (terms acceptable to Owner).

It is your right to: (a) approve, modify, reject or disapprove any and all proposals and offers as well as any prospective tenants or prospective purchasers for the Property and (b) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's listing price or lease offering rate.

5. We will work with you to create and implement a strategy to sell and/or lease the Property, including preparation of appropriate and customary marketing materials (such as an offering brochure). In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property's managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate.
6. The success of this engagement relies, in part, on cooperation and communication between you and CBRE. Therefore, you agree to: (i) provide us with all available information to assist us in marketing

- the Property; (ii) immediately refer to us all leasing and/or purchase inquiries for the Property; and (iii) conduct all negotiations with prospective tenants and/or purchasers exclusively through us.
7. You represent that you either are the fee owner of or otherwise have control over the Property. You further represent that you have full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.
 8. We will present all offers to you and assist you in developing and negotiating counteroffers until a lease or purchase and sale agreement ("PSA") is signed and all contingencies are satisfied or waived. You agree that you and/or your legal counsel are solely responsible for determining the legal sufficiency of any documents to be executed by you in any transaction contemplated by this engagement as well as the tax consequences of any such transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a lease or PSA. All final business and legal decisions shall be made solely by you. Notwithstanding any designation of us as "agent" in this Agreement, we will have no right, power, or authority to enter into any agreement with any prospective tenant, prospective purchaser, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
 9. We will earn, and you agree to pay us, a commission in accordance with this Agreement and the attached Exhibit A to this Agreement ("Commission Schedule") if either of the following occur:
 - (a) during the Term, you enter into an agreement to lease or sell the Property to a tenant or a purchaser, whether procured by us, you or anyone else and, in the event of a sales contract, the sale of the Property subsequently closes (whether during or after the Term); or
 - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the "Post Term"), the Property is leased to, sold to, or negotiations continue, resume or commence leading to a lease or sale of the Property during the Post Term or thereafter to any person or entity with whom CBRE negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term, or any such person's or entity's successors, assigns, or affiliates ("Existing Prospect"), or you enter into an agreement to sell the Property to an Existing Prospect and the sale of the Property subsequently closes (whether during or after the Post-Term). You agree that CBRE is authorized to continue negotiations with Existing Prospects. We will submit to you a list of such Existing Prospects no later than fifteen (15) business days following the expiration or termination of the Term; provided, however, that if a written offer has been submitted prior to said expiration or termination date, then it shall not be necessary to include the offeror's name on the list.
 10. You agree to remain responsible for payment of leasing commissions earned by us (or that may accrue in the future) unless the person or entity to whom you transfer the Property assumes your obligations, in writing, in a form reasonably acceptable to us. In addition to any sales commission due to us, earned but unpaid leasing commissions will be automatically accelerated and paid at the closing of such transaction regardless of any other installment payment timetable previously agreed upon. This Agreement is an irrevocable instruction to the escrow or closing agent to pay leasing commissions owed to us from deposited funds at closing, unless you or CBRE have entered into a satisfactory written agreement with the transferee to assume the obligation.
 11. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as a broker representing a purchaser or a tenant). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective tenant or purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement.

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Market conditions may exist whereby the Cooperating Broker receives an above-standard fee and/or broker bonus. If so, our commission shall be increased by and you agree to pay an amount such that we receive no less than 50% of the total fee in accordance with the Commission Schedule.

12. The Listing Team are your designated agents to the exclusion of all of CBRE's other licensees. All other CBRE licensees shall be referred to as "Non-Listing Team Agents" and shall be considered Cooperating Brokers. You acknowledge that CBRE is an international brokerage firm and that it may represent prospective tenants and purchasers, thereby creating a dual agency. You hereby consent to our representation of such prospects. You acknowledge that Non-Listing Team Agents owe duties of trust, confidence and loyalty exclusively to their clients. In the event that CBRE has a potential conflict of interest (such as CBRE proposing to act as a dual agent), then we will disclose the conflict to you and obtain your written consent to the conflict in advance of any negotiations with that potential tenant or purchaser. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other.
13. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform, and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective tenants and/or prospective purchasers everything you know (after reasonable inquiry by you) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
14. If the Property becomes the subject of foreclosure proceedings before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
15. In the event you fail to pay us our leasing commissions within ten (10) days after they are due, we are authorized to provide a copy of this Agreement to the tenant of the subject lease, and that tenant is hereby irrevocably instructed by you to pay our leasing commissions from any deposits or rental payments. You hereby irrevocably assign those deposits and rental payments to CBRE to the extent necessary to pay us our commissions. To the extent legally permissible, we are authorized to deduct our commissions from any security deposits or rental payments made by a tenant in connection with a lease transaction contemplated by this Agreement. You will credit such tenant for any payments made to us pursuant to this paragraph against any payments due under their lease. Further, you waive any claim, action or right, whether at law or in equity, against the tenant arising or resulting from their payments to us pursuant to this paragraph in lieu of any payments to be paid by the tenant to you under their lease.
16. While we are confident that this relationship will be mutually satisfactory, the parties agree to resolve any disputes subject to the following: if either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages.
17. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders governing each party's respective participation in any transaction contemplated by this Agreement. Further, we both acknowledge that: (a) it is illegal to refuse to display or lease or sell to or from any person because of one's membership in a protected class, e.g.: race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap,

familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.

18. This Agreement is the entire agreement and supersedes all prior understandings between you and CBRE regarding this engagement. The Agreement is governed by the laws of the state where the Property is located, without regard to its conflict of laws principles. This Agreement will be binding and inure to the benefit of your and CBRE's lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of either party's respective rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. Each party agrees that each has participated equally in the negotiation and drafting of this Agreement. You acknowledge that the person signing this Agreement on your behalf has your full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, mail, fax, electronic transfer or image, photocopy or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

Very truly yours,

CBRE, Inc.
Licensed Real Estate Broker

By: _____
Name: Justin McMahon
Title: Vice President

By: _____
Name: Tim McMahon
Title: Senior Vice President

By: _____
Name: Jeff Moore
Title: Senior Managing Director

AGREED:

City of San Clemente

By: _____
Name:
Title:

EXHIBIT A – Commission Schedule

A. *Lease.* Commissions shall be earned and payable upon lease execution in accordance with the following rate:

Ground Leases: 6% of capitalized first year's rent at an 8% capitalization rate due upon lease execution

The above rate is subject to the following provisions:

1. *Term of Less Than 1 Year.* If a lease term is less than 12 months, then the commission shall be prorated based upon the number of months included in the lease term.
2. *Option or Right of First Refusal to Renew, Extend Lease or Occupy Additional Space.* If a lease for which a commission is earned and payable hereunder contains: (i) an option or right of first refusal to renew or extend, and a lease term is renewed or extended, whether strictly in accordance with the terms of such option or right or otherwise and/or (ii) an option or right of first refusal to expand, and a tenant occupies additional space whether strictly in accordance with the terms of such option or right or otherwise, then you shall pay a leasing commission in accordance with the provisions of this Commission Schedule on the additional leased space. Said commission shall be earned and payable upon execution of the documents renewing or extending occupancy or adding space, as applicable.
3. *Purchase of Property by Tenant.* If a lease for which a commission is earned and payable hereunder contains an option, right of first refusal, or similar right for purchase of the Property, and a tenant, its successors or assignees, or any agent, officer, employee or shareholder of a tenant purchases the Property, whether strictly in accordance with the terms of such option, right of first refusal, similar right or otherwise during (a) the term of the lease, (b) any extension thereof, or (c) within ninety (90) days after the expiration thereof, then a sales commission shall be calculated and paid in accordance with the provisions of Section B below; provided, however, that there shall be a credit against such sales commission in the amount of lease commissions previously paid to CBRE relating to that portion of the purchaser's lease term which is canceled by reason of such sale. In no event shall such credit exceed the amount of such sales commission.

B. *Sale.* If the Property is sold, CBRE's commission shall be six percent (6%) of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. In the event this sale is in connection with a "build to suit" transaction, the commission shall be calculated on the gross sales price plus the gross construction cost of the building to be constructed on the Property. The commission shall be earned and paid on the date title to the Property is transferred to the purchaser; provided, however, that if the transaction involves an installment contract, then payment shall be made upon execution of such contract. If you are a partnership, corporation, or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid at the time of the transfer.

1. *Definitions.* Under this Agreement the terms "sell," "sale," or "sold" shall mean: (a) an exchange of the Property; (b) the granting of an option to purchase the Property; or (c) any other transfer, conveyance or contribution of a controlling interest in the Property or in the entity which owns the Property, including, but not limited to, situations where you are a corporation, partnership or other business entity and a controlling interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property.
2. *Option to Purchase.* If you grant an option to purchase the Property, you agree to pay us a commission in accordance with this Commission Schedule, on the price paid for the option and for any extensions when you receive payment for any such option and/or extensions. If the option is exercised, whether during the Term or after, we will earn a further commission in accordance with

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this Agreement. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by you to us on account of the option payments will be credited against the commission payable to us on account of the exercise of the option.

PROFESSIONAL SERVICES AGREEMENT
FOR SALE/LEASE OF CITY-OWNED PROPERTY AT SOUTHWEST
CORNER OF AVENIDA VISTA HERMOSA AND AVENIDA LA PATA

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20____ (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and CBRE, Inc. of 3501 Jamboree Road, Suite 100, Newport Beach, CA 92660 hereinafter referred to as the "CONTRACTOR".

RECITALS:

A. CITY requires professional commercial real estate services to be performed at or in connection with City-owned property located at the Southwest corner of Avenida Vista Hermosa and Avenida La Pata, San Clemente, CA 92673.

B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.

C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **June 18, 2020**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement,

CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the

project. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed six percent (6%) of the capitalized first year's rent at an 8% cap rate for a lease, and six

percent (6%) of the total consideration for a sale of the property (\$), including all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at 3501 Jamboree Rd., Suite 100, Newport Beach, CA 92660, and to the City of San Clemente, City Manager's Office, 910 Calle Negocio, San Clemente, California 92673, Attention: Michael Johnston, Management Analyst.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or

person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$_____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

Contractor's License Number _____

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

SCOPE OF SERVICES

Exclusive right to negotiate a sale of lease of the city-owned 2.29 parcel of land located at the Southwest corner of Avenida Vista Hermosa and Avenida La Pata, San Clemente, CA 92673 under the terms and conditions listed on the attached Exclusive Sale/Lease Authorization

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

The exclusive right to negotiate a sale/lease shall be from the period commencing on June 18, 2019 through June 18, 2020.

882/062266-0001
773382.08 a06/12/19

EXHIBIT "B"

6-18-19/ 6X-25

WORKER'S COMPENSATION INSURANCE CERTIFICATION

CBRE, Inc.

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Workermans'
Comp

882/062266-0001
773382.08 a06/12/19

6-18-19/ 6X-26

Dated: _____, 20____

Contracting Firm

By: _____

Title

Address

Proposal for

**RETAIL
DEVELOPMENT &
LEASING SERVICES**

Southwest corner of Ave. Vista Hermosa and Ave. La Pata
San Clemente, CA

APRIL 19, 2019

CBRE





Agenda

01 / Our Understanding

02 / Marketing Strategy

03 / Proposed Fees

04 / Why CBRE



OUR

Understanding

01

OUR
Understanding

EXECUTIVE SUMMARY

CBRE is pleased to present the following marketing proposal to the City of San Clemente for the future vision and strategy for the vacant ±2.29 acre parcel of commercial land located at the Southwest corner of Ave. Vista Hermosa and Ave. La Pata.

The purpose of this proposal is to summarize the best strategy to lease or sell the property for a retail development through a comprehensive process and to communicate CBRE's qualifications for successfully executing this assignment.

LOCALLED INVESTED, GLOBALLY CONNECTED.

JUSTIN MCMAHON AND TIM MCMAHON have significant retail leasing experience with a successful track record representing owners and occupiers in South Orange County. They will focus on developing leasing strategies and identifying retailers which best meet the needs of the trade area and the city's goals, whether through selling

or leasing to a tenant/developer. This local team will partner with specialized national resources to tailor strategies and drive tax generating uses for the City of San Clemente.

As natives of South Orange county, Justin (a San Clemente resident) and Tim offer insight into the nuances of this market; know how to generate excitement for assets; are equipped to position the project for maximum appeal; have access to CBRE specialists in every imaginable commercial real estate discipline; and regularly interact with tenant representation colleagues to stay in front of opportunities that are uniquely suited for this property.

With the depth of our retail leasing experience, CBRE will communicate the value of this opportunity with a network of national and local clients, colleagues and peers, exploring every possibility. Like you, CBRE can see the full potential for this property, and we are excited to partner with you to champion and sell that vision.



01

OUR
Understanding

San Clemente

Unique TRADE AREA

San Clemente offers a vibrant retail market with low vacancies and a recorded \$627.9 million opportunity gap with the majority of retail segments experiencing high demand. The city encompasses almost 3 million square feet of retail space. Of its 34 retail centers, the largest are the 442,000 square foot Plaza Pacifica, the appx. 400,000 square foot Outlets at San Clemente (with Metropolitan Theatres soon to open and more restaurants and retail coming soon) the 171,000 square foot San Clemente Plaza, and the 170,000 square foot Ocean View Plaza. San Clemente acts as the perfect location for Orange County's first major outlet center as an affluent market ranked 14th nationally in buying power, 1st in household retail spending, and contains the highest density of households with annual incomes over \$100,000.

Strong ECONOMY & DEMOGRAPHICS

The City of San Clemente's overall economy remains stable with continuous positive outlooks for the future. This is a direct result of the city's commitment to development and future planning. Boasting an unemployment rate of only 2.9% and an average income of \$131,000 the city's economy has rebounded strongly after the recession. Development continues on the last undeveloped area of the region, Marblehead Coastal, which upon its completion will include retail and residential properties. San Clemente is also the headquarters of multiple businesses including Cameron Health, ICU Medical, PICK Up Stix, Rainbow Sandals, and Traffix Devices.

SAN CLEMENTE

Demographics:

| | |
|------------------------------------|-----------|
| Daytime Population | 58,934 |
| 2018 Estimated Population | 66,536 |
| 2023 Projected Population | 68,515 |
| 2010 Census Population | 63,520 |
| 2000 Census Population | 49,993 |
| Growth 2010-2018 | 0.56% |
| Growth 2016-2023 | 0.59% |
| 2018 Estimated Median Age | 40.8 |
| 2018 Estimated Households | 24,607 |
| 2023 Projected Households | 25,122 |
| 2010 Census Households | 23,905 |
| 2000 Census Households | 19,391 |
| Growth 2010-2018 | 0.35% |
| Growth 2016-2023 | 0.42% |
| 2018 Est. Average Household Income | \$147,798 |



OUR

01

Understanding

San Clemente

MARKETING & TARGET

Tenants

CBRE has a nationwide network of sales professional that share retailer information on expanding tenants in each market. Our strategy is to take a proactive approach by targeting a very specific group of tenants, developers, and other potential buyers/lesees. Meanwhile, our team’s market presence and constant communication with tenants and active brokers ensure that the property will not only reach those select groups, but will also receive broad exposure to national and regional tenants. More importantly, CBRE’s Newport Beach office includes 17 retail experts who specialize in the greater Orange County market.

We will focus especially on resident-serving, tax-generating tenants such as fast casual restaurants, car washes, gas stations, pharmacies, hotels, and other compatible retail or entertainment uses.

Strategy

This unique vacant land opportunity in South Orange County provides the City with multiple options in order to achieve the ideal tenancy for the Property:

- 1 Ground lease the Property to a developer or tenant(s)
- 2 Sell the Property to a developer or tenant(s)
- 3 Self develop the Property utilizing a qualified fee developer and sell the Property as a net leased investment upon completion

Local

PERSPECTIVE & EXPERTISE

Your CBRE Marketing & Leasing Team consists of Justin McMahon who grew up in South Orange county and now resides in San Clemente, as well as Tim McMahon who resides in Ladera Ranch. This gives you unparalleled market expertise combined with CBRE's local and national reach.

01

OUR
Understanding



Good traffic patterns



Adjacent to very popular regional sports park

Strengths



Affluent and educated trade area



Across from very popular Target



Challenges

The City will need to parcelize and entitle the Property depending on the selected buyer(s)/lessee(s).

However, any proposed buyer or lessee can use this time to perform their due diligence as necessary.



No major retail synergy in the immediate area (other than Target)



Below average daytime density

OUR 01 Understanding

San Clemente

The City may consider selling or ground leasing to a hotel developer, as there is a deficiency of quality hotel properties in the City causing leakage to Dana Point and Laguna Beach. The City would benefit from both sales tax revenue and transient occupancy tax revenue.



A person is swimming in the ocean, with water splashing around them. A large, thick blue brushstroke graphic is drawn across the middle of the image, partially obscuring the swimmer. The background is a bright, overcast sky with white clouds.

MARKETING

Strategy



CBRE'S OVERALL PHILOSOPHY
AND STRATEGY IS BASED ON

PROPERTY AND MARKET ANALYSIS.

The three most important
components of a successful
marketing campaign for the
Project are:

Exposure
Commitment
Reporting

I. EXPOSURE

Exposure of the property to the market is the most important factor in achieving the highest possible value in the shortest amount of time.

DISSEMINATION TOOLS

- Proprietary Project Website
 - >Create website for subject property
 - >Drone video of subject property

E-MAIL

- Including our personal database of users in the San Clemente trade area
- Air mail blasts that go to hundreds of brokers in San Clemente and Surrounding Markets
- Regional Marketing to our Offices in Southern California
- Campaign Logic: ongoing property marketing email to brokers and users locally and nationally

DIRECT MAILERS

- Marketing materials such as color brochures, postcards, availability updates and promotions are sent directly to prospects in the area
- Brokers and users are targeted with these materials based upon the parameters of the availability

COLD CALLS

- The personal approach still remains one of the most effective tools for locating requirements
- Personally speaking with users about their needs and how they might relate to the available property
- Cold calling is an ongoing, daily task throughout the marketing campaign

USER PROSPECT LIST

- The prospect list identifies user requirements currently in the market by size range
- It is compiled weekly and derived from brokers calling into the Newport Beach office for listing information on any retail property CBRE is handling
- This allows us to ensure your property is being exposed to any current requirement that meets the parameters of the property

SIGNAGE

- A comprehensive sign program will be implemented to ensure visible, informative information on the property and new ownership, subject to your approval



CBRE'S OVERALL PHILOSOPHY
AND STRATEGY IS BASED ON

PROPERTY AND MARKET ANALYSIS.

The three most important
components of a successful
marketing campaign for the
Project are:

Exposure
Commitment
Reporting

II. COMMITMENT

A successful marketing campaign must have an enduring commitment on behalf of the marketing team to fulfill their promises, so that trust and respect develops between the ownership and the marketing team, promoting open communication of ideas and strategies.

Promises are easily made, but more difficult to keep. Traditionally, brokerage has been an individual effort. The broker, as an individual, needs to perform many functions: marketing creation of marketing materials, salesman, negotiator, business developer, administrative tasks, etc. In capturing new business, an individual promises certain services will be provided, however, as a function of time and survival, rarely are these promises kept.

To ensure commitment, we've restructured brokerage.

The marketing team has been designed to fulfill our commitments by creating an organization that clearly designates responsibilities to its members, and promotes collaboration. Our mission is to capture long-term relationships with our clients through unsurpassed service.

III. REPORTING

Reporting is a key component to a successful marketing campaign for three reasons: Accountability, Market Comparison and Communication.

ACCOUNTABILITY

It is the responsibility of the marketing team to inform the ownership regularly as to current prospects in the market, property tours, and explanations if the prospect chose an alternative location. Additionally, the marketing team will report on the status of current marketing strategies employed and their success. An accounting of all "promised" activities will be provided showing dates certain tasks were accomplished.

MARKETING COMPARISON

The marketing team is the "eyes and ears" for their ownership. Reporting identifies current sale transactions (comps) and a comparison of competing properties. It is essential to review how your properties are situated relative to the competition and the market to ensure our pricing expectations are reasonable.

COMMUNICATION

Reporting is often the best form of communication between ownership and the marketing team on a regular basis. We recommend reports to be submitted every two weeks. Additionally, a schedule of conference calls should be designated to provide for open communication between the marketing team and the ownership, if so desired.



CBRE VANTAGE

Powered by the industry's best intelligence across all asset classes, coupled with our professionals' unrivaled global expertise, CBRE's proprietary suite of Enablement Technologies power every step of the marketing process for the Property.

STRATEGIC MARKETING TOOLS AND TACTICS

CBRE offers scalable, customized marketing materials to effectively deliver a strong, clear message with maximum exposure to the right audience, no matter the budget.

Unique among commercial real estate firms, the Property Marketing Studio services as CBRE's in-house, creative marketing agency and can help us rapidly elevate your project's visibility, develop brand equity, accelerate activity and capitalize on momentum. We specialize in both business-to-business and business-to-consumer marketing, enabling us to promote this future retail development.

CBRE has developed relationships with key media outlets to provide positive, meaningful exposure. We lead all commercial real estate firms in terms of print and online media coverage and have a proven track record for generating press coverage that drives results.

- Build an Identity
- Digital and Social Media
- Public Relations & Advertising
- Customized Website
- World-Class Print & Digital Brochures



MARKETING 02 Strategy

DIMENSION

CBRE'S FLAGSHIP LOCATION INTELLIGENCE SYSTEM

Dimension is a GIS (geographic information system) technology platform that allows CBRE to continually and significantly enhance data and market insight. Among the data included in it are 970,000 exact store locations, demographic data like trade-area education levels and sales information such as spend data and grocery store sales. With Dimension, we can view cross-sections of those and other data sets as they relate to specific locations or markets on digital maps.

Within dimension, tapestry segmentation provides an accurate, detailed look into lifestyle choices, occupations, purchasing habits and recreational activities of the residents within the trade area. Tapestry classifies these residents into 67 unique segments derived from demographic and socioeconomic characteristics.



MARKETING

Strategy

MARKETING TIMELINE

CBRE will execute a managed bid marketing process that will maximize exposure of the Property, ensuring the property is sold or leased to the most qualified buyer or lessee with the best use at the highest price in the designated timeframe.

MONTH 1

- 1 Assemble Additional Property Information & Photography
- 2 Commence Marketing Material Preparations
- 3 Pre-Marketing Strategic Calls Commence

MONTH 2

- 4 Marketing Launch
- 6 Property/Area Visit
- 10 Call for Offers

MONTH 3

- 12 Best & Final Offers
- 13 Buyer Interviews

MONTH 4

- 15 Select Buyer
- 16 Due Diligence Begins

MONTH 5

- 17 Due Diligence Expires
- 21 Target Closing

23

TOTAL WEEKS

6-18-19/ 6X-41

02 MARKETING Strategy

PROPOSED FEES

GROUND LEASE

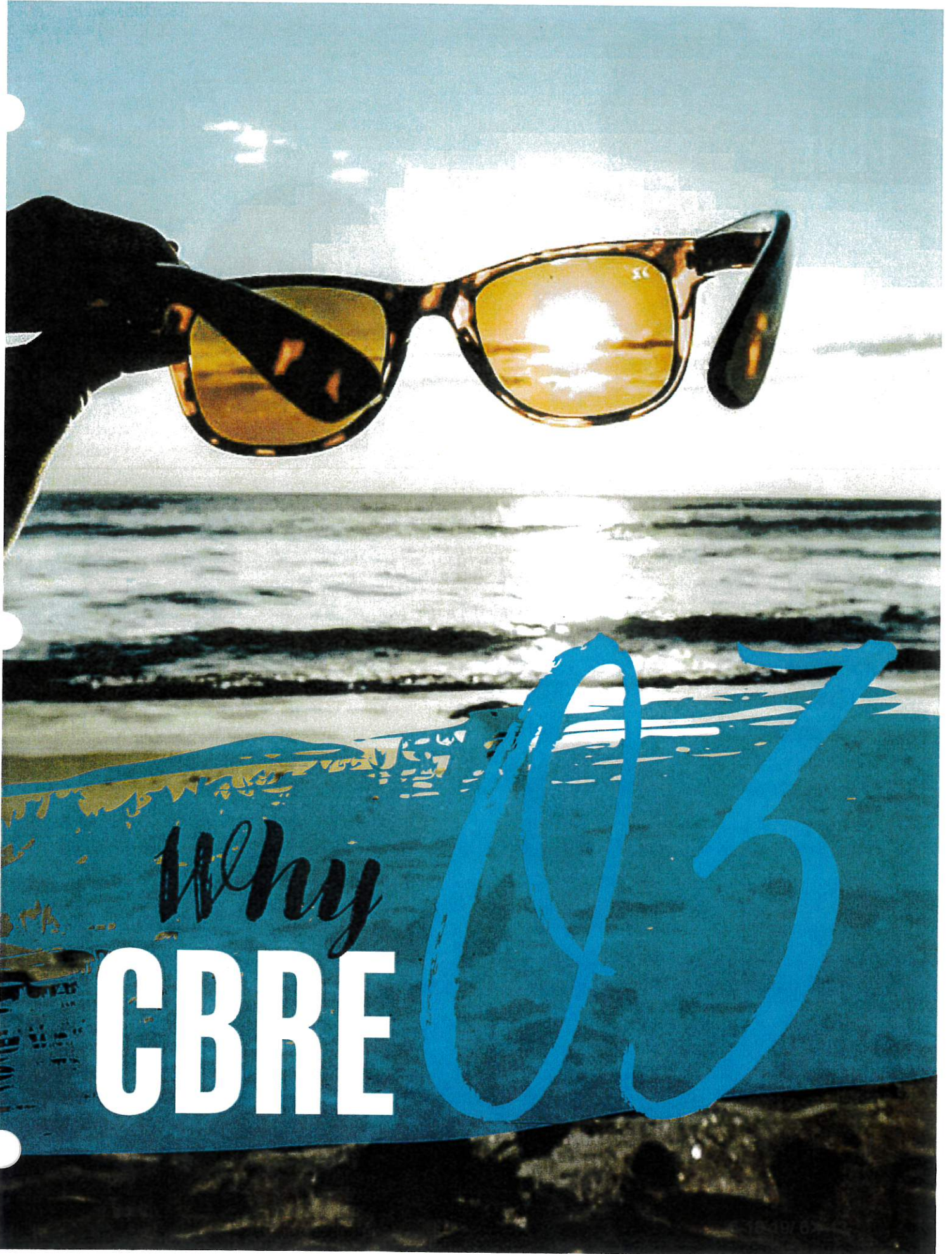
6% of capitalized first year's rent at an 8% cap rate

Example: $\$100,000/\text{yr rent} / .08 = \$1,250,000$ (Prop. Value) $\times 6\% = \$75,000$ commission

SALE

6% of the total consideration





Why
CBRE

CBRE

Why CBRE 03



JUSTIN MCMAHON

Vice President

Team
Co-Leads



TIM MCMAHON

Senior Vice President



JEFF MOORE

Executive Oversight
Regional Retail Lead

*PROVEN,
EXPERIENCED,
SPECIALISTS*



CANDICE DESMET

Client Service Specialist
Retail Properties Advisory
and Transaction Services



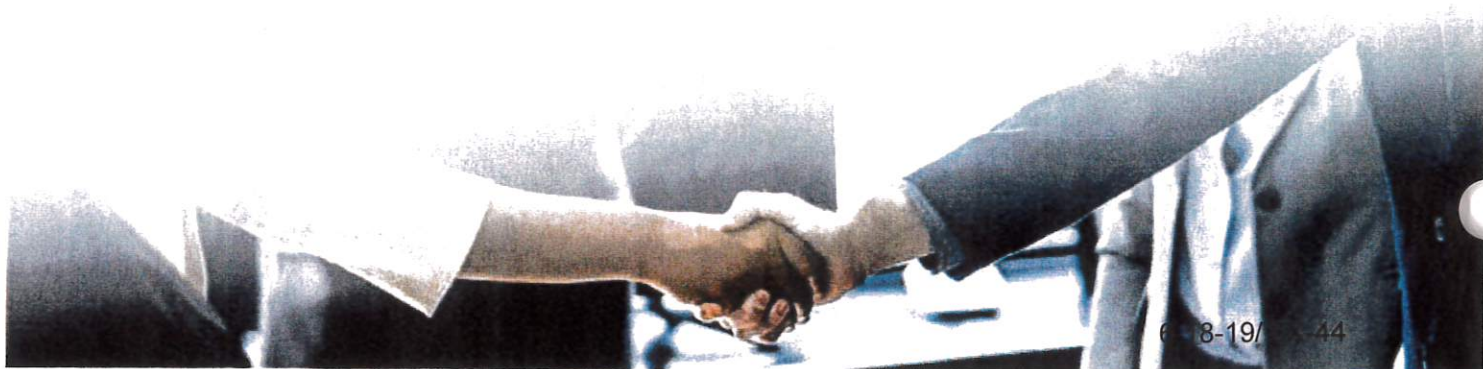
HEEJIN KONG

Marketing Lead
Orange County



SARA ROLLINS

Managing Director
Financial Consulting Services





JEFF MOORE



JEFF MOORE

Senior Managing Director
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Newport Beach, CA 92660

ACHIEVEMENTS

- 2011 OC Metro Top 40
- 1998-2006 Top Retail Producer, Orange County Region
- 1998-2006 CBRE National Top 20 Retail Producers
- 2000-2002 Irvine Company Broker of the Year
- 2000 Larry Perrish Award (Top CBRE national retail award)
- Featured on the cover of Real Estate Southern California Magazine in 2006

PROFESSIONAL BACKGROUND

Jeff Moore is a 30-year veteran of CBRE with leadership responsibilities for both the Orange County, California region, as well as for Retail Services for all Southern California offices.

As a Senior Managing Director for the Orange County Region, a role he assumed in 2007, Jeff is responsible for overseeing operations, business development and client relations for all lines of business in the Newport Beach and Orange Central offices, which total over 360 people including 110 sales and leasing professionals in addition

to the Property Management, Project Management, Valuation & Appraisal and Debt & Structured Finance groups.

Under Jeff's leadership, CBRE has maintained its long-time standing as the market leader in Orange County year after year. In 2016, the Orange County Region completed more than \$7.6 billion in sale and lease transaction value, and is the leading commercial real estate services firm in Orange County in terms of revenue and marketshare.

In September 2009, Jeff, who spent much of his commercial real estate career building one of the top producing retail teams in the country, also added responsibility for Retail Services for all Southern California offices. In this role, he is responsible for deploying CBRE's platform of services to provide overall strategy and consultative real estate solutions for the firm's retail clients. He also works closely with the business line leaders of Asset Services, Brokerage, Investment Properties/Capital Markets and Valuation & Appraisal to create client specific, integrated retail teams.

Jeff's initial transition from brokerage to management came in 2006 when he took on the role of Managing Director for the Anaheim office. The next year, he was promoted to Senior Managing Director for the Inland Empire Region, considered one of the fastest growing markets in the country at the time. During his leadership tenure, he successfully led the Inland Empire Region to new heights, growing the business by 20-25 percent annually.

As a retail broker, Jeff consistently ranked among the Company's best performing retail professionals nationally, specializing in tenant representation and shopping center development. He is a graduate of CBRE's first Emerging Leaders Program, which identifies and develops future market and line of business leadership in the United States.

CREDENTIALS & EDUCATION

PROFESSIONAL AFFILIATIONS / ACCREDITATIONS

- NAIOP SoCal Board Member 2011-Present
- NAIOP Executive Committee Vice President 2016 / President Elect 2018

EDUCATION

- Bachelor of Science in Business Administration, Kansas State University



JUSTIN MCMAHON



JUSTIN MCMAHON

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CLIENTS REPRESENTED

- The Clarett Group
- Jakosky Properties
- Hilton Hotels
- Regency Centers
- Shea Properties
- Shapell Industries
- Takisun
- Huntley, Mullaney, Spargo & Sullivan
- Ashley Industries, Inc.
- OliverMcMillan
- PRES Companies
- Fountainhead Development

PROFESSIONAL BACKGROUND

Justin McMahon specializes in the representation of owners and tenants in the acquisition, disposition and development of retail properties in Southern California. In addition to his local market expertise he also manages several multi-market Tenant requirements.

Justin joined CBRE in August of 2007 to focus on both tenant and landlord representation in Southern California after gaining valuable experience at Grubb & Ellis in Newport Beach, California. While at CBRE, Justin focuses on marketing and leasing high quality shopping center developments and represents several tenants expanding in the market.

MAJOR TENANTS

- Walmart
- TCL Chinese Theatres
- Office Max
- Starbucks
- Del Frisco's Restaurant Group
- 7-Eleven
- El Pollo Loco
- LA Fitness
- HQ Gastropub
- Real Mex Restaurants
- Wendy's
- Farmer Boys
- Famous Dave's BBQ
- The Kebab Shop
- Black Bear Diner
- On The Border
- Jimmy John's Gourmet Sandwiches
- Mizu Sushi Bar & Grill
- Bruegger's Bagels
- Islands Restaurants

MAJOR ASSIGNMENTS

- Marketplace at Laguna Niguel – 525,000 SF
- Ocean Ranch Village Laguna Niguel – 185,000 SF
- Second + PCH, Long Beach – 250,000 SF
- Laguna Heights Shopping Center – 150,000 SF
- Ocean Ranch Village Dana Point – 103,000 SF
- Circuit City Redevelopment, Laguna Hills – 60,000 SF
- Disposition of Starbucks stores Nationally (200 stores)
- Disposition of 100,000 SF former Home Depot Expo in Laguna Niguel (sublease to Lifetime Fitness)
- Managed the disposition process of closed Walmart and Sam's Club locations as well as outparcel sales in 7 Western States
- Yorba Linda Packing House Square - 80,000 SF repositioning

CREDENTIALS & EDUCATION

PROFESSIONAL AFFILIATIONS / ACCREDITATIONS

- Licensed Real Estate Salesperson
- Member of the International Council of shopping Centers (ICSC)
- 2013 SPIRE ward Winner for Excellence in Leasing
- Member of CBRE's National Restaurant Group

EDUCATION

- MBA in Business Administration, CSU Fullerton



TIM MCMAHON



TIM MCMAHON
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 Newport Beach, CA 92660

CLIENTS REPRESENTED

- 7-Eleven
- Albertson's
- AMC Theaters
- Applebee's
- Black Angus
- Bubba Gump Shrimp Co.
- Buie Communities
- Brinker International
- Del Frisco's Restaurant Group
- Edwards / Regal Theaters
- Famous Dave's BBQ
- Home Depot
- IL Fornaio
- Islands Restaurants
- Carino's Italian Grill
- King's Fish House
- LA Fitness
- Mimi's Café
- Morton's Steakhouse
- OfficeMax
- On The Border
- Ralphs Grocery Co.
- Real Mex Restaurants
- Regency Centers
- Rite-Aid
- Starbucks
- Sizzler
- TGI Fridays
- TJX Companies
- Vestar Development Co.
- Von's Grocery Co.
- Wal-Mart
- Shell Oil

PROFESSIONAL BACKGROUND

Tim McMahon's expertise in the retail arena is from both a brokerage and development standpoint. This experience, combined with the vast amount of up-to-date information and national contacts at his disposal, allow him to provide his clients with the most comprehensive service available in the market place. He has been involved in all aspects of retail real estate- "ground up" development, leasing, tenant representation and investment sale. Over the past several years, Tim has had extensive experience in the restaurant industry, both in acquisition and disposition.

Tim joined CBRE, Inc. in 2007 after 24 years with Grubb & Ellis. He has been a retail specialist for 30 years in Southern California. He has attained the title of Senior Vice President and has continually been one of the top producers. He has been Irvine Company's "Broker of the Year" and is a recipient of the "Senior Marketing Consultant of the Year" award. Tim has been responsible for the sale and leasing of over 17,000,000 square feet.

MAJOR / NATIONAL AND REGIONAL TENANTS

- Starbucks
- Del Frisco's Restaurant Group
- Islands Restaurants
- Albertson's
- Walmart
- Famous Dave's BBQ
- Home Depot
- TCL Chinese Theaters
- Ralphs Grocery Co.
- La Fitness
- Von's Grocery Co.
- TJX Companies
- Office Max

MAJOR ASSIGNMENTS

- Managed Disposition Program for 250 owned and leased Starbucks locations throughout the U.S.
- Currently planning and leasing 50 acre center for Rancho Mission Viejo Company in South Orange County
- Sizzler Restaurants - Managed Disposition Program for 163 leases, sold 35 properties, \$34.7 MM in total receipts
- 35 acre property / exclusively marketed - 330,000 SF Temecula Power Center, Sports Chalet, Office Depot, Petco
- Town Center - 600,000 SF of retail development in Rancho Santa Margarita, Cinepolis, Target, & Vans
- Home Depot - changing use of an 800,000 SF industrial complex to retail
- Marina Hills Center - 150,000 SF Laguna Niguel, Anchors include Albertson's & CVS
- Ocean Ranch Village - 180,000 SF Dana Point / Laguna Niguel, Anchors include Ralphs, CVS, & Edwards Theatres
- Rancho Niguel Center - 350,000 SF Laguna Niguel, Anchors include Ralphs, CVS, Nordstrom Rack, Regency Theaters & Lifetime Fitness
- Spectrum Towne Center- 800,000 SF Chino, Anchors include Sam's, Walmart, Nordstrom Rack & Kohl's
- Managed Disposition Program for Walmart including 15 large store prospects and 80 out parcels in 15 states

CREDENTIALS & EDUCATION

PROFESSIONAL AFFILIATIONS / ACCREDITATIONS

- Member International Council of Shopping Centers (ICSC)
- Past Member ICSC Program Committee
- Past Member Board of Directors, California Business Properties Association
- Past President Dana Point Chamber of Commerce
- Charter Member Monarch Beach Sunrise Rotary
- Member Board of Directors and past chair, Ocean Institute
- Past Chair, Board of Trustees South Coast Medical Center
- Member, Advisory Board Mission Hospital

EDUCATION

- Master in Business Administration, University of Southern California
- Bachelor of Science Degree in Business Administration, University of Southern California



CANDICE DESMET



CANDICE DESMET
Client Services Specialist
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PROFESSIONAL BACKGROUND

Candice Desmet joined CBRE in November of 2016 and is a Client Services Specialist in Retail Properties Advisory and Transaction Services. Candice holds her Real Estate Salesperson License and is an integral member of a brokerage team that represents property owners and tenants throughout Southern California, specializing in restaurant transactions.

Candice coordinates her team's business processes, assists in facilitating transactions, and works directly with clients to identify and achieve their goals. She is responsible for creating marketing materials including property marketing, tenant requirement packages, pitches, deliverables, and ad hoc projects and presentations. Candice also performs market research, oversees internal reporting and procedures for her team, and provides general support for the team's business plan objectives.

Candice graduated from the University of California, Irvine with a Bachelor of Arts in Political Science and a Minor in Biology. She also holds a Certificated in General Accounting as well as Taxation from Coastline Community College. Prior to joining CBRE, she worked at Land Advisors Organization as Director of Marketing, transacting over \$100M in sales while supporting three brokerage teams.

LANDLORDS REPRESENTED:

- Shea Properties
- PRES Companies
- Jakosky Properties
- Fountainhead Development

TENANTS REPRESENTED:

- The Kebab Shop
- Farmer Boys
- Thrive Juice Lab
- HQ Gastropub
- Black Bear Diner
- The Yellow Chillli

CREDENTIALS & EDUCATION

PROFESSIONAL AFFILIATIONS / ACCREDITATIONS

- Real Estate Salesperson License
- Member of the International Council of Shopping Centers (ICSC)

EDUCATION

- Bachelor of Arts in Political Science and Minor in Biology, University of California, Irvine
- Certification in General Accounting and Taxation, Coastline Community College



COMMITTED TO YOUR SUCCESS



UNPARALLELED SOUTH ORANGE COUNTY EXPERTISE

Over 50 years of combined experience



INTEGRATED MARKETING STRATEGY & EXECUTION PLAN

Consistent, refined approach that generates leasing velocity and elevates value



OUR COMMITMENT TO THE CITY OF SAN CLEMENTE

Promise of focus, the highest level of professionalism and delivery of our best resources to successfully market and lease or sell the Property.

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CBRE

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