

HAYMAKER/BEAN COMMERCIAL REAL ESTATE

EXCLUSIVE MARKETING AGREEMENT FOR THE SALE OF REAL PROPERTY

Allied Systems, Ltd. (L.P.) cade.daniel@alliedholdings.com 404-687-5668
 Name(s) of Owner Owner's Telephone Number

160 Clairmont Avenue, Suite 200, Decatur, GA 30030
 Owner's Current Mailing Address

THE PROPERTY:

239 Triport Road Georgetown Scott KY 40324
 Street Address City County State Zip

I-1 6,120 SF Building – 9.42 Ac Improved
 Current Zoning Square Feet or Acres ± Improved or Unimproved

\$ 665,000⁰⁰
 Listing Price

This **Exclusive Marketing Agreement For The Sale Of Real Property** is made as of the date of later execution hereof (the "Effective Date") by the undersigned Owner (whether one or more) and **Haymaker Company, LLC d/b/a Haymaker/Bean Commercial Real Estate**, a Kentucky limited liability company, with offices at 3120 Wall Street, Suite 300, Lexington, Kentucky 40513 ("Haymaker/Bean").

RECITALS:

First, that Haymaker/Bean is engaged in the business of serving as a broker for the sale of real property in the Commonwealth of Kentucky; and

Second, that Owner desires to engage Haymaker/Bean to market the real property identified above (the "Property"), and Haymaker/Bean is willing to market the Property on behalf of Owner, all in accordance with the terms and subject to the conditions contained in this Agreement.

AGREEMENTS:

In consideration of the foregoing recitals, the covenants and agreements set forth in this Agreement, and the mutual benefits to be derived therefrom, the receipt and adequacy of which are hereby acknowledged, Owner and Haymaker/Bean, intending to be legally bound, hereby agree as follows:

1. **Grant of Exclusive Right to Sell** Owner hereby grants to Haymaker/Bean, during the Term, the sole and exclusive right and authority to market and endeavor to sell the Property at the Listing Price and on the other terms contained in this Agreement, or at such other price and on such other terms as are acceptable to Owner.

2. **Listing Price** The Listing Price for the Property shall be as set forth above, payable in U.S. Dollars, cash due at the consummation of the sale of the Property (the "Closing").

3. **The Term** The Term of this Agreement shall be for a period of 12 calendar months following the Effective Date, expiring at 5:00 O'Clock P.M. on January 24, 2007.

4. **Commission** Subject to Sections 12 and 13 below, Haymaker/Bean shall be entitled to a commission of 7% of the gross sale price of the Property, or any part or portion of the Property. Said commission shall be due and payable at the Closing, whether the purchaser is secured by Owner, Haymaker/Bean or any other person. Haymaker/Bean shall be deemed to have earned the Commission on delivery to Owner of a purchase agreement signed by a ready, willing and able purchaser agreeing to purchase the Property in accordance with the terms of this Agreement, or in accordance with such other terms and conditions as are acceptable to Owner, as evidenced by Owner's agreement or by execution of a purchase and sale contract. Additionally, Haymaker/Bean shall be deemed to have earned the Commission if, within 3 calendar months after expiration of this Agreement, the Property is purchased by any person or entity with whom Haymaker/Bean or Owner or any other person negotiated regarding the Property during the Term of this Agreement. For the avoidance of doubt, commission shall only be due and payable upon successful completion of the sale of the Property.

5. **Marketing by Haymaker/Bean** Haymaker/Bean covenants with Owner as follows:

- (a) that Haymaker/Bean will, in an earnest and continued effort to sell the Property on the terms contained herein, list, advertise and promote the Property for sale in a manner that, in the judgment of Haymaker/Bean and its agents, will aid in securing prospects for the property;
- (b) that Haymaker/Bean will offer the Property for sale without regard to race, color, sex, creed, age, religion, national origin, marital status, or disability;
- (c) that Haymaker/Bean will solicit written offers from prospective purchasers, and then submit such written offers to Owner for Owner's approval and acceptance; and
- (d) that Haymaker/Bean will assist Owner in negotiating an acceptable purchase contract with a purchaser, with final determination of sale price and terms of sale to be made solely by Owner.

6. **Owner's Representations, Warranties and Covenants** Subject to Section 13 hereof, Owner represents, warrants and covenants to Haymaker/Bean as follows:

- (a) that Owner holds fee title to the Property, and has full authority to sign, deliver and perform under this Agreement, and that Owner shall at the Closing execute and deliver to the purchaser a general warranty deed for the Property;
- (b) that Owner shall refer to Haymaker/Bean all inquiries of other brokers, agents and other persons interested in the Property, and shall cooperate fully with Haymaker/Bean in every way possible to bring about a sale of the Property;
- (c) that all negotiations or dealings relating to the sale of the Property shall be with and through Haymaker/Bean, and that Haymaker/Bean may make the listing for the Property available to cooperating brokers;
- (d) that Haymaker/Bean shall have the exclusive right to place "For Sale" sign(s) on the Property, to remove all other signs, and to otherwise advertise the Property for sale;

- (e) that Haymaker/Bean and its agents shall have full access to the Property for purposes of displaying and showing the Property to prospective purchasers;
- (f) that Haymaker/Bean shall have no responsibility with respect to the condition of the Property, its management or care;
- (g) that Owner has not contracted with any other party for the sale or lease of the Property, and with the exception of General Electric Capital Corporation (acting in its capacity as collateral agent) as mortgagee, no other party holds an interest in the Property, and no real estate agent has any outstanding claim for commission against the Property; and
- (h) that all information related to the Property provided and to be provided by Owner to Haymaker/Bean or its agents (including specifically the property information contained in the heading of this Agreement) is and shall be true and correct to the best of Owner's knowledge, and Owner understands that Haymaker/Bean and its agents will rely on this information in promoting and marketing the Property, and Owner agrees to hold harmless, defend and indemnify Haymaker/Bean and its agents for any liability they may incur for utilizing this information in the promotion of the Property, unless such liability, claim, cost or expense arises from or relates to the negligence or willful misconduct on the part of Haymaker/Bean or its agents.

7. **Deposits** Haymaker/Bean is authorized to accept deposits on purchase contracts obtained pursuant to this Agreement and to deposit same in Haymaker/Bean's escrow account, said deposits to be released by Haymaker/Bean at the Closing in accordance with the terms of this Agreement or when otherwise authorized under Kentucky law. If a contract deposit obtained by Haymaker/Bean is forfeited to Owner, then Owner agrees to divide that deposit equally between Owner and Haymaker/Bean; provided that in no case shall the amount so payable to Haymaker/Bean be greater than the commission that Haymaker/Bean would have been entitled to if no forfeiture had occurred.

8. **Default by a Purchaser** In the event of a default by a purchaser who is under contract to buy the Property, or any part or portion thereof, or in the event of a mutual termination of a contract by Owner and the purchaser, and if such default or termination triggers the forfeiture of the purchaser's earnest money deposit, then such deposit shall be divided as provided for in Section 7.

9. **Dual Representation** Pursuant to this Agreement, Haymaker/Bean will be acting in the capacity of Owner's agent. However, Owner hereby specifically acknowledges that Haymaker/Bean may also represent a prospective purchaser. Should any such prospective purchaser become interested in the Property, Owner hereby authorizes Haymaker/Bean to serve as a dual agent for Owner and purchaser. As a dual agent, Haymaker/Bean will have the duty to make a full, fair and timely disclosure of all material facts and information within Haymaker/Bean's knowledge or readily available to Haymaker/Bean that might in any way affect either Owner's or the purchaser's rights and interests or otherwise influence either party's action or decision in connection with the contemplated transaction. Notwithstanding the foregoing, to the extent that confidential information has been communicated to Haymaker/Bean by either party, it is agreed that Haymaker/Bean is not required to disclose, and shall not disclose, divulge or otherwise make such information available to the other party without the prior written consent of such party. This duty of confidentiality shall survive the expiration or earlier termination of this agreement.

10. **Notices** Any notice, demand, request or other instrument that may be required to be given under this Agreement shall be in writing and shall be either (a) delivered in person (with a signed acceptance), or (b) sent by United States Certified or Registered Mail, postage pre-paid, return receipt required, or (c) delivered by a nationally recognized courier service that obtains an acknowledgement of receipt, and, in each such instance, such notice, demand, request or other instrument shall be addressed at the address set forth in the heading of this Agreement or at such other address as either party may designate by notice given in accordance with this section.

11. **Rules of Construction** (a) **Parties**—The word “Owner” shall mean all parties who are owners, regardless of number. (b) **Drafter**—The fact that this Agreement was initially drafted by one party or the other shall have no bearing on its interpretation or construction. (c) **Binding Effect**—The terms of this Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto, their administrators, executors, representatives, heirs, successors and permitted assigns. (d) **Counterparts/Facsimile**—This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument. In addition, a facsimile copy of this Agreement containing a party’s signature may be fully relied on to the same extent as an original. (e) **Severability**—In the event any provision of this Agreement, or its application to any person or circumstance, is held by any court having jurisdiction over any dispute arising hereunder to be invalid or unenforceable, then such court shall sever and/or reinterpret such provision so as to carry out the intent of the parties hereto in a valid and enforceable manner, and the invalidity or unenforceability of such provision within the jurisdiction of such court shall not affect the validity or enforceability of such provision in any other jurisdiction, and the remainder of this Agreement, including any reinterpretation of such provision, shall remain in full force and effect. (f) **Governing Law**—This Agreement shall be deemed to have been delivered to and made at Lexington, Kentucky, and the terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Kentucky, without regard to the principles of conflicts of law. (g) **Attorney Fees**—If either party to this Agreement brings an action to enforce the terms of this Agreement or to declare rights hereunder, then the prevailing party in the final judgment in any such action shall be entitled to recover from the other its costs and reasonable attorney’s fees. (h) **Survival**—Unless otherwise specifically provided, all of the Owner’s representations, warranties and covenants set forth in this Agreement shall be true upon the execution of this Agreement and shall survive expiration or termination of this Agreement. (i) **Non-Cumulative**—Except as specifically provided otherwise in this Agreement, no right or remedy conferred upon or reserved to either party by this Agreement is intended to be, nor shall be deemed to be, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy. (j) **Entire Agreement**—This Agreement and all exhibits hereto, if any, contains the complete and exclusive agreement between the parties hereto pertaining to its subject matter, and supersedes all prior and contemporaneous written and oral negotiations and agreements pertaining thereto. Each party hereby acknowledges and agrees that neither party, nor anyone acting on its behalf, has made any statement, promise, or agreement or has taken upon itself any engagement whatsoever, whether orally or in writing, in conflict with the terms of this Agreement, or that in any way modifies, varies, alters, enlarges, or invalidates any of the provisions hereof, or extends the term of this Agreement. No obligations of either party shall be implied in addition to the obligations expressed in this Agreement. (k) **Amendment**—This Agreement cannot be amended, modified or supplemented orally, but only by a subsequent written agreement signed by an authorized representative of all parties. (l) **Execution**—This Agreement shall not be valid until executed by or on behalf of all parties.

12. Other Terms and Conditions [Owner and Haymaker/Bean must initial after last line.] 7

Should Jack Cooper Transport (together with its parent, subsidiaries and affiliates) and/or unidentified interested purchaser, as represented by Ed Egan, and Owner enter into a fully executed sale agreement within the first 60 days of this Agreement, then Haymaker/Bean Commercial Real Estate would be compensated at the reduced rate of 3% of the purchase price. After 60 days, Section 7 applies to all purchase agreements. ~~56B~~ 56B

13. Bankruptcy Court Approval. Haymaker/Bean hereby acknowledges that Owner is a debtor-in-possession under Chapter 11 of the U.S. Bankruptcy Code, and Owner's authority to (a) enter into this agreement and (b) sell the Property is subject to the approval of the U.S. Bankruptcy Court for the Northern District of Georgia, Newnan Division.

IN WITNESS WHEREOF, Haymaker/Bean and Owner have signed and delivered, or have caused their authorized representatives to sign and deliver, this **Exclusive Marketing Agreement For The Sale Of Real Property.**

HAYMAKER/BEAN:

HAYMAKER COMPANY, LLC D/B/A
HAYMAKER/BEAN COMMERCIAL REAL
ESTATE

WITNESS:

Claire Ballinger

By: *Stephen G Bean*
Title: *[Signature]*
Date: 1/25/06

OWNER:

ALLIED SYSTEMS, LTD. (L.P.)

WITNESS:

[Signature]

By: *[Signature]*
Signature
John F. Blount
Print Name
Its: Vice President
1-24-06
Date