

## Commercial Lease Agreement

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**LEASE**

This lease (this **"Lease"**) is entered into as of \_\_\_\_\_ (the **"Effective Date"**) and is between \_\_\_\_\_, a \_\_\_\_\_ (the **"Landlord"**), and \_\_\_\_\_, a \_\_\_\_\_ (the **"Tenant"**).

The parties agree as follows:

**1. Basic Lease Terms**

(a) **"Effective Date"**: \_\_\_\_\_, 20\_\_.

(b) **"Premises"**: The real estate and buildings commonly described as \_\_\_\_\_ (\_\_\_\_\_ County) \_\_\_\_\_, as more particularly described on Exhibit A attached hereto (Parcel \_\_\_\_\_), together with any and all land, buildings, improvements, fixtures located thereon, and with all rights, privileges, easements, rights-of-way, water rights, oil, gas or mineral rights, appurtenances, and immunities thereto.

(c) **"Term:"** The initial term of this Lease is for a period of \_\_\_\_\_ years, commencing on the Effective Date, and expiring on \_\_\_\_\_, 20\_\_ (the **"Expiration Date"**), subject to the extension options set forth in section of this Lease.

(d) **"Permitted Uses"**: Industrial and light manufacturing, warehousing, office, distribution, and assembly, including designing, manufacturing and distributing branded merchandise and promotional products, including all activities incident or ancillary thereto and all other lawful uses and purposes.

(e) **"Rent"**: \$\_\_\_\_\_ per month.

(f) **"Landlord's Address"**:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(g) **"Tenant's Address"**:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(h) **"Security Deposit"**: \_\_\_\_\_

2. **Premises.** In consideration of the Tenant's obligation to pay Rent under this Lease, and in consideration of the other terms, provisions, and covenants of this Lease, the Landlord hereby demises and leases to the Tenant, and the Tenant hereby takes from the Landlord the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way pertaining to the Premises.

3. **Term and Option to Extend**

(a) The initial term of this Lease will commence on the Effective Date and expire on the Expiration Date. The Tenant may extend the Term of this Lease for \_\_\_\_\_ additional \_\_\_\_\_-year extension term(s), on all the same terms and conditions (except for Rent, which will increase during extension Terms as provided below) contained in this Lease, by notifying the Landlord in writing of the Tenant's election to do so not less than 30 days before the expiration date of the then-current Term, as the case may be.

(b) The initial term and any applicable extension term are referred to in this Lease as the "**Term.**"

4. **Possession and Work.** The Tenant shall be permitted to enter the Premises at any time on and after the Effective Date for any purpose, including performing Tenant Improvements or installing its furniture, fixtures, equipment, cabling, and moving its inventory and personal property into the Premises.

5. **Rent**

(a) During the initial \_\_\_\_\_ years of the Term, the Tenant shall pay to the Landlord the Rent for the Premises in advance without demand in equal monthly installments of \$\_\_\_\_\_. One such monthly installment (or prorated portion thereof) will be due and payable on the Effective Date and a like monthly installment will be due and payable in advance, without demand, on or before the first day of each calendar month succeeding the Effective Date during the initial \_\_\_\_\_ years of the Term.

(b) If the Tenant elects to extend the Term, the amount of Rent that the Tenant shall pay will be as follows:

- (1) Year \_\_\_\_ \$\_\_\_\_\_ per month
- (2) Year \_\_\_\_ \$\_\_\_\_\_ per month
- (3) Year \_\_\_\_ \$\_\_\_\_\_ per month.

(c) Rent due for any fractional calendar month at the commencement or end of any month during the Term will be prorated. The Tenant shall send all Rent payments to the Landlord's Address or by electronic fund transfer to a bank account to be provided by the Landlord upon the Tenant's request.

(d) Within 30 days after the written request of either party, the parties shall execute a Memorandum of Lease in recordable form which will set forth a description of: (1) the Effective Date; (2) the Rent; (3) the Term, (4) the Premises; and (5) the Tenant's Option to Purchase. Either party may record such memorandum.

6. **Permitted Use.** The Premises may be used for the Permitted Uses.

7. **Taxes.** The Landlord shall pay all taxes levied against the Premises as they become due and before they become deficient.

8. **Repairs and Maintenance.** From and after the Effective Date, and for the remainder of the Term, the Landlord shall perform ordinary maintenance and repair of the interior of the improvements on the Premises. In addition, the Landlord shall, at its own cost and expense without reimbursement by the Tenant, keep and maintain in good condition and repair, and make all necessary repairs and replacements to, the exterior walls, building slabs, foundations, structural parts and components, parking lots, gutters, downspouts, roof, roof membrane and coverings and any other part, component or system on the exterior of the Premises. The Landlord shall, at its own cost and expense without reimbursement by the Tenant, keep and maintain in good condition and repair, and make all necessary repairs and replacements to the sprinkler system, mechanical, HVAC, electrical and plumbing systems of the Premises. If the Landlord fails to perform any repair or replacement required to be made by the Landlord in this Lease, and the Landlord fails to cure such failure within 15 days after receipt of a written demand from the Tenant (or immediately, in the case of emergency repairs, including loss of heating and air conditioning), then the Tenant may make such repair or replacement and the Landlord shall reimburse the Tenant for the cost thereof. If the Landlord fails to pay such amount, then the Tenant may offset against the Rent due hereunder the amount so expended.

9. **Alterations.** The Tenant may, at its own cost and expense and in a good workmanlike manner, make such alterations, additions, or improvements or erect, remove, or alter such partitions, or erect such racks, shelves, bins, machinery, furniture, fixtures, trade fixtures, equipment, and other personal property as it may deem advisable, without the consent of the Landlord. All fixtures and permanent alterations, additions, improvements, and partitions erected by the Tenant will be and remain the property of the Landlord during the Term, and will be abandoned by the Tenant at the expiration of this Lease. All racks, shelves,

bins, machinery, furniture, equipment, and other personal property located in the Premises as of the Effective Date or otherwise installed by the Tenant may be removed by the Tenant at any time if the Tenant so elects. All such removals and restoration shall be accomplished so as not to damage the primary structure or structural qualities of the buildings and other improvements situated on the Premises.

10. **Signs.** The Tenant has the exclusive right to erect and maintain, in, on, or about the exterior and interior of the Premises, at its own expense, all signs (electrical or otherwise) necessary or appropriate to the conduct of the business of the Tenant.

11. **Inspection.** The Landlord and the Landlord's agents and representatives may enter and inspect the Premises at any reasonable time and on at least 48 hours' advance written notice during business hours, and subject to such reasonable conditions as the Tenant may require, for the purpose of making such repairs as may be required or permitted to be made by the Landlord under the terms of this Lease, provided that the same does not interfere with the Tenant's business activities on the Premises.

12. **Utilities**

(a) The Landlord shall supply cable television/satellite dish, (or allow the Tenant to install the same) telephone lines, water, gas, electricity, and sewer connections to the Premises.

(b) The Tenant shall pay all rents and charges for water, gas, heat, light, telephone service, and other utilities supplied to the Premises from and after the Effective Date and for the Term when the same become due, directly to the applicable utility provider. Notwithstanding the foregoing, if any utility service is not available at the Premises for any period of time greater than 21 days as a result of the Landlord's actions or neglect, then the Tenant will be entitled to an abatement of Rent commensurate with the period of time during which any such utilities are not available at the Premises as a result of the Landlord's actions or neglect. If such utilities remain unavailable for a period of time in excess of 21 days as a result of the Landlord's actions or neglect, then the Tenant shall have the right to terminate this Lease by delivering written notice thereof to the Landlord.

13. **Assignment and Subletting**

(a) The Tenant shall not assign this Lease or to sublet the whole or any part of the Premises without the prior written consent of the Landlord, which shall not be unreasonably withheld, delayed, or conditioned.

(b) Notwithstanding section 13(a), the Tenant may assign or transfer any interest in this Lease (including the Option to Purchase), or sublet or license all or a portion of the Premises, without the Landlord's consent, to a bona fide "**Related Transferee**," which means any of the following: (1) any corporation, limited liability company, partnership, trust, or other business entity that controls, is controlled by, or is under common control with the Tenant or the principal(s) of the Tenant; (2) a successor to the Tenant by way of a bona fide merger, consolidation, or corporate reorganization; or (3) the bona fide purchaser of all or substantially all of the Tenant's assets, stock, or other membership interests. Transfer or issuance of equity interests in the Tenant or any Related Transferee will be permitted without the Landlord's consent.

#### 14. **Fire and Casualty Damage**

(a) If the Premises are so injured or damaged by fire or other cause as to be uninhabitable for more than 120 days, then the Tenant may terminate this Lease upon written notice to the Landlord. A total destruction of the Premises shall automatically terminate this Lease. If this Lease is not so terminated, then the Landlord shall diligently restore the damaged Premises at its sole cost and expense as soon as is reasonably practical, but in all events less than 120 days from the date of such damage or casualty, and if the Landlord fails to do so, then the Tenant may terminate this Lease by delivering written notice to the Landlord. The Tenant will be entitled to an abatement of Rent for the period of time that all or any portion of the Premises are not useable for the Tenant's business due to such casualty based on the portion of the Premises that the Tenant is unable to use. If any such damage occurs before closing but after the Tenant has exercised its Option to Purchase, then the Tenant may, within 30 days after the date of such damage, by delivery of written notice to the Landlord, cancel and rescind the Tenant's exercise of the Option to Purchase.

(b) Each of the Landlord and the Tenant hereby releases the other (and the other's employees, officers, shareholders, directors, and members) from any and all liability or responsibility to the other or any claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils which may be insurable in policies of insurance covering such property and required to be carried within this Lease, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. Each party shall cause its insurance policies to contain a clause or endorsement to the effect that such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder and to the effect that such insurer waives its rights of subrogation as to such released or waived claim.

15. **Insurance**

(a) At all times during the Term, the Tenant shall maintain, at its sole cost and expense, policies of insurance containing the following insurance coverages (which policies shall name the Landlord as an additional insured):

- (1) Property insurance with premiums paid in advance insuring the Tenant's property using the standard Special Causes of Loss Form or equivalent for the full replacement value. The foregoing is referred to in this Lease as "**Property Insurance.**"
- (2) Commercial general liability insurance with respect to the Premises in amounts not less than \$1,000,000 per occurrence, \$2,000,000 aggregate limit using current ISO forms or equivalent.

(b) The Landlord shall obtain and keep in force during the Term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value thereof, as the same may exist from time to time, but in no event less than the total amount required by lenders having liens on the Premises, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood (in the event same is required by a lender having a lien on the Property), and special extended perils ("all risk" as such term is used in the insurance industry). Such insurance must provide for a payment of loss thereunder to the Landlord or to the holder of mortgages or deeds of trust on the Premises.

(c) The policies required by this section must provide for standard waivers of any right of subrogation that the insurer of such party may acquire against the other party to this Lease, for losses that are actually insured against, even if the loss results from a negligent act or omission. The Tenant's insurance company must provide the Landlord with a certificate of insurance on form ACORD-27 (for Property Insurance required to be carried under this Lease), or its equivalent, and ACORD-25 (for liability insurance required to be carried under this Lease), or its equivalent, which provides that the insurance may not be cancelled without giving the named insured at least 30 days' prior written notice (or at least ten days' written notice of cancellation in the event of the non-payment of premium). The Tenant may carry any required insurance under a blanket policy if that policy complies with the requirements of this Lease.

16. **Condemnation.** If the whole or any part of the Premises should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by conveyance in lieu thereof ("**Taking**"), and the Taking would prevent or materially interfere with the use of the Premises for the purpose for which they are then being used, including the taking of more than 25% of the Premises, then the Tenant may terminate

this Lease by delivery of written notice to the Landlord. If any minor Taking does not result in the termination of this Lease, Rent will be reduced as of the date of Taking in proportion to the reduction in area of the Premises caused by the Taking. The Tenant may in all events make a claim for its damages, including moving expenses, loss of its Option to Purchase, and other charges. If the Tenant acquires actual knowledge of the initiation of any taking or condemnation process involving the whole or any part of the Premises prior to closing but after the Tenant has exercised its Option to Purchase, then the Tenant may, within 30 days after the date the Tenant acquired knowledge of the initiation of such taking or condemnation, by delivery of written notice to the Landlord, to cancel and rescind the Tenant's exercise of the Option to Purchase.

17. **Quiet Enjoyment.** The Landlord covenants that its estate in the Premises is fee simple absolute, free from any and all claims of possession and occupancy, and that the Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Term free from molestation, eviction, or disturbance by the Landlord or any other persons or legal entity whatsoever claiming through the Landlord.

18. **Events of Default.** The following events will be deemed to be Events of Default by the Tenant under this Lease:

- (1) The Tenant fails to pay any installment of the Rent hereby reserved when due, or any other payment or reimbursement to the Landlord required under this Lease when due, and such failure continues for a period of 30 days after the Tenant's receipt of written notice of such nonpayment;
- (2) The Tenant becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;
- (3) The Tenant files a bankruptcy petition or Tenant is adjudged bankrupt or insolvent in proceedings filed against the Tenant;
- (4) A receiver or trustee is appointed for all or substantially all of the assets of the Tenant; and
- (5) The Tenant fails to comply with any term, provision, or covenant of this Lease (other than the foregoing in this section 18), and does not cure such failure within 30 days after written notice thereof to the Tenant, or such longer period as may be necessary to cure such default provided the Tenant has promptly commenced curing such default and is diligently proceeding to obtain such cure.

## 19. Remedies

(a) Upon the occurrence of any Event of Default described in the foregoing section, the Landlord may pursue any one or more of the following remedies at any time during the continuance of the Event of Default in compliance with applicable laws:

- (1) Give notice to the Tenant that this Lease will terminate on the date specified in that notice, which date will not be less than 30 days after the Landlord gives the notice to the Tenant; and
- (2) Enter upon and take possession of the Premises with legal process, and relet the Premises and receive the rent therefor; and the Tenant agrees to pay to the Landlord promptly after demand any deficiency that may arise by reason of such reletting on the days on which the Rent and amounts would have been payable if this Lease had not been terminated.

(b) The Landlord shall mitigate any damages or injury the Landlord may have which are caused by the Tenant's default. In no event will either party be liable for any consequential, punitive, or other non-compensatory or indirect damages.

20. **Landlord Default.** Notwithstanding anything herein to the contrary, if the Landlord fails to perform any of its obligations under this Lease, the Tenant may perform such obligation or obligations and to be reimbursed by the Landlord for the cost thereof. If the Landlord fails to pay such amount, then the Tenant may offset against Rent and other sums due under this Lease any amounts spent by the Tenant to cure any breach by the Landlord of its duties, obligations, or liabilities under this Lease.

21. **Waiver of the Landlord's Lien.** The Landlord hereby waives any and all security interests and other rights and interests in the Tenant's furniture, fixtures, trade fixtures, equipment, personal property, and inventory, however arising, including any statutory, common law or other landlord lien. The Tenant may remove its furniture, fixtures, trade fixtures, equipment, personal property, and inventory at any time and from time to time.

22. **Mortgages.** Provided that that the holder of any mortgage or deed of trust ("**Mortgage Holder**") delivers to the Tenant a reasonable non-disturbance agreement, this Lease will be subject to such mortgage or deed of trust. The Mortgage Holder at its option may elect, but will not be required, to make this Lease junior to any such mortgage or deed of trust. This provision will be self-executing, but the parties agree to execute and deliver such additional subordination, non-disturbance, and attornment agreements as may be reasonably requested by the Mortgage Holder or the Tenant. The Landlord agrees to use diligent efforts to

obtain a non-disturbance agreement in a form satisfactory to the Tenant from the any Mortgage Holder, and the Tenant's obligation to pay Rent and any other sums under this Lease will be conditioned upon the receipt of such agreement.

### 23. **Hazardous Materials**

(a) **"Hazardous Materials"** shall mean, to the extent they are present in amounts in violation of applicable law, any hazardous, toxic or dangerous substance, waste, contaminant, pollutant, gas, or material including petroleum and petroleum products, asbestos or asbestos-containing materials, and any other substance regulated under Environmental Requirements, underground tanks and associated lines or other equipment, barrels, containers, and other receptacles or equipment containing or previously containing such materials or substances. **"Environmental Requirements"** means all applicable federal, state, and local laws, rules, regulations, statutes, codes, ordinances, cleanup standards, judgments, orders, and any other legally enforceable requirements or standards which pertain to, regulate, or impose liability or standards of conduct concerning the use, storage, human exposure to, handling, transportation, release, cleanup, or disposal of Hazardous Substances. Unless otherwise expressly noted in this Lease, the term does not include laws, regulations, or standards of a state voluntary cleanup program (**"VCP"**). **"Contamination"** means the presence of Hazardous Materials in soil, sediments, groundwater, or surface water on or about the Premises or in any improvements located on the Premises in amounts, concentrations, or levels that meet or exceed standards requiring cleanup of industrial property established under Environmental Requirements or applicable VCP.

(b) The Landlord represents and warrants to the Tenant as follows: (1) it has provided the Tenant with copies of all written reports, correspondence, or other documents in its possession concerning the presence or suspected presence of Hazardous Materials at, on or from the Premises (**"Landlord Environmental Documents"**); (2) it has no knowledge of any other such environmental documents in the possession of a third party; (3) the Landlord is not aware of, nor has it received any written or oral notice of, any current Contamination or other current environmental condition of the Premises for which investigation or remediation may be required pursuant to Environmental Requirements; and (4) to the Landlord's knowledge, none of the structures contain asbestos-containing materials. Except as disclosed in the Landlord Environmental Documents, to the Landlord's knowledge the Premises are free from hazardous or toxic materials, as defined under any city, county, state, or federal law including in, about, or on the Premises. If the existence of any Hazardous Materials not introduced by the Tenant be found in, about or on the Premises, the Landlord shall immediately undertake to abate, remove, encapsulate, or otherwise remediate all such Hazardous Materials. This section will survive the expiration or sooner termination of this Lease.

(c) The Tenant shall not cause any Contamination on the Premises from and after the Effective Date nor shall it violate any Environmental Requirements applicable to the Premises or the operations thereon.

(d) If there are any Hazardous Materials in or about the Premises which were introduced in or about the Premises by the Landlord, its agents, employees, or contractors, or by any other person or entity, except the Tenant, the Landlord shall release, indemnify, and hold harmless the Tenant, and, at the Tenant's option, defend the Tenant, and its agents, employees, officers, and directors, if any, from any and all demands, expenses, fees, costs, fines, penalties, proceedings, claims, actions, causes of action, suits, judgments, settlements, and damages, and losses of any and every kind and nature, including diminution in value of the Premises, damages for the loss or restriction of use of any part or of any amenity of the Premises, and reasonable attorney fees and expenses which may arise as a direct or indirect result of such contamination or Hazardous Materials. This includes costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present on or about the Premises. Notwithstanding anything to the contrary in this Lease, the Landlord shall not indemnify the Tenant for any Hazardous Materials released directly by the Tenant on or about the Premises.

24. **Laws.** The Landlord shall promptly comply with all laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments that are applicable to the Premises and shall cause the Premises to comply with the same. The Landlord shall indemnify and hold the Tenant harmless from any loss, claim, or damage occasioned by the failure of the Landlord to comply with said laws, ordinances, orders, rules, regulations, and requirements that would prohibit or limit the Tenant's business operations in the Premises.

25. **Landlord Representations.** The Landlord represents and warrants to the Tenant that as of the Effective Date:

- (1) The Landlord owns the Premises in fee simple, and the Landlord's ownership interest is not subject to any mortgage, lien, lease, encroachment, easement, indenture, covenants, conditions, and restrictions or other matters or encumbrances affecting the Premises or the Landlord's ownership interest therein. The Premises have a legal right of access to public streets.
- (2) To Landlord's knowledge, there are no Hazardous Materials in, about, or on the Premises.

- (3) The Landlord has the full authority and power to execute and deliver this Lease and to perform the terms and conditions of this Lease, without the consent of any third party.
- (4) The Tenant's use and occupancy of the Premises for the Permitted Uses are expressly permitted and authorized by applicable zoning and other laws, regulations, ordinances, and building and other codes, and any and all agreements and legal restrictions affecting any part of the Premises (collectively, "**Legal Requirements**"), and the Tenant's use of the Premises for the foregoing purposes will not violate any such Legal Requirements.
- (5) The Premises and all systems, components, and parts thereof are in compliance with all Legal Requirements affecting any part of the Premises, including zoning ordinances and the Americans with Disabilities Act and insurance and fire marshal requirements.
- (6) All utilities serving the Premises are separately metered to the Premises and do not serve any other person, entity, or property other than the Premises.
- (7) The Premises and all systems, components, and parts thereof, including the HVAC, electrical, mechanical, and plumbing systems, sprinkler systems, roof, roof membrane, parking lot, windows, doors, light fixtures, wall and ceiling insulation, and landscaping are in good working order and in good condition and repair.
- (8) There are no ground leases or mortgages affecting the Premises.

26. **Broker Commissions.** Each party warrants to the other that each such party will indemnify and hold harmless the other party from any and all claims for commissions and other fees and expenses (including reasonable attorney fees) arising from failure of such party to pay amounts owed to any broker. This section will survive the expiration or sooner termination of this Lease.

27. **Option to Purchase.** The Landlord hereby grants to the Tenant the right and Option to Purchase the Premises, including the right to take an assignment of the Landlord's leasehold interest in the Premises, as appropriate, in accordance with the terms and conditions set forth on Exhibit B attached to this Lease and incorporated herein by this reference. This section will survive the expiration or sooner termination of this Lease.

28. [XX. **Right of First Refusal.** If the Landlord desires to sell its interest in the Premises or any part thereof, the Landlord shall give the Tenants written notice of any bona fide offer received by the Landlord from a potential buyer, which notice must (1) identify the proposed buyer, (2) contain a complete description of all material terms of the proposed sale to the proposed buyer, and (3) be signed by the proposed buyer and

indicate the proposed buyer's concurrence with the description of the terms of the proposed sale. The Tenants will have 30 days in which to elect whether or not to purchase the property in question on the terms contained in the Landlord's notice, and will have 60 days thereafter to complete the purchase. If the Tenants fail to give written notice within the 30-day period of their intention to purchase, or to complete the purchase within 60 days after the original notice from the Landlord (provided that the failure to complete the sale is not caused by any action of the Landlord), then the Landlord may sell the property in question to any third party upon substantially the same terms and conditions, and for a price not lower than that stated in the Landlord's original notice. If the Landlord fails to sell to any third party within six months after the Tenants' failure to elect, or failure to complete such sale, as the case may be, then the Landlord may not sell the property in question thereafter without a reoffer to the Tenants under this section.]

29. **Estoppel Certificates.** Each party agrees to execute and deliver to the other, within 15 business days of receipt of written request, an estoppel certificate stating, to the extent that such statements are true, that this Lease is in full force and effect, the date to which Rent has been paid, the unexpired Term of this Lease and such other matters pertaining to this Lease as may be reasonably requested.

30. **Surrender.** At the end of the Term the Tenant shall surrender the Premises subject to reasonable wear and tear and casualty and condemnation; provided however, that the Tenant may prior to vacating the Premises remove any or all of the Tenant's trade fixtures, fixtures, equipment, and personal property and improvements.

31. **Time.** Time is of the essence with respect to the performance of each of the covenants and agreements under this Lease. If the date for performance of any act under this Lease, or if the date of expiration of time period under this Lease, falls on a Saturday, Sunday, or legal holiday observed in \_\_\_\_\_, then the time for performance thereof, or the date of expiration of time period thereof, will be deemed extended to the next successive day which is not a Saturday, Sunday, or legal holiday observed in \_\_\_\_\_ or the State in which the Premises are located.

32. **Holdover.** If the Tenant holds over after the expiration of the Term and does not surrender the Premises prior to the expiration of the Term, then for each such month that the Tenant is holding over, the Tenant shall pay to Landlord 125% of the Rent due under this Lease for each month.

33. **Confidentiality.** Each party shall maintain any Confidential Information that it receives from the other party as confidential and may not disclose such information to any

person without the prior written consent of the party originally furnishing such Confidential Information. “**Confidential Information**” means: (1) information not available to the public concerning the Tenant’s financial affairs delivered by or on behalf of the Tenant to the Landlord; (2) information not available to the public concerning the Landlord’s business and financial affairs delivered by or on behalf of the Landlord to the Tenant; and (3) analyses, compilations, forecasts, studies, and other documents prepared on the basis of such information by the parties or their agents, representatives, affiliates, employees, or consultants. Notwithstanding the foregoing, a party may disclose the Confidential Information under applicable Law, regulation, or a valid order issued by a court or governmental authority of competent jurisdiction.

34. **Notices Between the Parties.** All notices, consents, requests, demands, and other communications under this Lease are to be in writing, and will be deemed to have been given: (1) when delivered in person; (2) three days after deposited in the United States mail, first class postage prepaid; (3) in the case of overnight courier services, one business day after delivery to the overnight courier service with payment provided; or (4) in the case of electronic transmission such as email, when sent; in each case addressed as follows, or to such other address as any party may designate by notice to the other party in accordance with the terms of this section:

If to the Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

If to the Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

Notices sent to a party's counsel do not constitute notice under this section.

35. **Successors and Assigns.** This Lease binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, and permitted successors and assigns.

36. **Governing Law and Forum Selection**

(a) The laws of the State of \_\_\_\_\_ (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Lease and all of the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance (including the details of performance), and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Lease shall bring the legal action or proceeding in either the United States District Court for the \_\_\_\_\_ District or in any court of the State of \_\_\_\_\_ sitting in \_\_\_\_\_ County. Each party to this Lease consents to the exclusive jurisdiction of the United States District Court for the \_\_\_\_\_ District and its appellate courts, and any court of the State of \_\_\_\_\_ sitting in \_\_\_\_\_ County and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this Lease and agrees that the exclusive choice of forum set forth in this section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

(c) Each party waives, to the fullest extent permitted by law, any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Lease brought in the United States District Court for the \_\_\_\_\_ District or in any court of the State of \_\_\_\_\_ sitting in \_\_\_\_\_ County and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

37. **Prevailing Party Attorney Fees.** If any legal action or other proceeding is brought under this Lease, in addition to any other relief to which the successful or prevailing party is entitled, the prevailing party is entitled to recover, and the non-prevailing party shall pay, all (1)

reasonable attorney fees of the prevailing party, (2) court costs, and (3) expenses, even if not recoverable by law as court costs (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings), incurred in that action or proceeding and all appellate proceedings. For purposes of this section, the term “attorney fees” includes, without limitation, paralegal fees, investigative fees, expert witness fees, administrative costs, disbursements, and all other charges billed by the attorney to the prevailing party.

38. **Force Majeure.** Neither party will be liable for delays in its performance or for non-performance due to unforeseen circumstances or causes beyond the party’s reasonable control.

39. **Amendment and Waiver.** No amendment, modification, supplement, termination, consent, or waiver of any provision of this Lease, nor consent to any departure therefrom, will be effective unless it is in writing and is signed by the party against whom enforcement is sought. Any waiver of any provision of this Lease and any consent to any departure from the terms of any provision of this Lease is to be effective only in the specific instance and for the specific purpose for which given.

40. **Severability.** Wherever possible, each provision of this Lease will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease is prohibited by or invalid under such law, the provision will be ineffective to the extent of the prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Lease.

41. **Entire Agreement.** This Lease constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations, and discussions of the parties, whether oral or written. All exhibits, schedules, and addenda referred to in this Lease are intended to be and are specifically incorporated by reference into this Lease.

42. **Counterparts.** This Lease may be signed by the parties on any number of separate counterparts, and all such counterparts so signed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart. A signature delivered by facsimile, email, or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Lease.

43. **Construction.** Unless the context of this Lease clearly requires otherwise: (1) references to the plural include the singular and vice versa; (2) references to any person include such person’s successors and assigns but, if applicable, only if such successors and assigns are

permitted by this Lease; (3) references to one gender include all genders; (4) "including" is not limiting; (5) "or" has the inclusive meaning represented by the phrase "and/or"; (6) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Lease refer to this Lease as a whole and not to any particular provision of this Lease; and (7) section and clause references are to this Lease unless otherwise specified. The parties have participated jointly in the negotiation and drafting of this Lease. In the event an ambiguity or question of intent or interpretation arises regarding this Lease, this Lease will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease.

44. **Exhibits.** The following exhibits are attached to this Lease and are incorporated by this reference herein:

- (1) Premises
- (2) Option to Purchase

*[Signature page follows.]*

The parties are signing this Lease as of the Effective Date.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Exhibit A

Premises

Exhibit B

Option to Purchase

This Option to Purchase is attached to and made a part of that certain Lease (the "Lease") dated \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ (the "**Landlord**"), and \_\_\_\_\_, a \_\_\_\_\_ (the "**Tenant**"). Capitalized terms used in this Option to Purchase and not defined herein will have the meaning ascribed to such term as set forth in the Lease.

The Landlord hereby grants to the Tenant the right and option to purchase (the "**Option to Purchase**") the Landlord's interest in and to the Premises. The Tenant's Option to Purchase shall grant the Tenant the right to acquire the entire Premises. The Option to Purchase shall be exercised by the Tenant giving written notice to the Landlord of such exercise no later than \_\_\_\_ months following the Effective Date, which notice shall specify the closing date (the "**Closing Date**"), but which Closing Date shall not be later than the later of: (1) 180 days following the exercise of the Tenant's Option to Purchase or (2) 60 days after the date on which the Landlord has delivered to the Tenant all of the following: (A) title policy insuring the Landlord's ownership interest, (B) all title exception documents and the vesting deed(s); (C) all environmental reports and environmental permits prepared for the Landlord or in the Landlord's possession and control; (D) any code violation and condemnation notices; (E) evidence of entity authorization to enter into and perform this Option to Purchase; (F) tax bills, special assessments, and owner's association assessments (from the past two years); (G) maintenance and service contract records (from the past two years); and (H) a letter from the Landlord certifying that it has delivered full and complete copies of the foregoing (collectively, "**Landlord's Diligence Deliverables**"), unless the parties agree otherwise in writing.

If the Option to Purchase is exercised by the Tenant as aforesaid, then the purchase price to be paid by the Tenant to the Landlord on the Closing Date shall equal the sum of \$\_\_\_\_\_ (the "**Purchase Price**"), as adjusted at Closing (as defined below) by prorations made in accordance with this Lease and further reduced by a credit of 10% for the amount of all Rent paid to the Landlord up to and including the Closing Date. The Landlord will be solely responsible for payment of any prepayment penalty, fee, or cost due to the Landlord's lender or financial institution resulting from the Tenant's exercise of the Option to Purchase and the mandatory payoff of the Landlord's lender, if any. The Purchase Price shall be paid by wire transfer of good funds delivered first to the title company, in escrow, and then by the title company to the Landlord. The Tenant shall pay Rent to the Landlord up to and including the Closing Date, which Rent shall be pro-rated as appropriate. The items listed herein shall be adjusted between the Landlord and Tenant as of the Closing Date, shall be added to or

subtracted from the Purchase Price and shall be reflected on a closing statement (the “**Closing Statement**”) to be prepared by the title company based upon the information provided to it by the Landlord and the Tenant at Closing, which information the parties agree to provide.

The Tenant shall pay the following costs of Closing the purchase of the Premises: (1) the cost of any title endorsements the Tenant desires to purchase and any lender’s policy; (2) 50% of the cost of any surveys or environmental reports; (3) all of the cost of any other due diligence the Tenant desires to perform (other than survey or environmental reports) including any physical condition assessment; (4) the costs of the Tenant’s attorneys and third party consultants; and (5) 50% of the charges of the title insurance company serving as the Closing agent for the Closing of the purchase and sale. The Tenant will have, in addition to its other rights and remedies set forth herein, the right to deduct from the Purchase Price to be paid at Closing an amount sufficient to pay the cost of placing the Premises in the condition as required by the Lease, net of any insurance proceeds assigned or otherwise available to the Tenant.

The Landlord shall pay the following costs of Closing the sale of the Premises: (1) the cost of the Tenant’s title insurance premium; (2) the cost of releasing any liens, encumbrances, or other title which are not exceptions and which can be removed with the payment of money unless and to the extent that such liens, encumbrances or title exceptions are caused by the Tenant or have been consented to by the Tenant in writing (“**Permitted Exceptions**”); (3) any and all transfer taxes, deed stamps, or other taxes due in connection with the sale or conveyance of the Premises; (4) 50% of the cost of any surveys or environmental reports; (5) the costs of the Landlord’s attorneys and third party consultants; and (6) 50% of the charges of the title insurance company serving as the Closing agent for the Closing of the purchase and sale.

The Landlord agrees to indemnify, defend, and hold harmless the Tenant from and against any and all liability and expense arising from all claims for commission arising out of the execution and delivery of this Option to Purchase or Closing on the transaction contemplated hereby, if the person claiming the commission claims to have been hired by the Landlord.

The Tenant’s obligation to purchase the Premises after exercising its Option to Purchase will be contingent on its due diligence review of the Premises and all things and matters related thereto, including without limitation, performing environmental studies, surveys and assessments, as the Tenant deems appropriate. The Landlord shall cooperate with the Tenant in the collection of any diligence information.

On the Closing Date, the Landlord shall tender fee simple ownership of the Premises to the Tenant with all plumbing systems, electrical systems, heating, ventilating, and air conditioning systems and equipment in the same condition as required under the Lease. The

closing on the purchase and sale of the Premises as contemplated herein (the “Closing”) will occur in at the offices of a reputable title company selected by the Tenant. A party to this Lease will not be required to be present in person at such Closing if such party has delivered all of the items it is required to deliver at the Closing to the title company on or before the Closing; provided however, that if such items have been delivered to the title company with escrow instructions, such instructions shall not be inconsistent with the provisions of this Lease. If any such instructions conflict with the provisions of this Lease, the provisions of this Lease will govern. The Closing must be conducted in accordance with the standard closing practices of such title company (taking into account the respective obligations of the parties under this Lease).

On the Closing Date, the Landlord shall execute and deliver to Tenant (or its designee), the following:

- (1) a general warranty deed conveying good and marketable title to the Tenant or its designee title to the Premises, subject only to the Permitted Exceptions;
- (2) a bill of sale transferring to the Tenant all of the Landlord’s right, title, and interest in and to any and all personal property belonging to Landlord that is located at the Premises together with special warranties of title;
- (3) such other releases, terminations, affidavits, bills of sale, assignments, and conveyance documents as the Tenant may reasonably require to consummate the sale of the Premises and conveyance documents, permit applications, and related documents the Tenant may reasonably require to consummate the sale of the Premises, including releases or terminations of all liens, security interests, mortgages, deeds of trust, and uniform commercial code financing statements affecting the Premises or any part thereof;
- (4) a certification that the Landlord is not a foreign person (as defined in Section 1445 of the Internal Revenue Code of 1986, as amended);
- (5) exclusive possession of the Premises and all keys thereto;
- (6) the executed Closing Statement;
- (7) an assignment of all of the Landlord’s right, title, and interest in and to any and all warranties and guaranties relating to the improvement and personal property included within the property to be transferred and conveyed to the Tenant, including, without

limitation, all warranties and guaranties relating to the Premises, fixtures, and systems contained therein; and

- (8) such other certificates, documents, affidavits, and agreements as may be required for the title company to issue an ALTA owner's policy of title insurance, insuring good and marketable fee simple title to the Premises, in favor of the Tenant, and, if requested by Tenant, standard ALTA endorsements providing survey, comprehensive, contiguity, tax parcel, environmental, zoning (ALTA 3.1 form,) and public street access endorsements, and a companion ALTA Loan Policy of Title Insurance in favor of the Tenant's lender, if any; such obligation on the part of the Landlord to include the delivery of such additional documents, certificates of good standing, resolutions, and affidavits, including a standard "Seller's Affidavit" as the title company may require in order to close the transaction in accordance with its customary practices and to provide the Tenant (or its assignee or designee) with the title insurance coverage provided for herein.

If the Tenant exercises the Option to Purchase and the Landlord defaults in the performance of its obligations under the same, then the Tenant may: (1) specifically enforce the Landlord's obligations herein; (2) withhold the payment of rent hereunder from and after the scheduled Closing Date without being in default hereunder until such time as the Landlord tenders the title to the Premises to the Tenant in the condition required herein and executes and delivers to the Tenant the other documents and agreements required to be executed and delivered herein by the Landlord; and (3) exercise any other right or remedy available to the Tenant under applicable law or equity. If the Tenant exercises the Option to Purchase and thereafter defaults in the performance of the Tenant's obligations under the same in any material respect, then (1) the Tenant shall be obligated to continue performing its obligations under this Lease; and (2) the Tenant shall be deemed to have waived its Option to Purchase entirely.