

**COMMERCIAL LEASE  
GROSS LEASE**

**This Commercial Lease** (this "Lease"), made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date"), by and between \_\_\_\_\_ (hereinafter, whether singular or plural, masculine, feminine, or neuter, designated as "Lessor," which expression shall include Lessor's heirs, personal representatives, assigns, and successors in interest), with an address of \_\_\_\_\_, and \_\_\_\_\_ (hereinafter, whether singular or plural, masculine, feminine, or neuter, designated as "Lessee," which expression shall include all Lessees, jointly and severally, and shall include Lessee's heirs, personal representatives, assigns, and successors in interest), with an address of \_\_\_\_\_.

WITNESSETH:

**I. DEMISE OF PREMISES.**

Lessor, for and in consideration of the covenants and agreements herein contained to be kept and performed Lessee, and upon the terms and conditions herein contained, does hereby let, lease, and demise to Lessee the following-described premises situated in \_\_\_\_\_ in the County of \_\_\_\_\_, State of \_\_\_\_\_, to wit:

That certain premise commonly known by street address and/or legal description as \_\_\_\_\_ (the "Premises").

**II. TERM OF LEASE.**

The term of this lease (the "Term") shall be for a period of \_\_\_\_\_, beginning on \_\_\_\_\_, and ending on \_\_\_\_\_.

**III. RENT.**

Lessee, for and in consideration of this Lease and the demise of the Premises by Lessor to Lessee, hereby agrees and covenants with Lessor to pay as rent for the Premises, without notice or demand, the sum of \$ \_\_\_\_\_, per \_\_\_\_\_ ("Rent").

Rent shall be due and payable on or before \_\_\_\_\_.

Rent shall be paid by Lessee to Lessor on Lessor's order in lawful money of the United States to the following address or by the following electronic means: \_\_\_\_\_, or at such other place as Lessor may designate from time to time for this purpose.

- |   |   |
|---|---|
| <input type="checkbox"/> Rent is payable in advance | <input type="checkbox"/> Rent shall commence as of the Effective Date |
| <input type="checkbox"/> Rent is payable in arrears | <input type="checkbox"/> Rent shall commence on _____                 |

- Rent shall remain constant throughout the Term
- Rent shall be adjusted throughout the Term as follows: \_\_\_\_\_.

- Rent is subject to CPI adjustment, as set forth immediately below

In the event Rent is subject to CPI adjustment, Rent shall be subject to \_\_\_\_\_ increases based upon changes in the Consumer Price Index, "All Items," U.S. City Average, (1982-84-100) as published by the United States Department of Labor. The Base Index in each calculation shall always be the Consumer Price Index, "All Items," U.S. City Average, for the calendar month which is three months prior to the commencement date of the term of this Lease and the Current Index in each calculation shall be the Consumer Price Index, "All Items," U.S. City Average, which is three months prior to the anniversary of the commencement date of the Term of this Lease immediately preceding such rent adjustment calculation. On or before each anniversary date of commencement



of the Term of this Lease, Lessor shall determine the percentage of increase to be applied to the Rent by dividing the Current Index by the Base Index. The percentage change from such calculation shall be applied to the Rent and such adjusted rent shall be effective from such anniversary date of this Lease until the next successive annual adjustment. This formula for adjustment of the Rent shall prevail at each interval anniversary date throughout the Term of this Lease.

If the Consumer Price Index shall no longer be published, then the parties shall ascertain the CPI adjusted rent from such other reliable source or sources of information as may then be available to reflect the same processes. If the Consumer Price Index is hereafter changed to establish a different reference period after the date of execution of this Lease, then the percentage of change shall be computed by first transposing the Base Index to reflect the change in the reference period and the percentage change shall be computed based on the revised reference.

Lessee's failure to pay Rent and other charges promptly may cause Lessor to incur unanticipated costs. Therefore, if Lessor does not receive any Rent and other charges due within five (5) days after it becomes due, Lessee shall pay Lessor a late charge equal to \_\_\_\_\_ % of the overdue amount.

A \$ \_\_\_\_\_ fee will be assessed on any check returned by the bank for nonpayment. In the event Lessee has more than one insufficient check to Lessor, Lessee shall pay all future rental payments in the form of a cashier's check or money order.

### III. SECURITY DEPOSIT.

- No security deposit is required.
- As a condition of this Lease, Lessee shall deposit with Lessor a security deposit in the amount of \$ \_\_\_\_\_. The security deposit shall be held by Lessor as required by applicable law. Lessor shall have the right to apply the security deposit and offset any damages it may incur under this Lease against the security deposit. Thereafter, and after expiration of the Term and vacation of the Premises by Tenant, the balance of said security deposit, if any, shall be returned to Lessee.

### IV. USE OF PREMISES.

Lessee, for and in consideration of this Lease and the demise of the Premises by Lessor to Lessee, hereby agrees and covenants with Lessor to use and occupy the Premises for the purpose of \_\_\_\_\_,

and for no other purpose without first obtaining the written consent of Lessor therefore; the Lessee shall not use or occupy or permit the Premises to be used or occupied, or to do or permit anything to be done in or on the Premises, in a manner which will make void or avoidable any insurance then in force with respect thereto, or which will make it impossible to obtain fire or other insurance required to be furnished hereunder, or which will cause or be likely to cause structural damage to the Premises or any portion thereof, or which will constitute a public or private nuisance. Further, the Lessee shall not use or occupy or permit the Premises to be used or occupied for any business, purpose, or use deemed disreputable or extra-hazardous, or for any purpose or in any manner which is in violation of any present or future municipal, state and federal ordinances, laws, rules and regulations.

### V. CONDITION OF PREMISES AND REPAIRS.

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that Lessee has examined the Premises prior to the execution hereof, knows the condition thereof, and acknowledges that Lessee has received the Premises in good order and condition, and that no representation or warranty as to the condition or repair of the Premises has been made by Lessor, and, at the expiration of the term of this Lease, or any renewal or extension thereof, Lessee will yield up peaceably the Premises to Lessor in as good order and condition as when the same were entered upon by Lessee, loss by fire or inevitable accident, damage by the elements, and reasonable use and wear excepted; that Lessee will keep, at Lessee's own expense, the Premises in good order and repair during the term of this Lease, or any extension or renewal thereof, and will repair and replace promptly, at Lessee's own expense, (see below) any and all damage, including, but not limited to, damage to walls and floors, heating and cooling units, plumbing, glass, sidewalks, and all other appurtenances, that may occur from time to time; that Lessee hereby waives any and all right to have such repairs or replacements made by Lessor or at Lessor's expense, and that, if Lessee fails to make such repairs and replacements promptly, or if such repairs and replacements have not been made within fifteen (15) days after the occurrence of damage,



Lessor may, at Lessor's option, make such repairs and replacements and Lessee hereby agrees and covenants to repay the cost thereof to Lessor on demand. Lessor shall be responsible for the roof and structural elements of the Premises and its foundation, and the major components of heating and cooling units, including the compressor, if they fail.

**VI. LIABILITY OF LESSOR.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that Lessor shall not be liable for any damage to persons or property arising from any cause whatsoever, which shall occur in any manner in or about the Premises, and Lessee hereby agrees to indemnify and save harmless Lessor from any and all claims and liability for damage to persons or property arising from any cause whatsoever, which shall occur in any manner in or about the Premises. Further, Lessee hereby agrees and covenants with Lessor that Lessor shall not be liable for any damage to the Premises, or to any part thereof, or to any property or effects therein or thereon, caused by leakage from the roof of the Premises or by bursting, leakage, or overflowing of any waste pipes, water pipes, tanks, drains, or stationary washstands, or by reason of any damage whatsoever caused by water from any source whatsoever, and Lessee hereby agrees and covenants to indemnify and save harmless Lessor from any and all claims and liability for any damage to the Premises, or to any part thereof, or to any property or effects therein or thereon.

**VII. REQUIREMENTS OF PUBLIC AUTHORITY.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that during the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future municipal, state and federal ordinances, laws, rules and regulations affecting the Premises or appurtenances thereto, or any part thereof, whether the same are in force and effect at the time of the commencement of the term of this Lease or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable attorneys' fees, that may in any manner arise out of or be imposed because of the failure of the Lessee to comply with the covenants and agreements of this paragraph VII. Further Lessee hereby agrees and covenants with Lessor that if Lessee fails to comply promptly with any present or future municipal, state, and federal ordinances, laws, rules, and regulations, or fails to comply by such time that compliance may be required by law, Lessor, may, at Lessor's option, take such actions as may be necessary to comply with all present and future municipal, state, and federal ordinances, laws, rules, and regulations, and Lessee hereby agrees and covenants to repay the cost incurred by Lessor in taking such action to Lessor on demand.

Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities pertaining to Lessee's use of the Premises and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, including the American with Disabilities Act, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions, and other environmental matters, all zoning and other land use matters, and utility availability, and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Lessor or Lessee with respect to the use or occupation of the Premises.

**VIII. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that Lessee shall not make, or suffer or permit to be made, any alterations, additions, or improvements whatsoever in or about the Premises without first obtaining the written consent of Lessor therefore; provided, however, that such consent, if given, shall be subject to the express condition that any and all alterations, additions, and improvements shall be done at Lessee's own expense and in accordance and compliance with all applicable municipal, state, and federal ordinances, laws, rules and regulations, and that Lessee hereby covenants and agrees with Lessor that in doing and performing such work Lessee shall do and perform the same at Lessee's own expense, in conformity and compliance with all applicable municipal, state, and federal ordinances, laws, rules and regulations, and that no liens of mechanics, material men, laborers, architects, artisans, contractors, subcontractor, or any other lien of any kind whatsoever shall be created against or imposed upon the Premises, or any part thereof, and that Lessee shall indemnify and save harmless Lessor from any and all liability and claims for damages of every kind and nature which might be made, or from judgments rendered against Lessor or against said the Premises on account of or arising out of such alterations, additions, or improvements.

NOTE: ANY ALTERATION, ADDITION OR IMPROVEMENT SHALL BE APPROVED BY LESSOR UPON



SUBMISSION OF A WRITTEN ARCHITECTURAL DRAWING. ALL IMPROVEMENTS SHALL BE COMPLETED BY A LICENSED CONTRACTOR AND WITH ALL CITY OR MUNICIPAL LAWS AND REGULATIONS AS STATED HEREIN.

**IX. OWNERSHIP OF ALTERATIONS, ADDITIONS AND IMPROVEMENTS.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that any and all alterations, additions, and improvements, except signs, shelving, moveable furniture and equipment not affixed to the roof, walls or floors, made at Lessee’s own expense after having first obtained the written consent of Lessor therefore, in accordance with the provisions contained in Paragraph VIII hereof, whether or not attached to the roof, walls, or floors, foundations, or the Premises in any manner whatsoever, shall immediately merge and become a permanent part of the realty, and any and all interest, of the Lessee therein shall immediately vest in Lessor, and all such alterations, additions, and improvements shall remain on the Premises and shall not be removed by Lessee at the termination of this Lease. The signs, shelving, moveable furniture and equipment not affixed to the roof, walls or floors, shall be removed by Lessee at Lessee’s expense on or before the termination of the Lease, and Lessee shall repair any damage caused thereby at Lessee’s own expense, such that the Premises shall be in as good order and condition as when the same were entered upon by Lessee.

- Lessee is leasing the Premises in “as is condition”.
- Lessee is leasing the Premises on the basis that Lessor shall perform the following work and improvements:

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**X. ASSIGNMENT AND SUBLETTING.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that neither Lessee nor Lessee’s heirs, personal representatives, assigns, or successors in interest shall assign this Lease or sublet the Premises, in whole or in part, without first obtaining the written consent of Lessor therefore; that no assignment of this Lease or any subletting of the Premises, in whole or in part, shall be valid, except by and with the written consent of Lessor first obtained; that the consent of Lessor to any such assignment or subletting shall not operate to discharge Lessee or Lessee’s heirs, personal representatives, assigns, or successors in interest from their liability upon the agreements and covenants of this Lease, and Lessee, Lessee’s personal representatives, assigns and successors in interest shall remain liable for the full and complete performance of all the terms, conditions, covenants, and agreements herein contained as principals and not as guarantors or sureties, to the same extent as though no assignments or sublease had been made; that any consent of Lessor to any such assignment or subletting shall not operate as a consent to further assignment or subletting or as a waiver of this covenant and agreement against assignment and subletting; and that the following any such assignment or subletting, the assignee and/or sublettee shall be bound by all of the terms, conditions, covenants, and agreements herein contained including the covenant against assignment or subletting.

- Assignment and subletting are permissible upon the following terms and conditions: \_\_\_\_\_
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**XI. UTILITY AND OTHER CHARGES.**

- Lessor shall provide the following utilities for the Premises at no additional charge: \_\_\_\_\_
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Any utilities not provided by Lessor as expressly noted above shall be the sole responsibility of Lessee.

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor to pay promptly all utility and other charges of whatsoever kind and nature, including charges for electrical, gas, water, refuse, sewage, telephone and other services, which may be incurred in connection with



Lessee's use of the Premises, and to indemnify and save harmless Lessor there from. Any use of trash dumpsters that require additional pickups shall be at Lessee's cost.

Lessee understands and agrees that the electricity to the Premises is sub metered and that Lessor shall invoice Lessee on a periodic basis for for electric usage, and Lessee shall promptly pay said invoice. Lessee also agrees that Lessor may charge an administrative fee to Lessee of \$ \_\_\_\_\_ per month for billing and reading of electric meter.

**XII. LESSOR'S RIGHT OF ENTRY AND TO MAKE ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor, Lessor's heirs, personal representatives, assigns, agents, attorneys, and successors in interest shall have the right at any time, upon reasonable notice to Lessee, to enter upon the Premises to inspect the same and to make any and all improvements, alterations, and additions of any kind whatsoever upon the Premises, providing such improvements, alterations, and additions are reasonably necessary or convenient to the use to which the Premises are being put at the time, but at no time shall Lessor be compelled or required to make any improvements, alterations, or additions.

**XIII. TAXES, OTHER ASSESSMENTS, AND INSURANCE.**

Lessee and Lessor hereby covenant and agree that all taxes and special and general assessments of whatsoever kind and nature, extraordinary as well as ordinary, which have been or may be levied upon the Premises and upon any alterations, additions, and improvements thereon, shall be paid by Lessor at the time when the same become due and payable, and that all taxes and special and general assessments of whatsoever kind and nature, extraordinary as well as ordinary, which have been or may be levied upon the personal property located upon the Premises shall be paid by Lessee at the time when the same shall become due and payable. Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor to carry and maintain in full force and effect during the term of this Lease, and any extension or renewal thereof, at Lessee's expense, public liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to Lessor, with limits of coverage of not less than \$1,000,000 for each person and \$ 1,000,000 in the aggregate for bodily injury or death liability for each accident, and \$50,000 for property damage liability for each accident, for the benefit of both Lessor and Lessee as protection against all liability claims arising from the premises. Lessee hereby agrees and covenants with Lessor to deliver a copy of the insurance as soon thereafter as practicable, and to give Lessor not less than ten (10) days written notice informing Lessor of the expiration of any such policy. Fire and extended coverage insurance upon all buildings, alterations, and improvements upon the Premises shall be provided for as follows: by Lessor, and fire and extended coverage insurance upon all of the contents and other personal property situated upon the Premises shall be provided for as follows by Lessee. It is understood and agreed by and between the parties that a copy of each policy of fire and extended coverage insurance shall be provided to the parties hereto at the beginning of the term of this Lease, or as soon thereafter as practicable, and that the party who is responsible for paying the premiums on each policy of fire and extended coverage insurance shall give the other party not less than ten (10) days written notice informing the other party of the expiration of any such policy. Lessee agrees to name Lessor as an additional interest under its liability insurance policy covering the Premises. Lessee represents that such policy is in limits of not less than \$1,000,000.00, and Lessee shall provide Lessor with a certificate of such insurance.

At Lessee's own expense, Lessee shall repair all damage or destruction of any plate or window glass in the Premises and shall maintain adequate plate glass insurance at its own expense for Lessor's benefit. If Lessee fails to repair the damage of any plate glass or window glass in the Premises, or fails or refuses to maintain adequate plate glass insurance for Lessor's benefit, then Lessor may repair said damage or destruction or may insure the plate glass and charge the cost of such repairing or the cost of premium for the plate glass insurance to Lessee and the amount thereof shall be deemed to be, and be paid as, additional rent.

Lessee agrees to install such fire extinguishing equipment as Lessor may reasonably require from time to time in writing, or as may be required by law. Lessee further agrees not to do anything that will increase the rate of fire insurance on the building in which the Premises are located, without the prior written consent of Lessor; and if such consent is given, Lessee agrees to pay promptly to Lessor the amount of the increase in the cost of such insurance, during the term of this Lease.

All policies required to be affected by Lessee under this Lease shall be maintained in force throughout the lease



term. A certificate of each policy or renewal policy maintained in force throughout the lease term shall be delivered to Lessor at the mailing address specified in this Lease. Each such certificate shall provide that no policy required to be maintained in force under this Lease shall be reduced in amount or canceled without (10) days' advance notice in writing given to Lessor at the mailing address provided in this Lease.

**XIV. HOLDING OVER.**

Lessee, for and in consideration of this Lease and the demise of the Premises, agrees and covenants with Lessor's that no holding over by Lessee after the expiration of this Lease, or any renewal or extension thereof, whether with or without the consent of Lessor, shall operate to extend or renew this Lease, and that any such holdings over shall be construed as a tenancy from month to month at the monthly rental which shall have been payable at the time immediately prior to when such holding over shall have commenced, and such tenancy shall be subject to all the terms, conditions, covenants, and agreements of this Lease.

**XV. BANKRUPTCY AND CONDEMNATION.**

Lessee, for and in consideration of this Lease and the demise of the Premises, hereby agrees and covenants with Lessor that should Lessee make an assignment for the benefit of creditors or should be adjudged a bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver or trustee should be appointed by any court of competent jurisdiction for Lessee because of any insolvency, or any execution, attachment, or replevin, or other court order should be issued against the Lessee or any of Lessee's property, whereby the Premises or any building or buildings, or alterations, additions, or improvements thereon, shall be taken or occupied or attempted to be taken or occupied by someone other than the Lessee, the occurrence of any such event shall be deemed a breach of this Lease, and, in such event, Lessor shall have the option to forthwith terminate this Lease and to re-enter the Premises and to take possession thereof, whereupon Lessee shall quit and surrender peaceably the Premises to Lessor. In no event shall this Lease be deemed an asset of Lessee after the assignment for the benefit of creditors, the adjudication in bankruptcy, the appointment of a receiver or trustee, or the issuance of a Writ of Execution, a Writ of Attachment, a Writ of Replevin, or other court order against Lessee or Lessee's property whereby the Premises or any building or buildings, or alterations, additions, or improvements thereon, shall be taken or occupied or attempted to be taken or occupied by someone other than the Lessee. Further, Lessee hereby covenants and agrees with Lessor that in the event the Premises, or any part thereof, shall be taken for any public or quasi-public use under any statute or by right of eminent domain, this Lease shall automatically terminate, as to the part so taken, as of the date possession shall have been taken, and the rent reserved shall be adjusted so that Lessee shall be required to pay for the remainder of the term that portion of the rent reserved in the proportion that the Premises remaining after the taking for public or quasi-public use bears to the whole of the Premises before the taking for public or quasi-public use. All damages and payments resulting from the taking for public or quasi-public use of the Premises shall accrue to and belong to Lessor, and Lessee shall have no right to any part thereof.

**XVI. DESTRUCTION.**

Lessee, for and in consideration of this Lease and the demise of the Premises, agrees and covenants with Lessor that if at any time during the term of this Lease, or any extension or renewal thereof, the Premises shall be totally or partially destroyed by fire, flood, earthquake, or other calamity, then Lessor shall have the option to rebuild or repair the building or buildings, and any alterations, additions, or improvements on the Premises, in as good condition as they were immediately prior to such calamity; provided, however, that such rebuilding or repair shall be commenced within a period of thirty days after notice in writing to Lessor of such destruction or damage. In such case, a just and proportionate part of the rental herein specified shall be abated until such the Premises shall have been rebuilt and repaired. In case, however, Lessor shall within thirty (30) days following notice in writing to him of such damage elect not to rebuild or repair the Premises, Lessor shall notify Lessee and, thereupon, this Lease shall terminate and become null and void. Moreover, in no event shall Lessor have any duty or obligation to rebuild or repair any signs, shelving, moveable furniture, equipment not affixed to the roof, walls, or floors as a permanent part of the realty, or any other personal property owned or leased by the Lessee and used to carry out the purpose for which Lessee is leasing the Premises.

**XVII. SIGNS.**

Lessor and Lessee covenant and agree that Lessee may at Lessee's own expense erect and maintain a sign or signs to carry out the purpose for which Lessee is leasing and the Premises; provided, however, the location, type and design of all exterior signs shall be first approved in writing by Lessor. Upon the expiration of this Lease, or any renewal or extension thereof, Lessee shall remove such sign or signs and shall repair any damage to the



premises caused thereby at Lessee's own expense.

Lessee shall not install exterior signage or signage visible from the exterior of the Premises.

Further, at any time within thirty days prior to the termination of this Lease, or any renewal or extension thereof, Lessor shall have the right to place upon any part of said the Premises any "For Rent" or "For Lease" signs that Lessor may select.

### **XVIII. DEFAULT.**

Lessee's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

- a. If Lessee abandons or vacates the Premises; or
- b. If Lessee fails to pay any Rent or any other charges required to be paid by Lessee under this Lease and such failure continues for five (5) days after such payment is due and payable; or
- c. If Lessee fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Lessor or Lessee; or
- d. If a writ of attachment or execution is levied on this Lease or on any of Lessee's Property; or
- e. If Lessee makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Lessee files a voluntary petition for relief or if a petition against Lessee in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Lessee or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days; or
- g. If in any proceeding or action in which Lessee is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Premises or Lessee's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Lessee's Property; or
- h. If Lessee is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d. through g. above.

2. Remedies. In the event of Lessee's default hereunder, then in addition to any other rights or remedies Lessor may have under any law, Lessor shall have the right, at Lessor's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Lessee's right to possession of the Premises and reenter the Premises and take possession thereof, and Lessee shall have no further claims to the Premises or under this Lease; or
- b. Continue this Lease in effect, reenter and occupy the Premises for the account of Lessee, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- c. Reenter the Premises under the provisions of subparagraph b., and thereafter elect to terminate this Lease and Lessee's right to possession of the Premises.

If Lessor reenters the Premises under the provisions of subparagraphs b or c above, Lessor shall not be deemed to have terminated this Lease or the obligation of Lessee to pay any Rent or other charges thereafter accruing, unless Lessor notifies Lessee in writing of Lessor's election to



terminate this Lease. In the event of any reentry or retaking of possession by Lessor, Lessor shall have the right, but not the obligation, to remove all or any part of Lessee's Property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Lessee. If Lessor elects to relet the Premises for the account of Lessee, the rent received by Lessor from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Lessee to Lessor; second to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Lessor and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting which is applied against the Rent due hereunder is less than the amount of the Rent due, Lessee shall pay the deficiency to Lessor promptly upon demand by Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as determined, any costs and expenses incurred by Lessor in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

Should Lessor elect to terminate this Lease under the provisions of subparagraph a or c above, Lessor may recover as damages from Lessee the following:

- i. *Past Rent.* The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus
- ii. *Rent Prior to Award.* The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus
- iii. *Rent After Award.* The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Lessee proves could be reasonably avoided; plus
- iv. *Proximately Caused Damages.* Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result there from, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Lessor in (1) retaking possession of the Premises, (2) maintaining the Premises after Lessee's default, (3) preparing the Premises for reletting to a new Lessee, including any repairs or alterations, and (4) reletting the Premises, including broker's commissions.

"The worth at the time of the award" as used in subparagraph i and ii above, is to be computed by allowing interest at the rate of ten percent (10%) per annum. "The worth at the time of the award" as used in subparagraph iii above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Lessor subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Lessor's knowledge of any breach at the time of such acceptance of Rent. Lessor shall not be deemed to have waived any term, covenant or condition unless Lessor gives Lessee written notice of such waiver.

3. Lessor's Default. If Lessor fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Lessee specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Lessor fails to commence to cure within that thirty (30) day period and complete such cure within ninety (90) days of commencement thereof, then Lessor shall be liable to Lessee for any damages sustained by Lessee as a result of Lessor's breach. If, after notice to Lessor of default, Lessor (or any first mortgagee or first deed of trust beneficiary of Lessor) fails to cure the default as provided herein, then Lessee shall have the right to cure that default at Lessor's expense. Lessee shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease except as otherwise





specifically provided herein.

**XIX. LESSOR’S REMEDIES ARE CUMULATIVE.**

The specified remedies to which the Lessor may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Lessor may be lawfully entitled in case of any breach or threatened breach by the Lessee of any of the agreements and covenants herein contained.

**XX. WAIVERS.**

Lessee, for and in consideration of this Lease and the demise of the Premises, agrees and covenants with Lessor that the delay or omission in the enforcement of any of the agreements and covenants herein contained, or in the exercise of any of Lessor’s rights hereunder, shall not affect the duty of the Lessee to thereafter faithfully fulfill and perform all of the agreements and covenants herein contained, and that the failure, neglect, or omission of Lessor to terminate this Lease for any one or more breaches of any agreements and covenants hereof, shall not be deemed a consent by Lessor of such breach and shall not impede, impair, stop, bar, or prevent Lessor from thereafter terminating this Lease, either for such violation, or for prior to subsequent violations of any covenant or agreement hereof.

**XXI. BINDING ON HEIRS, PERSONAL REPRESENTATIVES, ASSIGNS AND SUCCESSORS IN INTEREST.**

It is understood and agreed by and between the parties hereto that the agreements, covenants, terms, conditions, provisions, and undertakings in this Lease, or in any extension or renewal thereof, shall extend to and be binding upon the heirs, personal representatives, assigns, and successors in interest of the respective parties hereto, as if they were in every case named and expressed, and shall be construed as covenants running with the land; and wherever reference is made to either of the parties hereto, it shall be held to and include and apply also to the heirs, personal representatives, successors, and assigns of such party, as if in each and every case so expressed.

**XXII. ADDRESSES FOR NOTICES.**

Any and all notices required or permitted to be given hereunder shall be considered to have been given if in writing and delivered to the respective party designated below upon the date of such personal delivery, or upon a date three (3) days following the mailing of any such notice by certified or registered mail, return receipt requested, addressed to the respective party at the respective address set forth below, or at such other address as either party may furnish the other for this purpose by written notification delivered or mailed to the other as herein provided.

NOTICES TO LESSOR:

\_\_\_\_\_

Phone: \_\_\_\_\_

With a copy to:

\_\_\_\_\_

Phone: \_\_\_\_\_

LESSEE:

\_\_\_\_\_

Phone: \_\_\_\_\_

With a copy to:

\_\_\_\_\_

Phone: \_\_\_\_\_

**XXIII. DECLARATION OF CONTRACTUAL LIABILITY.**

If there is more than one party Lessee, the covenants and agreements of the Lease shall be joint and several obligations of each such party.

**XXIV. GRAMMATICAL USAGE.**

In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and



vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

**XXV. COVENANT TO EXECUTE ADDITIONAL INSTRUMENTS.**

The parties hereto hereby agree to execute and deliver any instruments in writing necessary to carry out any agreement, covenant, term, condition or assurance in this Lease whenever an occasion shall arise and request for such instrument shall be made.

**XXVI. SEVERABILITY.**

If any provision of this Lease, or any application thereof, shall be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease, and any other application of such provision, shall continue in full force and effect.

**XXVII. CAPTIONS.**

The section headings are for convenience of reference only and shall not otherwise affect the meaning hereof.

**XXVIII. GOVERNING LAW.**

This Lease shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

**XXIX. AMENDMENTS.**

It is understood and agreed by and between the parties hereto that this Lease shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

**XXX. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

(a) Lessee and the Premises will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in subparagraph (g), all as amended and modified from time to time (collectively, "Environmental Laws"). All governmental permits relating to the use or operation of the premises required by applicable Environmental Laws are and will remain in effect, and lessee will comply with them.

(b) Lessee will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of hazardous material, as that term is defined in subparagraph (g), on, in, under, or from the Premises. Lessee will promptly notify lessor, in writing, if Lessee has or acquires notice or knowledge that any hazardous material has been or is threatened to be released, generated, manufactured, stored, treated, transported, or disposed of, on, in, under, or from the Premises; and if any hazardous material is found on the Premises, Lessee, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the hazardous material to the complete satisfaction of lessor and the appropriate governmental authorities.

(c) Lessee will immediately notify lessor and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Laws. Lessee will promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of lessor. Lessee will keep the Premises free of any lien imposed pursuant to any Environmental Laws.

(d) Lessor will have the right at all reasonable times and from time to time to conduct environmental audits of the Premises, and Lessee will cooperate in the conduct of those audits. The audits will be conducted by a consultant of Lessor's choosing, and if any hazardous material is detected or if a violation of any of the warranties, representations, or covenants contained in this paragraph is discovered, the fees and expenses of such consultant will be borne by Lessee and will be paid as additional rent under this Lease on demand by lessor.

(e) If Lessee fails to comply with any of the foregoing warranties, representations, and covenants, lessor may cause the removal (or other cleanup acceptable to lessor) of any hazardous material from the Premises. The costs of hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Lease, whether or not a court has ordered the cleanup, and those costs will become due and payable on demand by lessor. Lessee will give lessor, its agents, employees access to the Premises to remove or otherwise clean up any hazardous material. Lessor, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, and this Lease will not be construed as creating any such obligation.



(f) Lessee agrees to indemnify, defend (with counsel reasonably acceptable to Lessor and at Lessee's sole cost), and hold lessor and lessor's affiliates, shareholders, directors, officers, employees, and agents free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, asserted, or awarded against lessor or any of them in connection with or arising from or out of:

- (1) Any hazardous material, on, in, under, or affecting all or any portion of the Premises;
- (2) Any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this paragraph;
- (3) Any violation or claim of violation by Lessee of any environmental law; or
- (4) The imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of hazardous material.

This indemnification is the personal obligation of Lessee and will survive termination of this Lease. Lessee, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Lessor under CERCLA, as that term is defined in subparagraph (g), or any state equivalent or any similar law now existing or enacted after this date. To the extent that Lessor is strictly liable under any such law, regulation, ordinance, or requirement, Lessee's obligation to Lessor under this indemnity will also be without regard to fault on the part of Lessee with respect to the violation or condition that results in liability to Lessor.

(g) For purposes of this Lease, "hazardous material" means:

- (1) "Hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., both as amended to and after this date;
- (2) "Hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act ("RCRA"), 42, U.S.C. § 6901, et seq., as amended to and after this date;
- (3) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended to and after this date;
- (4) Crude oil or any fraction of it that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);
- (5) Any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. § 2011, et seq., as amended to and after this date;
- (6) Asbestos in any form or condition; and
- (7) polychlorinated biphenyls (PCB's) or substances or compounds containing PCB's.

### XXXI. RULES & REGULATIONS.

This Lease and Lessee's obligations hereunder include compliance with the Rules and Regulations separately provided by Lessor to Lessee.

There are no separate Rules and Regulations pertaining to this Lease and the Premises.

### XXXII. BROKERS.

No brokers were used in connection with this transaction

Brokers were used in connection with this transaction: Name of broker: \_\_\_\_\_

The following party shall be responsible for broker's commissions: \_\_\_\_\_

Each part shall indemnify and hold harmless the other for any claim, liability or damage for brokers' commissions, finders' fees or the like.



**XXXIII. HOLDOVER.**

Upon expiration of the Term, this Lease shall convert to a month-to-month tenancy, at the monthly Rental rate then existing as of the expiration of the Term.

Upon expiration of the Term, Lessee shall have vacated the Premises. If Lessee fails to so vacate, Lessee shall be deemed a tenant at sufferance, and Rent shall automatically convert to \_\_\_\_\_ % of the Rental rate then existing as of the expiration of the Term.

**XXXIV. MISCELLANEOUS.**

It is understood and agreed by the parties hereto that this Lease sets forth all covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Premises and supersedes all prior or contemporaneous agreements with respect to the Premises, and that there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Lessor and Lessee other than as are set forth herein.

It is understood and agreed by and between the parties hereto that there shall be no valid and binding contract or lease between the parties until this Lease is executed by the Lessor and Lessee, notwithstanding anything to the contrary herein and notwithstanding any contrary representation made by any party or any broker on behalf of a party.

Lessor and Lessee understand, agree, and acknowledge that:

- a) This Lease has been freely negotiated by both parties; and
- b) That, in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the day and year first above written.

Lessor:  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Name: \_\_\_\_\_

Lessee:  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Name: \_\_\_\_\_



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