

SUBLEASE AGREEMENT – COMMERCIAL PROPERTY

BETWEEN

(“Sublessor”)

AND

(“Subtenant”)

Property:

Insert address/description:

Dated: _____.



SUBLEASE AGREEMENT – COMMERCIAL PROPERTY

This SUBLEASE AGREEMENT (this “Sublease”) is made and entered into as of _____ (the “Effective Date”), by and between _____ (“Sublessor”), and _____ (“Subtenant”).

RECITALS:

A. By Lease Agreement by and between _____ (“Landlord”), and Sublessor, dated as of _____, as may have been amended from time to time (the “Prime Lease”), Landlord, as lessor, leased to Sublessor, as lessee, *inter alia*, the real property and improvements known as _____ and more particularly described in the attached **Exhibit A** (the “Leased Premises”), subject to the terms and conditions set forth in the Prime Lease; and

B. Subtenant desires to sublease the Leased Premises from Sublessor upon the terms and conditions set forth herein; and

C. Notwithstanding anything to the contrary set forth herein, Subtenant will have no rights or obligations with respect to any of the Property as described in the Prime Lease, other than as set forth herein with respect to the Leased Premises.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals: Incorporation of Terms. The foregoing recitals and certain terms and provisions of the Prime Lease (subject to the provisions of Section 5 of this Sublease) are incorporated herein by reference and are made a substantive part of this Sublease, as specifically set forth herein. The foregoing incorporation of portions of the Prime Lease herein by reference in lieu of expressly restating each Prime Lease provision herein is done as a matter of convenience. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Prime Lease. This Sublease is subject and subordinate to the Prime Lease in all respects. Sublessor shall have the right to amend or modify the Prime Lease without the consent of Subtenant; provided, however, that if such amendment or modification would adversely affect in any way Subtenant’s liabilities or Subtenant’s rights, the terms of such amendment or modification to the Prime Lease will not be applicable to this Sublease nor bind Subtenant unless Subtenant consents in writing to such amendment or modification in its sole and absolute discretion. If Sublessor amends or modifies the Prime Lease in a way that affects Subtenant or the Leased Premises or this Sublease, but for which Subtenant’s consent is not required as set forth above, Sublessor shall give Subtenant written notice of such amendment or modification.



2. Sublease; Condition of the Property. Sublessor does hereby sublease to Subtenant, and Subtenant does hereby sublease from Sublessor the Leased Premises upon the terms and conditions set forth herein. Subtenant has fully inspected the Leased Premises and shall accept the Leased Premises in its “as-is,” “where-is” condition as of the date hereof. Subtenant acknowledges that, except as specifically set forth in this Sublease, no representations, statements or warranties, express or implied, have been made by or on behalf of Sublessor with respect to the condition of the Leased Premises.

3. Term. The term of this Sublease (the “Sublease Term”) shall commence on _____ (the “Sublease Commencement Date”) and shall

continue on a month-to-month basis until such time as the termination of the Prime Lease OR

continue for a term of _____, subject to earlier termination in the event of termination of the Prime Lease.

Each month of this Sublease is referred to in this Sublease as a “Sublease Month.”

4. Rent.

(a) Base Subrent. Beginning on the Sublease Commencement Date, and throughout the Sublease Term, Subtenant shall pay to Sublessor, as base subrent hereunder, a monthly rental for each Sublease Month in an amount of \$_____ per month (the “Monthly Base Subrent”); provided, however, that in any event, the Monthly Base Subrent shall never be less than the base rent allocable to the Leased Premises under the Prime Lease.

(b) Subrental Payments. The Monthly Base Subrent for each Sublease Month shall be payable by Subtenant to Sublessor in equal monthly installments, in advance. All payments to be made by Subtenant hereunder shall be payable to Sublessor at the address set forth in Section 15 of this Sublease, or at such other address as Sublessor shall designate in writing, by good check or by wire or electronic transfer of immediately available funds. At its option, Sublessor may direct Subtenant to pay the Monthly Base Subrent directly to Landlord. All payments of Monthly Base Subrent shall be made by Subtenant without demand, abatement, set-off, offset or reduction of any kind. All payments of Monthly Base Subrent shall be due and payable on the ____ day of each and every calendar month during the Sublease Term, with time being of the essence. Except as otherwise set forth herein to the contrary, Subtenant’s obligation to pay Monthly Base Subrent during the Sublease Term shall survive the expiration or earlier termination of this Sublease. In the event that the Sublease Term commences on a date other than the first day of a calendar month or expires on a day other than the last day of a calendar month, Monthly Base Subrent owed for less than a full month shall be prorated accordingly. Any tax due under this Sublease and any Subrent hereunder shall be payable by Subtenant. The amount of Subrent hereunder is net of such taxes.



5. Compliance with Prime Lease.

(a) **Obligations under the Prime Lease.** Subtenant hereby acknowledges that it has read the Prime Lease, a true, correct and complete copy of which (redacted to delete certain business or confidential terms) is attached hereto as **Exhibit B** and, except as set forth below, is incorporated herein by reference as fully as if the terms and provisions thereof were set forth herein, but only insofar as it relates to the Leased Premises from and after the Effective Date. Subject to the referenced limitations, Subtenant agrees to assume the same responsibilities and duties and to enjoy the same rights and privileges that the Sublessor has as “Tenant” from and to the Landlord with respect to the Leased Premises, excepting matters relating to the identification of the Leased Premises the issues specifically addressed herein (in each of which events the specific terms of this Sublease shall control), and other excluded terms set forth hereinbelow; provided, however, in no event shall Sublessor be deemed to have assumed the responsibilities of the Landlord under the Prime Lease nor shall Sublessor be responsible for the compliance of the Landlord with the provisions of the Prime Lease. The foregoing notwithstanding, Sublessor agrees to fulfill all of its obligations under the Prime Lease (other than those obligations which Subtenant will be obligated to fulfill pursuant to this Sublease), and to use reasonable efforts to enforce its rights under the Prime Lease against Landlord with respect to the Premises. If Subtenant requests that Sublessor pursue certain rights and remedies against the Landlord under the Prime Lease or requests that Sublessor obtain consents under Section 5(d) below, Sublessor will do so provided that such request is consistent with the Sublessor’s rights under the Prime Lease (and not, in Sublessor’s reasonable opinion, a frivolous matter) and, to the extent any such enforcement of rights or request for consent pertains to the Leased Premises, Subtenant or this Sublease, Subtenant shall reimburse Sublessor within ten (10) days following written demand for the full amount of all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Sublessor in attempting to enforce the Prime Lease.

(b) **Incorporation of Prime Lease Provisions.** In furtherance of the provisions of Section 5(a) of this Sublease, except as otherwise specifically provided for herein, the subletting effected hereby shall be upon all of the terms and conditions of the letting effected by the Prime Lease, except the provisions of the Prime Lease relating to “Landlord” shall be deemed to refer to Sublessor, the provisions thereof relating to “Tenant” shall be deemed to refer to Subtenant, the provisions of the Prime Lease relating to the Property (as defined in the Prime Lease) shall be deemed to refer to the Leased Premises and the provisions of the Prime Lease referring to the Lease shall be deemed to refer to this Sublease. Sublessee will be responsible for all of Tenant’s representations, warranties, and covenants under the Prime Lease.

(c) **Avoidance of Prime Lease Termination.** Subtenant covenants that it shall take no action or permit anything to be done which would constitute a default under, or cause termination of, the Prime Lease; provided, however, that if Subtenant is in full compliance with the terms of this Sublease, then Subtenant shall be deemed to not be in violation of the foregoing covenant. Furthermore, Subtenant covenants that it shall fully perform hereunder so that Sublessor is fully able to prevent any default under the Prime Lease. Subtenant shall indemnify, defend and hold Sublessor harmless from and against any loss, cost, damage, or expense (including, without limitation, court costs and reasonable attorneys’ fees) incurred as a result of a breach by Subtenant of the foregoing covenant.



(d) **Actions Requiring Landlord Consent.** Whenever Subtenant desires to take any action that would require the consent of Landlord under the Prime Lease and/or any other party or entity whose consent is required under the Prime Lease (a “Prime Lease Consent Party”), Subtenant shall not take such action unless the consent to such action is obtained from Landlord, Prime Lease Consent Party (if applicable) and Sublessor.

(e) **Leasehold Financing Prohibited.** Subtenant shall not grant a leasehold mortgage or deed of trust or otherwise encumber its leasehold position under this Sublease.

6. **Alterations.** Except as otherwise permitted pursuant to the terms of the Prime Lease with respect to the Leased Premises, Subtenant shall not make any alterations, additions, or improvements on or to the Leased Premises without first obtaining the prior written authorization of (i) Sublessor and (ii) to the extent required under the Prime Lease, Landlord and any applicable Prime Lease Consent Party. All alterations, additions, and improvements shall be made in accordance with and to the extent required by the provisions of the Prime Lease, including but not limited to Section 6 of the Prime Lease. Prior to the end of the Sublease term (including any early termination of the Sublease term), Subtenant shall remove all alterations, additions or improvements made by Subtenant with respect to which under the Prime Lease Sublessor has a removal obligation upon the expiration or termination of the Prime Lease, unless Sublessor has approved in writing (and to the extent Landlord approval is required under the Prime Lease, Landlord has approved) such installation and waived such removal obligation at the time of the installation thereof by Subtenant.

7. **Liability for Damage or Injury and Indemnification.**

(a) **Subtenant Indemnification.** Sublessor shall not be liable for any damage to the Leased Premises or any injury to persons sustained by Subtenant or its employees, agents, invitees, guests, or other persons caused by conditions or activities on the Leased Premises, or activities of Subtenant in or upon the Leased Premises (unless and to the extent Sublessor or its agents directly caused the loss or the Landlord under the Prime Lease is liable for such damage or injury pursuant to the terms of the Prime Lease). Subtenant hereby indemnifies and saves harmless Sublessor from any liability, loss, cost or expense (including, without limitation, reasonable attorneys’ fees) arising from and after the Effective Date out of or in any way relating to (i) Subtenant’s use and occupation of the Leased Premises and (ii) matters for which Sublessor may become liable to Landlord under the Prime Lease with respect to or on account of the Leased Premises due to a violation by the Subtenant of this Sublease. Subtenant’s obligation hereunder shall survive the termination of this Sublease. Subtenant shall carry liability insurance as required of Sublessor under the Prime Lease with respect to the Leased Premises, including naming as additional insureds, Sublessor, Landlord, and, if applicable, Landlord’s designated Lender (as may be defined in the Prime Lease) and any other party required to be an additional insured under the Prime Lease. Subtenant shall provide Landlord and Sublessor with all certificates of insurance required under the Prime Lease with respect to the Property, and shall comply with all insurance requirements imposed upon Sublessor as “Tenant” under the Prime Lease with respect to the Leased Premises.

(b) **Waiver of Subrogation.** Notwithstanding anything to the contrary in this Sublease, whether the loss or damage is due to the negligence of Sublessor or its agents or



employees, or any other cause, Subtenant hereby releases Sublessor and its agents and employees from responsibility for and waives its entire claim of recovery for (i) any and all loss or damage to the personal property of Subtenant located in the Leased Premises arising out of any of the perils which are covered by Subtenant's property insurance policy which Subtenant is required to maintain under the terms of this Sublease, or (ii) loss resulting from business interruption at the Leased Premises, arising out of any of the perils which may be covered by the business interruption insurance policy which Subtenant is required to maintain under the terms of this Sublease. Each policy shall contain, without limitation, an effective waiver by the carrier against all claims for payment of insurance premiums against Sublessor and/or the Landlord under the Prime Lease, and shall contain a full waiver of subrogation against the Sublessor and/or the Landlord under the Prime Lease.

8. Casualty and Condemnation. In the event of damage or destruction of the Property by fire or other casualty, this Sublease shall not terminate unless the Prime Lease shall terminate, absolutely or with regard to the Leased Premises, in accordance with the provisions of the Prime Lease. The rental obligation of Subtenant shall be prorated only if Sublessor's rental and/or additional rental obligations with respect to the Leased Premises is abated pursuant to the terms of the Prime Lease. In the event the Prime Lease is terminated due to a taking of all or any portion of the Leased Premises leased by Sublessor pursuant to the Prime Lease, Subtenant shall have no claim against Sublessor or the Landlord for the value of any unexpired term of this Sublease or any other claim, nor any claim or right to any portion of any award or payment resulting from such condemnation, except that Subtenant may maintain a separate claim for its relocation expenses, as long as the same is permitted to be maintained by Sublessor as the "Tenant" under the Prime Lease. At Sublessor's sole and exclusive option, any repair or restoration with respect to the Leased Premises as required under the terms of the Prime Lease shall be performed by Subtenant, and in such instance, Sublessor shall have no obligations with respect thereto. In the event of any casualty or condemnation of the Leased Premises, Subtenant shall be subject to all the rights and obligations of Sublessor as the "Tenant" contained in the Prime Lease with respect to the Leased Premises.

9. Assignments and Subleases. Subtenant shall not assign this Sublease or any interest herein (including any assignment by operation of law), or sub-sublet all or any part of the Leased Premises without the prior written consent of Sublessor, which consent may be granted or withheld by Sublessor in its sole and unfettered discretion. In the event of any assignment or sub-sublet, Subtenant will not be released from liability hereunder. Any attempted assignment or sub-sublet that is made in violation of this Section 9 shall be void and shall be a default by Subtenant. Consent by Sublessor and Landlord to one or more assignments or sub-sublettings shall not operate as a waiver of Sublessor's and Landlord's rights with respect to any subsequent assignment or sub-subletting. No assignment or sub-subletting shall relieve Subtenant from primary liability for all obligations of Subtenant under this Sublease, whether accruing before or after the date of such assignment or sub-subletting. For purposes of this Sublease, the term "sublet" or "sub-sublet" shall be deemed to include the granting of any rights of occupancy of any portion of the Leased Premises.

10. Subordination of Sublease. This Sublease and Subtenant's interest hereunder shall be automatically subordinate to any Mortgage or other security instrument hereafter encumbering the Leased Premises or placed upon the Leased Premises by Landlord and/or Sublessor, and to any



and all advances made or to be made thereunder, to the interest thereon, and all renewals, replacements, and extensions thereof.

11. Default. In the event that Subtenant shall be in default beyond any applicable notice and cure period of any covenant or obligation under this Sublease, or if any other default set forth in the Prime Lease occurs that is caused by Subtenant, then Sublessor shall have available to it with respect to Subtenant and this Sublease all of the remedies available to Landlord under and with respect to the Prime Lease in the event of a like default or failure on the part of the Sublessor thereunder.

12. No Waiver. The failure of Sublessor to insist at any time upon the strict performance of any covenant or agreement herein, or to exercise any option, right, power, or remedy contained in this Sublease shall not be construed as a waiver or a relinquishment thereof for the future. No act or thing done by Sublessor or its agents during the term hereof shall be deemed as acceptance or surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid unless in writing and signed by Sublessor. No payment by Subtenant or receipt by Sublessor of a lesser amount than the monthly installment of Monthly Base Subrent due under this Sublease shall be deemed to be other than on account of the earliest rent due hereunder, or portion thereof, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Sublessor may accept such check or payment without prejudice to Sublessor's right to recover the balance of such rent or pursue any other remedy in this Sublease or available to Sublessor at law or in equity.

13. Surrender of Property; Holdover. Upon the expiration or other termination of the Sublease Term, Subtenant shall quit and surrender to Sublessor the Leased Premises, in substantially the same condition that existed on the Effective Date, normal wear and tear and casualty loss and condemnation excepted, and Subtenant shall remove all of its property. Subtenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Sublease Term. In the event of holding over by Subtenant or any person or entity claiming under Subtenant after expiration or other termination of this Sublease, or in the event Subtenant continues to occupy the Leased Premises after the termination of Subtenant's right of possession, such holding over or possession shall constitute a tenancy at sufferance, subject to all of the terms and provisions of this Sublease. In the event of any such holding over, in addition to any other remedies available to Sublessor under this Sublease, at law or in equity, Sublessor shall have the right, in accordance with applicable law, to enter upon and take possession of the Leased Premises.

14. Brokers. Subtenant represents and warrants to Sublessor that (i) no broker brought about this transaction or dealt with Subtenant in connection herewith, and (ii) Subtenant has had no dealings with any real estate broker, finder, or other persons, with respect to this Sublease in any manner. Subtenant agrees to indemnify, defend, and hold harmless Sublessor against and from any and all losses, costs, claims, damages, and expenses (including, without limitation, reasonable attorneys' fees) that may be claimed by any broker by reason of any dealings, actions or agreements with Subtenant.



15. Notices. All notices given or required to be given pursuant to the provisions hereof shall be in writing and shall be hand-delivered or sent by reputable overnight delivery service or certified mail, postage prepaid, return receipt requested, to the following addresses, or to such other address as the party to be notified shall specify in writing by such notice:

Sublessor:

With a copy to:

Subtenant:

With a copy to:

Notices shall be deemed given and effective upon the date of delivery (or refusal to accept delivery) if delivered by hand or overnight delivery service, and upon the date set forth on the return receipt therefor if delivered by certified mail.

16. Waiver of Jury Trial. It is agreed that in any litigation relating to this Sublease, there shall be no jury trial; the parties hereto hereby expressly agreeing to waive same, to the fullest extent permitted by law.

17. Use of the Leased Premises. The parties agree that Subtenant's use of the Leased Premises is limited to the use restrictions and permissible uses as set forth in the Prime Lease. Additionally, Subtenant shall not use the Leased Premises for any use expressly prohibited under the Prime Lease

18. Non-Recourse to Sublessor. Neither Sublessor nor any employees, officers, directors, or owners of Sublessor, shall have any personal liability to Subtenant under this Sublease. Any recourse against Sublessor or its affiliates under this Sublease shall be limited to Sublessor's interest, if any, in and to the Leased Premises.

19. Miscellaneous.

(a) **Severability.** If any term or provision in this Sublease is found to be invalid or unenforceable, such term shall be severed from the interpretation of this Sublease, and any such finding shall not render or cause any other term or provision herein to be deemed invalid or unenforceable or otherwise impact the enforceability of the remainder hereof.

(b) **Binding Effect.** This Sublease shall be binding upon the parties hereto and their respective heirs, successors, and permitted assigns.

(c) **Governing Law.** This Sublease shall be governed by, and construed in accordance with, the laws of the State in which the Leased Premises are located.

(d) **Integration.** This Sublease represents the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior agreements regarding the



subject matter hereof between the parties hereto, whether oral or written, are not part of this Sublease unless expressly stated herein.

(e) **Counterparts.** This Sublease may be executed in two separate counterpart instruments, which, when taken together, shall constitute one and the same agreement.



IN WITNESS WHEREOF, the parties hereto have made and entered into this Sublease Agreement under seal as of the day and year first set forth above.

SUBLESSOR:

By: _____
Name:
Title:

SUBTENANT:

By: _____
Name:
Title:

Consent of Landlord under Prime Lease:

The undersigned Landlord under the Prime Lease dated _____ between the undersigned (s the Lessor therein) and Sublessor (as the Lessee therein), hereby consents to this Sublease and Subtenant's occupancy of the Leased Premises as contemplated herein.

Dated: _____

Landlord: _____

By: _____
Name:
Title:



EXHIBIT A

Legal Description of the Leased Premises



EXHIBIT B

Prime Lease between Landlord and Sublessor

[See attached]



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