

# MODIFIED GROSS COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Agreement") made \_\_\_\_\_ by and between:

**Landlord:** \_\_\_\_\_ with a mailing address of \_\_\_\_\_ ("Lessor") AND

**Tenant:** \_\_\_\_\_ with a mailing address of \_\_\_\_\_ ("Lessee").

HEREINAFTER, the Lessor and Lessee ("Parties") agree to enter into an Agreement for the leasing of commercial real estate in accordance with the following terms:

- 1. PREMISES.** The Lessee agrees to rent the property located at \_\_\_\_\_ ("Premises") together with the right of ingress and egress and the non-exclusive use of common areas, pursuant to the following terms and conditions:
- 2. RENTABLE SPACE.** The total rentable space of the Premises consists of \_\_\_\_\_ Square Feet (SF).
- 3. USE(S).** The Lessee shall be allowed to use the Premises for the following:  
\_\_\_\_\_

The aforementioned use(s) shall be referred to as the "Permitted Use(s)". Any use by the Lessee that does not correspond to the Permitted Use(s) shall be by prior written consent of the Lessor only.

- 4. INITIAL TERM.** This Agreement shall have an initial period of \_\_\_\_\_ months beginning \_\_\_\_\_, and ending on \_\_\_\_\_ ("Initial Term").
- 5. MONTHLY RENT.** The rent amount for the initial period shall be: \_\_\_\_\_ Dollars paid on the \_\_\_\_\_ day of every month and: (check one)

- Shall remain the same during the Initial Term.

- Shall increase during the Initial Term as follows:

1<sup>st</sup> Period:

- From \_\_\_\_\_ to \_\_\_\_\_
- Monthly Rent: \$ \_\_\_\_\_

2<sup>nd</sup> Period:

- From \_\_\_\_\_ to \_\_\_\_\_
- Monthly Rent: \$ \_\_\_\_\_

**6. SECURITY DEPOSIT.** Under the terms of this Agreement: (check one)

- The Lessee shall not be required to pay a Security Deposit.

- The Lessee shall be required to pay \$\_\_\_\_\_ as a non-interest bearing security deposit to secure the performance by Lessee of the provisions and conditions of this Agreement ("Security Deposit"). The Lessee shall pay the Security Deposit to the Lessor at the execution of this Agreement. In the event Lessee fails to pay the Rent or otherwise defaults on any provision herein, Lessor may apply the whole or any part of the Security Deposit to the payment of any sum in default or any of Lessee's damages as a result of default. If any portion of the Security Deposit is applied, Lessee, upon demand by Lessor, shall deposit an amount sufficient to return the Security Deposit to its original amount. Should Lessee comply with all of the covenants and conditions of this Agreement, the Security Deposit or any balance thereof shall be returned to within \_\_\_\_ days of the expiration of the Term.

**7. LATE FEE.** If any payment or charges due by the Lessee to the Lessor are not made within \_\_\_\_ calendar days, the Lessor shall: (check one)

- Not charge a late fee.

- Charge a late fee in the amount of: (check one)

- \$\_\_\_\_\_ for each  day  occurrence Rent is late.

- \_\_\_\_% of balance shall accumulate for each  day  occurrence Rent is late.

**8. RENEWAL OPTIONS.** The Lessee shall: (check one)

- Not have the option to renew this Agreement.

- Have the option to renew this Agreement by providing at least \_\_\_\_ days' notice before any ending termination date. The Lessee shall have \_\_\_\_ renewal period(s) as follows:

1<sup>st</sup> Renewal Period:

• From \_\_\_\_\_ to \_\_\_\_\_

• Monthly Rent: \$\_\_\_\_\_

2<sup>nd</sup> Renewal Period:

• From \_\_\_\_\_ to \_\_\_\_\_

• Monthly Rent: \$\_\_\_\_\_

The Initial Term and any renewal periods shall be referred to as the "Term".

**9. UPFRONT PAYMENT.** Upon the execution of this Agreement, Lessee shall pay to Lessor the following: (check one)

- First Month's Rent of \$\_\_\_\_\_

- Last Month's Rent of \$\_\_\_\_\_

- Security Deposit of \_\_\_\_\_

**10. POSSESSION.** Possession shall commence on \_\_\_\_\_, unless otherwise agreed upon. Lessor shall use due diligence to give possession as nearly as possible at the beginning of the Term. Rent shall be prorated taking into account any delay in providing possession, but the Term shall not be extended as a result of such delay. Lessee shall make no other claim against Lessor for the delay in obtaining possession of the Premises.

**11. LESSOR INDEMNITY AND LIABILITY INSURANCE.** Lessor shall indemnify, defend and hold Lessee harmless from all loss, liability, costs, damages, and expenses that may occur or be claimed with respect to any person or persons, or property on or to the common areas, resulting from any act done or omission by or through Lessor, its agents, employees, invitees, or any person. Lessor shall maintain, at all times during the Term, comprehensive general liability insurance with an insurance company licensed to do business in the state in which the common areas are located and satisfactory to Lessee, properly protecting and indemnifying Lessee with single limit coverage of not less than \$\_\_\_\_\_ for personal injury, and \$\_\_\_\_\_ for death of persons and \$\_\_\_\_\_ for property damage.

**12. PROPORTIONATE SHARE.** If the Premises are a part of a multiple tenancy complex, the responsibility of Lessee for costs are determined by taking a percentage of the total cost of the expenses based upon the rentable floor space in said complex occupied by Lessee. It is agreed the Premises is \_\_\_\_\_% ("Proportionate Share") of the total floor space in the building.

- a. Lessor may, with notice to Lessee, elect to perform and provide certain maintenance and services pertaining to the entire building or area of which the Premises are a part, including, but not limited to, landscaping, trash removal, lawn maintenance, common area lighting, watering, paving maintenance, and snow removal. In such event, Lessee shall reimburse Lessor for its Proportionate Share of such maintenance services.
- b. Within ninety (90) days following the end of each year during the Term, Lessor shall furnish Lessee a written statement covering the lease year just expired (measured from the Commencement Date), showing in reasonable detail a general breakdown of the total operating costs, the amount of Lessee's obligation relating thereto, and the total payments made by Lessee.

Lessee agrees to conduct its business in a lawful and legal manner and in a way that provides quiet enjoyment to the rest of the Lessees in the complex, including, but not limited to, mitigation and limitation of noise, vibration, odor, trash, or fumes. In the event Lessor receives complaints from other Lessees in the building or complex and determines, in its sole reasonable judgment, that Lessee is conducting its operations in a manner so as to be objectionable to other Lessees, Lessee shall, upon notice from Lessor, promptly modify its operations to eliminate such objections.

**13. EXPENSES.** It is the intention of the Parties that this Lease shall be considered a "Modified Gross Lease".

In addition to the Base Rent, the Lessee shall be obligated to pay the following monthly expenses:

Lessor shall pay the following monthly expenses:

**14. LESSOR'S RIGHT OF ENTRY.** Lessor or Lessor's agent may enter at reasonable hours to inspect or show the Premises to prospective lenders and purchasers, and to do anything Lessor may be required to do hereunder or which Lessor may deem necessary for the good of the Premises or any building of which they are apart. During the last \_\_\_\_ days of the Term, Lessor may display a "For Rent" sign on the Premises and show the Premises to prospective lessees.

**15. DAMAGE BY CASUALTY.** If during the Term or previous thereto, the Premises shall be destroyed or so damaged by fire or another casualty as to become un-leaseable, then, at the option of Lessor, this Agreement shall terminate from the date of such damage or destruction. Lessor shall exercise this option to so terminate this Agreement by notice in writing delivered to Lessee within \_\_\_\_ days after such casualty. Upon such notice, Lessee shall immediately surrender said Premises and all interest therein to Lessor, and Lessee shall pay Rent up until the date of casualty. If Lessor does not elect to terminate this Agreement, this Agreement shall continue in full force and effect, and Lessor shall expeditiously repair the Premises, placing the same in as good a condition as they were at the time of the damage or destruction. Rent shall be prorated taking into account the amount of time Lessee is unable to occupy the Premises. If the Premises are slightly damaged by fire or another casualty but still leaseable, then Lessor shall expeditiously repair the same with no rent proration. Lessee may not make a claim for compensation because of any inconvenience or loss of business arising from the necessity of repairing any portion of the building or the Premises.

**16. NOTICES.** Any notice hereunder shall be sufficient if sent by certified mail and addressed to:

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

**17. ASSIGNMENT AND SUBLETTING.** Lessee shall not assign, transfer, or encumber this Agreement in any way and shall not sublease the Premises or any part thereof or allow any other person to be in possession thereof without the prior written consent of Lessor, in each instance. For the purpose of this provision, any transfer of a majority or controlling interest in Lessee (whether in one or more related or unrelated transactions), whether by transfer of stock, consolidation, merger, transfer of a partnership interest or transfer of any or all of Lessee's assets or otherwise, or by operation of law, shall be deemed an assignment of this Agreement.

Notwithstanding any permitted assignment or subletting, Lessee shall at all times remain directly, primarily, and wholly responsible and liable for the payment of the Rent herein specified and for compliance with all of its other obligations under the terms and provisions of this Agreement.

- 18. SIGNAGE AND ALTERATIONS.** Lessee shall not place any signs, billboards, or advertisements upon the Premises without the prior written consent of Lessor. Lessee is responsible for the costs of any permitted signage. Lessee shall not make any material or structural alterations or additions in or to the Premises without the prior written consent of Lessor.
- 19. TOXIC OR HAZARDOUS MATERIALS.** Lessee shall not store, use, or dispose of any toxic or hazardous materials in, on, or about the Premises without the prior written consent of Lessor. Lessee shall be solely responsible for and shall defend, indemnify and hold Lessor, and its agents and employees, harmless from and against all claims, costs, and liabilities, including attorney's fees and expenses, arising out of or in connection with the Lessee storage, use, or disposal of any toxic or hazardous material in, on, or about the Premises. Lessee's obligations under this paragraph shall survive the termination of this Agreement.
- 20. CONDITION OF PREMISES.** Lessee acknowledges that it has inspected the Premises and Lessee accepts the Premises in its current condition. At the end of the Term, Lessee, at its expense, shall (i) surrender the Premises in the same condition as existed at the time the commencement of the Term, reasonable wear and tear excepted; (ii) have removed all of Lessee's property from the Premises; (iii) have repaired any damage to the Premises caused by the removal of Lessee's Property; and (iv) leave the Premises free of trash and debris and the building in "broom clean" condition.
- 21. PERSONAL PROPERTY.** Lessor shall not be liable for any loss or damage to any inventory, goods, fixtures, improvements, or personal property of Lessee on or about the Premises.
- 22. APPLICATION OF LAW.** Lessee shall comply with all laws, ordinances, regulations and other legal requirements affecting the Premises and the use thereof, and Lessee shall indemnify, defend and hold Lessor harmless from expense or damage resulting from failure to do so.
- 23. FIXTURES.** Except for Lessee's personal property and trade fixtures, all buildings, repairs, alterations, additions, improvements, installations, and other non-trade fixtures installed or erected on the Premises, whether by or at the expense of Lessor or Lessee, shall belong to Lessor and shall remain on and be surrendered with the Premises at the expiration or termination of this Agreement. However, at Lessor's option, Lessee shall remove Lessee's alterations or improvements prior to the expiration of this Agreement and return the Premises to its original condition.
- 24. EMINENT DOMAIN.** Should all or a part of the Premises be taken under eminent domain so that the Premises are unsuitable, in Lessee's reasonable opinion, for Lessee's use, then the term of this Agreement shall terminate as of the date that title shall vest in the acquiring authority and the Rent and other charges shall be adjusted as of the date of such taking. The Lessor shall be entitled to the proceeds of the eminent domain award made to Lessor. Nothing herein shall be construed to prevent Lessee from separately pursuing a claim against the requisite authority for Lessee's independent loss or damages to the extent available, provided, however, that no award to Lessee shall reduce the award to Lessor. Lessee shall have no claim

against Lessor for the value of the unexpired term of this Agreement.

**25. WAIVER OF SUBROGATION.** The parties will each look to their own insurance for recovery of any loss resulting from fire or another casualty. Lessor and Lessee release one another from such claims and waive any right of recovery of insured claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver shall remain effective despite either party's failure to obtain insurance. If either party fails to obtain insurance, it bears the full risk of its own loss.

**26. DEFAULT AND REMEDIES.** If: (a) Lessee fails to comply with any term, provision, condition, or covenant of this Agreement; (b) Lessee deserts or vacates the Premises; (c) any petition is filed by or against Lessee under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof; (d) Lessee becomes insolvent or makes a transfer in fraud of creditors; (e) Lessee makes an assignment for the benefit of creditors; or (f) a receiver is appointed for Lessee or any of the assets of Lessee, then in any of such events, Lessee shall be in default and Lessor shall have the option to do any one or more of the following: (i) enter the Premises either with or without process of law and to expel, remove and put out Lessee or any other persons thereon, together with all personal property; (ii) terminate this Agreement; (iii) Rent said Premises or any part thereof for such term or terms and at such terms and conditions as Lessor in its sole discretion may deem advisable, with the right to repair, renovate, remodel, redecorate, alter, and change said Premises. At the option of Lessor, rents received by Lessor from such reletting shall be applied in order as follows: to the payment of any indebtedness from Lessee to Lessor other than Rent due; to the payment of any costs and expenses of such reletting, including, but not limited to, attorney's fees, advertising fees, and brokerage fees, and to the payment of any repairs, renovation, remodeling, redecorations, alterations, and changes in the Premises; to the payment of Rent and additional Rent due and payable hereunder and interest thereon; and, if after applying said rentals there is any deficiency in the Rent and additional rent and interest to be paid by Lessee under this Agreement, Lessee shall pay any such deficiency to Lessor and such deficiency shall be calculated and collected by Lessor monthly. No such re-entry or taking possession of said Premises shall be construed as an election on Lessor's part to terminate this Agreement unless a written notice of such intention is given to Lessee. Notwithstanding any such reletting without termination, Lessor may at any time terminate this Agreement by reason of any default, in addition to any other remedy it may have.

**27. WAIVER.** The rights and remedies of Lessor under this Agreement, as well as those provided by law, shall be cumulative, and none shall be exclusive of any other rights or remedies. A waiver by Lessor of any breach or default of Lessee shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default. It is agreed that the acceptance by Lessor of any installment of Rent subsequent to the date the same should have been paid shall not alter the covenant and obligation of Lessee to pay subsequent installments of Rent promptly upon the due date. Receipt by Lessor of partial payment after Lessee's default shall not be construed to be or constitute a cure of any such default. No receipt of money by Lessor before or after the termination of this Agreement shall in any way reinstate, continue, or extend the term above demised.

**28. SUBORDINATION.** This Agreement shall be subject and subordinate at all times to any existing mortgages and any mortgages hereinafter obtained on the Premises.

**29. SUCCESSORS.** The provisions, covenants, and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, heirs, successors, and assigns of each of the parties hereto, except that no assignment or subletting by Lessee without the written consent of Lessor shall vest any rights in the assignee or sublessee of Lessee.

**30. QUIET POSSESSION.** Lessor agrees, so long as Lessee fully complies with all of the terms, covenants, and conditions of this Agreement, that Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term. Such right to quiet enjoyment shall be binding upon Lessor, its heirs, successors, or assigns, but only during such party's ownership of the Premises.

**31. AUTHORITY.** Lessor and Lessee further covenant and represent that each has full right, title, power, and authority to make, execute, and deliver this Agreement.

**32. BANKRUPTCY.** Neither this Agreement nor any interest therein nor any estate hereby created shall pass to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors by operation of law or otherwise during the Term or any renewal thereof.

**33. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties, and no modification of this Agreement shall be binding upon the parties unless evidenced by an agreement in writing signed by Lessor and Lessee after the date hereof. If more than one Lessee is named herein, the provisions of this Agreement shall be applicable to and binding upon such Lessees, jointly and severally.

**34. ESTOPPEL CERTIFICATES.** Lessee shall at any time upon written notice by Lessor, with notice providing Lessee no less than ten (10) days, execute, acknowledge, and deliver to Lessor or to any lender of or purchaser from Lessor a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification) and the date to which the Rent and other charges are paid in advance, if any, and acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises or of the business of Lessor.

**35. ADDITIONAL TERMS AND CONDITIONS.**

**36. ATTACHMENTS.** The following Attachments are incorporated herein: (check all that apply)

- Attachment A: \_\_\_\_\_
- Attachment B: \_\_\_\_\_
- Attachment C: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

**Lessor's Signature:** \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Lessee's Signature:** \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Agent's Signature:** \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

### NOTARY ACKNOWLEDGMENT

STATE OF \_\_\_\_\_  
\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, as **Lessee** and \_\_\_\_\_, as **Lessor** of this Agreement who proved to me through government issued photo identification to be the above-named persons, in my presence executed foregoing instrument and acknowledged that (s)he executed the same as his/her free act and deed.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_ Commission Expires: \_\_\_\_\_