

# COMMERCIAL LEASE

Revised June 2008 (Previous forms obsolete)

**This is a legally binding contract. Seek competent advice prior to execution.**

**STATE OF ALABAMA** \_\_\_\_\_ **COUNTY**

This Commercial Lease (the "Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between and among the following:

**NAME OF LANDLORD:** \_\_\_\_\_

whose address is: \_\_\_\_\_

(hereinafter called "Landlord"), and

**NAME OF AGENT:** \_\_\_\_\_

whose address is: \_\_\_\_\_

as agent for Landlord (hereinafter called "Agent"), and

**NAME OF TENANT:** \_\_\_\_\_

whose address is: \_\_\_\_\_

(hereinafter called "Tenant").

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

1. **LEASED PREMISES.**

(a) **Description.** Landlord does hereby demise and let unto Tenant the following described premises located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Alabama, to wit:

**DESCRIPTION OF THE LEASED PREMISES:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (the "Leased Premises") subject to all existing easements, if any, and the regulatory laws and ordinances of the political subdivision in which the Leased Premises is situated.

(b) **Use.** The Leased Premises shall be used by Tenant as \_\_\_\_\_ and for no other

or different use or purpose. Tenant shall not use or occupy the Leased Premises, or permit the Leased Premises to be used or occupied, in violation of any ordinance, law or regulation of any governmental body, or in any manner which would vitiate or increase the premium charged for insurance on the Leased Premises or the building in which it is located, if applicable.

2. **TERM.** The Term of this Lease is for \_\_\_\_\_ (the "Term") beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Commencement Date") and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, unless sooner terminated pursuant to the terms and conditions provided for herein.

3. **RENT.**

(a) **Base Rent.** Tenant agrees to pay to Landlord or if designated by Landlord, to Agent, at the above designated address of said party, without demand, deduction or set-off, on the first day of each month of said Term, in advance, as rent for said Leased Premises, the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per month, being the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) per annum ("Base Rent"). Base Rent for any period during the Term which is for less than one month shall be a prorated portion of the monthly rental due hereunder.

(b) **Additional Rent.** All additional amounts owed by Tenant to Landlord pursuant to the terms and conditions of this Lease shall be deemed to be and shall become additional rent hereunder ("Additional Rent"), whether or not the same shall be designated as such or shall be due and payable along with usual rental payments (Base Rent and Additional Rent shall be referred to as "Rent").

4. **LATE FEE.** Notwithstanding any other remedies available to Landlord for the nonpayment of Rent, Tenant agrees that a service and bookkeeping charge of \$\_\_\_\_\_ shall become due and payable each and every month that the Rent has not been received by the Landlord or its designee by the \_\_\_\_\_ day of the month, or if a check accepted as Rent is returned unpaid for any reason. In the event during the Term Tenant's Rent check is dishonored by any financial institution, Tenant agrees that all future Rent payments shall be to Landlord made by cashier's check, certified check, money order or bank wire. The parties agree that such charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment and/or returned check.

5. **POSSESSION.** If for any reason Landlord fails to deliver the Leased Premises to Tenant ready for occupancy on the Commencement Date, this Lease shall remain in full force and effect and Landlord shall have no liability to Tenant due to delay in occupancy and Rent shall commence when the Leased Premises are ready for occupancy. In addition, the Term provided herein shall be proportionately extended for an additional period of time to the end so that this Lease shall provide for a full Term as herein provided.

6. **DEPOSIT.** Landlord and Tenant agree that Tenant will deposit with Landlord, or if designated by Landlord, its Agent, the sum of \$\_\_\_\_\_ ("Deposit") on the date of execution of this Lease, to be held, without interest payable to Tenant, as a security for the payment of Rent, and for the faithful performance by Tenant of all covenants and agreements under this Lease, said Deposit to be returned to Tenant after the termination of this Lease and any renewal hereof, provided Tenant shall have made all such payments and performed all such covenants and agreements. Nothing in this paragraph shall be deemed to limit the amount of any claim, demand or cause of action of Landlord against Tenant under the other provisions of this Lease.

7. **CONDITION OF LEASED PREMISES.** This Lease is made upon the following terms, conditions and covenants: Landlord covenants to keep Tenant in possession of the Leased Premises during the Term, but shall not be liable for the loss of use by eminent domain nor the failure or inability of Tenant to obtain possession thereof provided Landlord shall exercise commercially reasonable due diligence and effort to place Tenant in possession. Nothing herein contained shall be construed as a warranty that the Leased Premises are in good condition or fit or suitable for the use or purpose for which they are let. Neither Landlord nor its Agent has made any representations or promises with respect to the Leased Premises or this Lease except as herein expressly set forth. Tenant has examined the Leased Premises and accepts the same in the physical condition in which the same now exists (except as otherwise expressly provided herein) and acknowledges that the Leased Premises are suitable for the use intended by Tenant. 8. **NUISANCE.** Tenant agrees that it shall not engage in or permit its employees or licensees to engage in any conduct on the Leased Premises that would constitute a nuisance or otherwise unreasonably interfere with the leasing or quiet enjoyment of any third party located adjacent to the Leased Premises. 9. **AGENT DISCLAIMER.** Tenant and Landlord expressly acknowledge that the Agent has not made an independent investigation or determination with respect to the existence or non-existence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances or gases, in, on, or about the Leased Property or any adjacent property, or for the presence of underground storage tanks, or whether or not any building or part of the Leased Premises complies with the Americans With Disabilities Act. Any such investigation or determination shall be the responsibility of Landlord and/or Tenant, and Agent shall not be held responsible therefor.

10. **ROOF / OUTSIDE AREAS.**

(a) **Roof Leaks.** Should the roof of the Leased Premises leak at any time during the Term, due to no fault on the part of Tenant, Landlord will repair the same within a reasonable time after being requested in writing by Tenant so to do, but in no event shall Landlord be liable for damages or injuries arising from such defect or the failure to make said repairs after being so notified, except to the extent of the reasonable cost of repairing said roof. Tenant agrees that nothing shall be installed on the roof of the Leased Premises or any building to which the Leased Premises is a party, without the prior written consent of the Landlord. Subject to the foregoing sentence, in the event heating, ventilation and air conditioning equipment or a part of any air conditioning equipment is installed by Tenant on the roof of the Leased Premises or any building to which the Leased Premises is a part, or in the event that Tenant installs a sign on the roof of the Leased Premises or any building to which the Leased Premises is a party, then Tenant shall be responsible for repairing any roof leaks, attributable to such installation, during the Term of this Lease at Tenant's sole cost and expense.

(b) Roof and Drains, Etc., Debris. Tenant will keep the Leased Premises and adjacent grounds including, walks and steps, if any, free and clear of all cans, bottles, fragments, debris, trash, and any other items not specifically allowed hereunder. If the Leased Premises consists of a single tenant building, Tenant will keep the downspouts, gutters and drains of the building clean, open and free of obstruction, and in good working order. If the Leased Premises, or any part thereof, consist of first floor space adjacent to the street, or ground adjacent to the street, Tenant will keep the sidewalk, steps, curb and gutter in front thereof or adjacent thereto clean and free from snow, ice, debris, or other hazardous materials or obstructions and will indemnify, defend and hold Landlord harmless from all damages or claims arising out of Tenant's failure to do so.

(c) Outside Storage. Unless specifically allowed hereunder by Landlord, Tenant shall not be allowed to have any outside storage on the Leased Premises or on any property adjacent thereto.

11. **LANDLORD'S REPAIRS.** Landlord shall not be obligated or required to make any repairs or do any work on or about the Leased Premises or any part thereof or any adjacent property thereto, or on or about any premises connected therewith, but not hereby leased, unless and only to the extent herein specifically agreed. Neither Landlord nor its agent (including Agent) shall be liable for any damages or injuries arising from defective workmanship or materials related to Landlord's repairs made pursuant to the terms of this Lease; Tenant hereby expressly waiving the same. Furthermore, Landlord and its agents (including Agent) shall not be liable for any deaths, injury, loss or damage resulting from any repair or improvement and undertaken, voluntarily or involuntarily, by or on behalf of Landlord, other than Landlord being responsible for its willfully wrongful acts. 12. **INSPECTION AND SHOWING.** Landlord reserves the right to enter upon the Leased Premises and to make such repairs and to do such work on or about said Leased Premises as Landlord may deem necessary or proper, or that Landlord may be obligated to make hereunder. At any time during the Term, Landlord reserves the right to visit and inspect Leased Premises, to show the Leased Premises to prospective tenants and purchasers, and to display "For Sale" and "For Rent" signs on the Leased Premises.

13. **ALTERNATIONS AND IMPROVEMENTS; SIGNS.** Except as herein specifically provided, Tenant will not make or permit to be made any alterations, additions, improvements or changes in the Leased Premises without first obtaining the written consent of Landlord. Furthermore, no signs shall be erected by Tenant until the consent thereof in writing is first had and obtained from Landlord and any applicable governing body or entity. The consent to a particular alteration, addition, improvement or change shall not be deemed consent to or waiver of a restriction against alterations, additions, improvements or changes for the future.

14. **TENANT'S REPAIRS; UPKEEP; UTILITIES; COMPLIANCE WITH LAW.**

(a) Glass Maintenance. Tenant will replace all plate and other glass on or in the Leased Premises, if and when broken or cracked, and failing so to do Landlord may replace the same and Tenant will pay Landlord the cost and expense thereof upon demand.

(b) Keys. Tenant will replace all keys lost or broken.

(c) Utility Bills. Tenant will pay all bills for utilities and services used on the Leased Premises.

(d) Tenant's Repairs. Except for repair items specifically allocated to Landlord hereunder, Tenant shall, at Tenant's expense, but under the direction of Landlord, maintain and promptly repair the Leased Premises and/or portion thereof and/or the fixtures and appurtenances therein. Tenant's obligations hereunder shall include, without limitation, Tenant keeping all elevators, heating, ventilation and air conditioning equipment (HVAC), electric wiring, telephone service wires, water pipes, water closets, drains, sewer lines, sprinkler systems and other plumbing, whether above or under ground, on the Leased Premises in good order and repair and doing all maintenance, repairs, modifications and replacements which may be required by the applicable laws or ordinances.

(e) Landlord's Limitation of Liability. Landlord shall not be liable for any damages caused by, or growing out of, any breakage, leakage, getting out of order or defective conditions of any elevators, heating, ventilation and air conditioning equipment (HVAC), electric wiring, telephone service wires, water pipes, water closets, drains, sewer lines and sprinkler systems or plumbing, or any of them.

(f) Compliance with Laws. Tenant will, at Tenant's expense, comply, at all times and in all respects with all the applicable laws and ordinances (including but not limited to building and fire codes) applicable to this jurisdiction insofar as the Leased Premises, and the streets and highways bounding the same, are concerned, and Tenant will not by any act or omission render Landlord liable for any violation thereof. Such compliance shall include, but not be limited to, the **AMERICANS WITH DISABILITIES ACT** requirements as it may relate to the Leased Premises.

(g) No Waste / Delivery of Leased Premises by Tenant. Tenant will, at Tenant's expense, take good care of the Leased Premises

and the fixtures and appurtenances therein, and will cause no active or permissive waste or injury thereof or thereto. At the end of the Term or earlier termination hereof, Tenant shall deliver the Leased Premises to Landlord in good repair and condition, reasonable wear and tear excepted pursuant to the terms hereof.

(h) **Tenant's Failure.** Should Tenant fail to abide by any provision of this Section, Landlord may enter the Leased Premises and take such action that is required of Tenant hereunder and collect the cost thereof from Tenant.

15. **NO LIENS.** Tenant shall not allow any liens to be filed against the Leased Premises. If any such liens shall be filed, Tenant shall cause the same to be released within ten (10) days after the filing thereof by bonding or other method acceptable to Landlord. If Tenant shall fail to timely cancel or discharge said lien or liens as required above, Landlord, at its sole option, may cancel or discharge the same and Tenant shall pay to Landlord upon demand, Landlord's cost thereof plus a charge equal to ten percent (10%) of such costs for administrative cost recovery.

16. **PUBLIC LIABILITY INSURANCE AND INDEMNITY.** Tenant shall during the entire Term of this Lease, at Tenant's own expense, keep in force by advance payment of premiums, public liability insurance in an amount of not less than a combined single limit of \$ \_\_\_\_\_, insuring Tenant, Landlord, and Landlord's Agents and Landlord's lender (as additional insureds) against any liability that may accrue against them or any of them on account of any occurrences in or about the Leased Premises during the Term or in consequence of Tenant's occupancy thereof and resulting in bodily injury or property damage. Tenant shall furnish to Landlord certificates of all insurance required under this paragraph. Each policy shall require notice of non-renewal to Landlord and its designees and shall further provide that it may not be altered or canceled without thirty (30) days' notice being first given to Landlord and its designees. Landlord shall have the right to require increased limits if, in Landlord's reasonable judgment, such increase is necessary. All policies required to be maintained hereunder shall include a waiver of subrogation in favor of Landlord. Tenant agrees to comply with all reasonable requirements of Landlord's insurance carrier so as not to cause cancellation of Landlord's insurance coverages. Tenant specifically agrees and is required to maintain ABC type, portable fire extinguishers in the Leased Premises and said extinguishers must be serviced annually, tagged and dated.

17. **DEFECTS IN LEASED PREMISES.** Landlord shall not be liable for any injury or damage caused by, or growing out of, any defect in the Leased Premises, in the building in which the Leased Premises is a part, if any, or its equipment, drains, plumbing, electric or telephone wiring, electric or electronic equipment or appurtenances, or in said Leased Premises, or caused by, or growing out of fire, rain, wind, leaks, seepage or other cause.

18. **EVENTS OF DEFAULT.**

(a) Upon the happening of any one or more of the events as expressed in paragraph (b) below, Landlord shall have the right, at the option of Landlord, to exercise any and all of the following:

- (i) annul and terminate this Lease upon two (2) days written notice to Tenant and thereupon re-enter and take possession of the Leased Premises;
- (ii) accelerate Rent pursuant to Paragraph 19 herein;
- (iii) the right upon two (2) days written notice to Tenant to re-enter and re-let said Leased Premises, from time to time, and such re-entry or re-letting or both, shall not discharge Tenant from any liability or obligation hereunder, except that rent (that is, gross rents less the expense of collecting and handling, and less commission) collected as a result of such re-letting shall be credited on Tenant's liability up to the amount due under the terms of this Lease and the balance, if any, credited to Landlord. Nothing herein, however, shall be construed to require Landlord to re-enter and re-let, nor shall anything herein be construed to postpone the right of Landlord to sue for Rents, whether matured by acceleration or otherwise, but on the contrary, Landlord is hereby given the right to sue therefor at any time after default; and/or
- (iv) Exercise any other remedy available to Landlord at law or equity.

(b) The Tenant's events or default referred to herein are:

- (i) failure of Tenant to pay Rent, or any other sum provided for in this Lease as and when the same become due;
- (ii) the removal, attempt to remove or permitting to be removed from said Leased Premises, except in the usual course of trade, the goods, furniture, effects or other property of Tenant or any assignee or sub-tenant of Tenant;

- (iii) the levy of an execution or other legal process upon the goods, furniture, effects or other property of Tenant brought on the Leased Premises or upon the interest of Tenant in this Lease;
- (iv) the filing of a petition in bankruptcy, a petition for an arraignment or reorganization by or against Tenant; the appointment of a receiver or trustee, or other court officer, for the assets of Tenant;
- (v) the execution of an assignment for the benefit of creditors of Tenant;
- (vi) the vacation or abandonment by Tenant of the Leased Premises or the use thereof for any purpose other than the purpose for which the same are hereby let;
- (vii) if the rental herein is based in whole or in part on the percentage of Tenant's sales; failure of Tenant to exercise diligent effort to produce the maximum volume of sales;
- (viii) the assignment by Tenant of this Lease or the re-letting or sub-letting by Tenant of the Leased Premise or any part thereof without the written consent of Landlord first had and obtained;
- (ix) Tenant ceases operating in the Leased Premises for a period of ninety (90) or more consecutive days; and/or
- (x) the violation by Tenant of any other of the terms, conditions or covenants not set out in this paragraph on the part of Tenant herein contained and failure of Tenant to remedy such violation within ten (10) days after written notice thereof is given by Landlord to Tenant.

19. **ACCELERATION OF RENT; DEFAULT-ATTORNEY FEE AND COST; WAIVER OF EXEMPTIONS.** Upon termination or breach of this Lease or re-entry upon said Leased Premises for any one or more of the defaults set forth in paragraph 18(b) above, or upon termination of this Lease or re-entry of said Leased Premises, the Rent provided for in this Lease for the balance of the Term, or any renewal term or other extended term, and all other indebtedness to the Landlord owed by Tenant, shall be and become immediately due and payable at the option of Landlord and without regard to whether or not possession of the Leased Premise shall have been surrendered to or taken by Landlord. Tenant agrees to pay Landlord, or on Landlord's behalf, a reasonable attorney's fee in the event Landlord employs an attorney to collect any Rent due hereunder by Tenant, or to protect the interest of Landlord in the event the Tenant is adjudged a bankrupt, or legal process is levied upon the goods, furniture, effects or personal property of Tenant upon the said Leased Premises, or upon the interest of the Tenant in this Lease or in said Leased Premises, or in the event Tenant violates any of the terms, conditions, or covenants on the part of the Tenant herein contained. In order to further secure the prompt payments of said Rent, as and when the same mature, and the faithful performance by Tenant of all and singular the terms, conditions and covenants on the part of Tenant herein contained, and all damages, and costs that Landlord may sustain by reason of the violation of said terms, conditions and covenants, or any of them, Tenant hereby waives any and all rights to claim personal property as exempt from levy and sale, under the laws of any state and/or the United States.

20. **ABANDONMENT; RE-LETTING.** Subject to the Landlord's right to accelerate Rent herein, in the event Tenant substantially abandons the Leased Premises before the expiration of the Term, whether voluntarily or involuntarily, or violates any of the terms, conditions, or covenants hereof, Landlord shall have the privilege at Landlord's option of re-entering and taking possession of said Leased Premises and leasing all or any portion of said Leased Premises for such Term and for such use deemed as satisfactory to Landlord, applying each month the net proceeds (gross proceeds less any reasonable expenses from leasing the same, including without limitation brokers' commissions), obtained from said leasing to the credit of Tenant up to the amount due under the terms of this Lease herein and the balance to Landlord and said leasing shall not release Tenant from liability hereunder for the Rent reserved, or any other sum due Landlord or performance due by Tenant, for the residue of the Term hereof, but Tenant shall be responsible each month for the difference, of any, between the net proceeds obtained from such leasing and the monthly Rent reserved hereunder, and said difference shall be payable to Landlord on the first day of each month for the residue of the Term hereof.

21. **RE-ENTRY, ETC., NO BAR.** No re-entry allowed hereunder shall bar the recovery of Rent or damages for the breach of any of the terms, conditions, or covenants on the part of Tenant herein contained. The receipt of Rent, or keys to the Leased Premises, after breach or condition broken, or delay on the part of Landlord to enforce any right hereunder, shall not be deemed a waiver of forfeiture, or a waiver of the right of Landlord to annul the Lease or to re-enter said Leased Premises or to re-let the same, or to accelerate the maturity of the Rent hereunder.

22. **IMPROVEMENTS AND ADDITIONS PROPERTY OF LANDLORD.** All improvements and additions (including electrical fixtures) to the Leased Premises shall adhere to the Leased Premises, and become the property of Landlord. Notwithstanding the

foregoing, Landlord shall have the right to require Tenant to remove any and all improvements and additions (including electrical fixtures) from the Leased Premises two (2) weeks prior to the expiration of the Term, and upon notification of such requirement, Tenant shall remove said improvements and additions and shall restore the Leased Premises to its original condition, normal wear and tear excepted.

23. **FIRE & OTHER CASUALTY.** In the event of the total destruction of, or partial damage to, the Leased Premises remises by fire or other casualty, Landlord shall proceed with due diligence and dispatch to repair and restore the Leased Premises to the conditions to which they existed immediately prior to the occurrence of such casualty, at Landlord's cost and expense, provided such costs and expenses do not exceed the proceeds of insurance collected by Landlord on the Leased Premises by reason of such casualty, the application of which insurance proceeds are not prohibited, by reason of any mortgage provision, from being used toward the cost of restoration and repairing the same; provided, further, that if the unexpired portion of the existing Term of this Lease shall be two (2) years or less on the date of such casualty and the cost of such repair or restoration exceeds twenty percent (20%) of the then replacement value of said damaged Leased Premises, as estimated by two (2) or more reputable contractors, Landlord may by written notice to Tenant, within thirty (30) days after the occurrence of such casualty, terminate this Lease without penalty. If the insurance proceeds are insufficient to effect such restoration or repairs, Landlord at its option may terminate this Lease without penalty by written notice to Tenant within forty-five (45) days after the occurrence of such casualty. In the event the repairing and restoring of the Leased Premises can not be completed within four (4) months after the date of occurrence of such casualty, as estimated by two or more reputable contractors, Tenant shall have the right to terminate this Lease upon giving written notice to Landlord within thirty (30) days from the date of occurrence of said casualty. From the date of such damage or destruction until said building has been substantially repaired or restored, an equitable abatement of rent shall be allowed Tenant.
24. **TRANSFER OR ASSIGNMENT, CONDITIONS; LEASE ASSIGNMENT FEE CLAUSE.** Tenant shall not sublease, assign or transfer this Lease, nor allow a sublease, assignment or transfer, in whole or in part, by operation of law or otherwise, or mortgage or pledge the same, without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and absolute discretion. Any purported transfer, encumbrance, pledge, mortgage, assignment or subletting not in compliance herewith shall be void and of no force or effect. As one of the conditions precedent to the obtaining of such consent, the assignee must assume, in writing, all the obligations of Tenant hereunder, but such assumption shall not operate to release Tenant from any agreement or understanding on the part of Tenant expressed or implied in this Lease. If a lease assignment, transfer or sublease is consummated for this Tenant or any one or more parties before the expiration to any assignment of this Lease, then Tenant, the assignee or transferee shall pay a \$ \_\_\_\_\_ fee to Landlord, or where applicable, Landlord's agent, for each and every Lease transaction made.
25. **NOTICES AND DEMANDS.** All notices and demands authorized or required to be given to Tenant under any provision hereof must be in writing, and may be (a) delivered to Tenant in person or left on or in the Leased Premises or (2) given by certified mail, addressed to Tenant at the address of Tenant shown on page one (1) of this Lease, with the proper postage affixed thereto. All notices and demands authorized or required to be given to Landlord under any provision hereof must be in writing and must be given by certified mail, addressed to Landlord at the address of Landlord shown on page one (1) of this Lease with a copy to Agent, addressed to Agent at the address of Agent shown on page one (1) of this Lease, both with the proper postage affixed thereto.
26. **AGENTS COMMISSION AGREEMENT.** THE COMMISSIONS PAYABLE FOR THE SALE, LEASE OR MANAGEMENT OF PROPERTY ARE NOT SET BY THE BIRMINGHAM ASSOCIATION OF REALTORS® BUT IN ALL CASES ARE NEGOTIABLE BETWEEN THE BROKER AND THE CLIENT.

The Landlord  Tenant  agrees to pay \_\_\_\_\_, as agent, a commission of \_\_\_\_\_ as compensation for services rendered. The Landlord

Tenant  agrees to pay \_\_\_\_\_, as agent a commission of \_\_\_\_\_ for any renewals or expansions.

27. **HOLD HARMLESS.** Tenant will indemnify, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's Agent free and harmless from all demands, claims and suits or expenses caused by any default committed hereunder on the part of Tenant. Tenant will further indemnify, defend (with counsel acceptable to Landlord) and save harmless Landlord and Landlord's Agent from any loss, cost, damage and/or expense caused by injuries to persons or property while in, on or about the Leased Premises, not attributable to the willfully wrongful act of Landlord or Landlord's Agent. Any property stored in or on the Leased Premises shall be at the sole risk of Tenant. Landlord will indemnify, defend (with counsel acceptable to Agent) and save harmless Agent from all demands, claims and suits or expenses caused by any default committed hereunder on the part of Landlord. Landlord will further indemnify, defend (with counsel acceptable to Agent) and save harmless Agent from any loss, cost, damage and/or expense caused by injuries to persons or property while in, on or about the Leased Premises.

28. **WAIVER OF SUBROGATION RIGHTS.** Neither Landlord nor Tenant shall be liable to the other for any loss or damage from risks ordinarily insured against under fire insurance policies with extended-coverage endorsements, irrespective of whether such loss damage results from their negligence or that of any of their agents, servants, employees, licensees or contractors to the extent that such losses are covered by valid and collectable insurance on the property at the time of loss.
29. **HOLDOVER.** Should Tenant continue to occupy the Leased Premises after the expiration of the Term or after the earlier termination of this Lease, whether with or against the consent of Landlord, such tenancy shall be a tenancy at sufferance and in no event a tenancy from month to month, or from year to year. Unless otherwise specifically agreed in writing, Tenant shall pay one and one-half (1½) times the highest monthly rent paid under this Lease. In addition, Tenant will indemnify, defend (with counsel acceptable to Landlord) and hold harmless Landlord for any and all costs and damages associated with said holdover.
30. **NON-WAIVER.** The failure of Landlord to insist, in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by Landlord of Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in writing, and signed by Landlord.
31. **EMINENT DOMAIN AND CONDEMNATION.** If all or any part of the Leased Premises is taken by eminent domain ("eminent domain" shall include the exercise of any similar power of taking, and any purchase or acquisition in lieu of condemnation), or in the event the improvements are condemned and ordered torn down or removed by lawful authority, then the Term of this Lease shall cease as of the date possession shall be taken by the condemning authority, or as of the date improvements are ordered torn down or removed, which every may be applicable, with the Rent to be apportioned as of the date of such taking or of such order, as the case may be; provided, however, if as a result of a partial taking of the Leased Premises by eminent domain, the Leased Premises is reduced by not more than twenty-five (25%), Landlord may elect to continue the Term of this Lease and to restore, at Landlord's expense, the remaining Leased Premises to a complete architectural unit with storefront (if applicable), signs and interior of equal appearance and utility as they had previous to the taking, but there will be prorata reduction of the Base Rent payable each month. Landlord shall be deemed to have exercised its said option to restore the Leased Premises unless, within thirty (30) days after the date of taking, Landlord shall notify Tenant in writing of its election to terminate this Lease. Landlord shall be entitled to receive all of the proceeds of any total or partial taking of the Leased Premises by eminent domain, including any part of such award as may be attributable to the unexpired leasehold interest or other rights of Tenant in the Leased Premises, and Tenant hereby assigns, and transfers to the Landlord all of Tenant's right to receive any part of such proceeds.
32. **SUBORDINATION/ATTORNMENT.** At the option of Landlord this Lease may be subordinated to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the land and/or building of which the Leased Premises are a part and to all advances heretofore made or hereafter to be made upon the security thereof. Tenant agrees to execute and deliver to Landlord from time to time within ten (10) days after written request by Landlord all instruments which might be required by Landlord to confirm such subordination. 33. **CLEAN LEASED PREMISES UPON TERMINATION, ETC.** Tenant hereby agrees that prior to the expiration of the Term or prior termination of this Lease, Tenant will promptly remove from the Leased Premises all signs, trash, debris and personal property of the Tenant, and Tenant will leave the Leased Premises in broom-clean condition. Upon surrender of the Leased Premises, Tenant shall surrender all keys to the Leased Premises to Landlord. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease. 34. **TAXES AND INSURANCE.** Subsequent to the "Base Year" (as hereinafter defined), Tenant agrees to reimburse Landlord the amount ("Excess Amount"), if any, by which all real estate taxes, rent taxes, special assessments and insurance costs levied or assessed against the Leased Premises for the year immediately following the Base Year and each subsequent year during the Term hereof exceeds the amount of the real estate taxes, rent taxes, special assessments and insurance costs levied or assessed against the Leased Premises for the Base Year. Such reimbursement shall be due on or before the later of (i) thirty (30) days prior to the due date of the bills or (ii) fifteen (15) days after Landlord has furnished Tenant with a copy of such bills and a copy of Landlord's computations establishing the Excess Amount. "**Base Year**" shall be defined as the first year following the Commencement Date. In the event that the Leased Premises is part of a multi-tenant building, such charges shall be prorated among all tenants in the building, and shall be in the proportion which the total area of the Leased Premises bears to the total rentable building area owned by Landlord of which these Leased Premises are a part.
35. **HAZARDOUS MATERIALS.** In consideration of existing and future legislation concerning the handling, storage, use and disposition of dangerous/hazardous chemicals and materials, Tenant and Landlord acknowledge the risks and liabilities associated with same and agree to the following: Tenant shall determine what laws, regulations and ordinances regarding the handling, storage, use and disposition of dangerous/hazardous chemicals and materials apply to Tenant's business with respect to the Leased Premises. Tenant shall take all necessary steps, including any inspections, test or studies, as required by such laws to cause prompt and ongoing compliance therewith. Tenant agrees to immediately notify Landlord and the appropriate authorities of any material spills, improper handling or storage, or improper discharges of any dangerous/hazardous chemicals and materials. Further, in addition to and in further support of any compliance with other hold harmless and indemnification obligations, Tenant acknowledges and assumes total responsibility for any and all dangerous/hazardous chemicals and materials it

may handle, store, use and dispose of in or about Leased Premises. Such responsibility shall include, but not be limited to, medical costs and personal injury awards (compensatory and/or punitive), environmental clean-ups and related costs, governmental fines, indirect and/or consequential damages and losses including without limitation the loss of rents from third party tenants of Landlord, against Landlord and/or Tenant resulting from Tenant's willful and/or negligent handling, storage, use, disposition of dangerous/hazardous chemicals and materials, and/or Tenant's noncompliance with applicable law. Tenant shall, upon governmental request or upon Landlord's request, disclose the type and quantity of dangerous/hazardous chemicals and materials Tenant is/has handled, stored, used, disposed of or intends to handle, stored, use or dispose of in or about the Leased Premises. 36. **ADDENDUM CLAUSE**. This Lease consists of eight (8) pages together with an Addendum of \_\_\_\_\_ pages which are attached hereto, initialed by all parties, and incorporated in this Lease by reference. In case of conflict between the printed portion of this Lease and the Addendum, the terms of the Addendum prevail.

37. **BINDING EFFECT**. This Lease shall be binding upon, and inure to the benefit of, Landlord and Tenant, their executors, administrators, heirs assigns or successors.

38. **TIME**. Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

39. **RECORDING**. Neither Landlord nor Tenant shall record this Lease nor a short form memorandum thereof without the consent of the other.

40. **ENTIRE AGREEMENT**. This Lease contains the entire understanding between the parties and supersedes any prior understanding or agreements between them respecting the subject matter. No representations, arrangements or understandings except those fully expressed herein, are or shall be binding upon the parties. No changes, alterations, modifications, additions or qualifications to the terms of this Lease shall be made or be binding unless made in writing and signed by each of the parties.

41. **COUNTERPARTS**. Several copies of this Lease may be executed by all of the parties. All executed copies constitute one and the same Lease, binding upon all parties. 42. **TERM "LANDLORD"**. The term "Landlord" as used in this Lease, so far as covenants or agreements on the part of Landlord are concerned, shall be limited to mean and include only the owner (or ground lessor, as the case may be) for the time being of the Leased Premises. If the Leased Premises or the underlying Lease, if any, be sold or transferred, the seller thereof shall be automatically and entirely released of all covenants and obligations under this Lease from and after the date of conveyance or transfer, provided the purchaser on such sale has assumed and agreed to carry out all covenants and obligations contained in this Lease to be performed on the part of Landlord hereunder, it being hereby agreed that the covenants and obligations, contained in this Lease to be performed on the part of Landlord, shall be binding on Landlord, its successors and assigns, only during their respective successive period of ownership of the Leased Premises.

43. **TOPIC HEADINGS**. Headings and captions in this Lease are inserted for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor constitute any part of this Lease and are not to be considered in the construction of this Lease. 44. **AUTHORIZATION**. Tenant and the person executing and delivering this Lease on Tenant's behalf each represents and warrants that such person is duly authorized to so act; that Tenant is duly organized, is qualified to do business in the jurisdiction in which the Leased Premises are located, is in good standing under the laws of the state of its organization and the laws of the jurisdiction in which the Leased Premises is located, and has the power and authority to enter into this Lease and to conduct its business in the manner being conducted; and that all action required to authorize Tenant and such person to enter into this Lease and to conduct its business in the manner being conducted has been duly taken.

45. **RULES AND REGULATIONS**. Tenant agrees that Landlord shall have the right, from time to time, to establish, modify and enforce rules and regulations with respect to the Leased Premises; however, the rules and regulations imposed by Landlord under this Section shall not materially impair or diminish Tenant's rights or materially increase Tenant's obligations set forth in this Lease. Tenant agrees to fully comply with and observe all said rules and regulations established by Landlord. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the rules and regulations were contained herein as covenants. In the case of any conflict between said rules and regulations and this Lease, this Lease shall be controlling.

46. **BIRMINGHAM ASSOCIATION OF REALTORS® ("BAR") DISCLAIMER, WAIVER AND RELEASE OF CLAIMS**. This provision, without any changes, modifications, deletions or revisions, must be included in all BAR form documents that include any reference to BAR. The parties hereto hereby acknowledge and agree that: (A) THIS DOCUMENT HAS IMPORTANT CONSEQUENCES, LEGAL, FINANCIAL AND OTHERWISE, AND BAR HAS ADVISED THE PARTIES THAT THEY SHOULD EACH CONSULT WITH AN ATTORNEY AND/OR OTHER PROFESSIONAL OF THEIR CHOICE WITH RESPECT TO THE TERMS HEREOF, AND/OR THE COMPLETION, MODIFICATION AND/OR EXECUTION OF, THIS DOCUMENT; (B) form documents by their nature are designed to be of specific general application, and may not be applicable to specific facts and circumstances, may not address given party's specific conditions or requirements, and/or may not reflect the relative bargaining or

negotiations of the parties, as such variables may arise on any given transaction, (C) to avoid any possible misunderstanding or confusion as to the original form of this document and any revisions, modifications or changes to it, any and all revisions, modifications or changes to the original form should be made readily apparent by highlighting, underscoring or other means to distinguish them from the original version; (D) BAR has made the original version of this document and other document forms available to BAR's members as a service, but makes no representation or warranty, expressed or implied, as to the suitability or applicability of the terms and conditions of, or the enforceability of, this document or other document forms; (E) BAR document forms are updated by BAR from time to time, and BAR recommends to the parties that they use the most current, updated version of any such document forms; and (F) by executing this document the parties hereto hereby waive and release BAR, its officers, directors, members, attorneys, employees, and agents, from any and all claims, demands, and/or causes of action (whether known or unknown) arising out of, pertaining to, or resulting directly or indirectly from the use of this form document.

**Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and, anything herein to the contrary notwithstanding, this instrument shall not become effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.**

IN WITNESS WHEREOF, Landlord, Agent and Tenant have respectively executed these presents as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Agent)

(Landlord)

\_\_\_\_\_  
(L.S.)  
(Tenant)