

# COMMERCIAL LEASE AGREEMENT (TEXAS)

THIS LEASE made effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date").

BETWEEN:

**LESSOR**

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

Address: \_\_\_\_\_

\_\_\_\_\_

(the "Lessor")

- and -

**LESSEE**

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

Address: \_\_\_\_\_

\_\_\_\_\_

(the "Lessee")

IN CONSIDERATION of the mutual promises and at the rental and upon the covenants, conditions and provisions herein set forth, contained and other good and valuable consideration, Lessor leases to Lessee and Lessee leases from Lessor, the following real property:

Leased Premises Address: \_\_\_\_\_

Legal Description: \_\_\_\_\_

all as more particularly described in Schedule "A" attached to this Lease, which is incorporated herein by this reference, together with all improvements now or hereafter located thereon and all appurtenances and privileges related thereto, all of which area is hereinafter referred to as the "Premises."

**1. Term of Lease**

- (a) **Initial Term.** Lessor hereby leases the Leased Premises to Lessee, and Lessee hereby leases the same from Lessor, for an Initial Term beginning on \_\_\_\_\_, 20\_\_\_\_ ("Commencement Date") and ending on \_\_\_\_\_, 20\_\_\_\_ ("Expiry Date"). Lessor shall use its best efforts to give Lessee possession as nearly as possible at the beginning of the Lease term. If Lessor is unable to provide Lessee with possession of the Leased Premises in a timely fashion, rent shall abate for the period of delay. Lessee shall make no other claim against Lessor for any such delay.
- (b) **Renewal Term.** Lessee shall have the option to renew the Lease for an additional Renewal Term of \_\_\_\_ year(s). Lessee shall exercise such renewal option, if at all, by giving written notice to Lessor not less than ninety (90) days prior to the expiration of the Initial Term. The Renewal Term shall be at a rental rate as agreed to between the parties and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

**2. Rent Payments**

Rent is due in advance on the \_\_\_\_\_ day of each calendar month, beginning in \_\_\_\_\_, 20\_\_\_\_. Lessee shall prepay the first and last month's rent to Lessor at the time that the parties execute this Lease. All rent payments shall be paid to Lessor at the following address:

Street Address: \_\_\_\_\_

City: \_\_\_\_\_, Texas

or at such other place as Lessor may from time to time notify Lessee in writing. If the lease term commences on a day other than the first day of a calendar month, the first month's rent shall be adjusted accordingly. If Lessor fails to make a rent payment in full within 10 days after it is due, a late payment penalty of \_\_\_\_\_% will be applied and will be payable as additional rent.

**3. Base Rent**

Subject to any cost of living increases (if provided for in this Lease), the Base Rent payable under this Lease for each year of the Initial Term shall be as set out in the table below:

Lease Year	Annual Rent	Monthly Payment
Year 1	\$ _____	\$ _____
Year 2	\$ _____	\$ _____
Year 3	\$ _____	\$ _____
Year 4	\$ _____	\$ _____
Year 5	\$ _____	\$ _____

The Base Rent for any period of the Initial Term which is not a full calendar year shall be prorated by dividing the annual rent due for the period by twelve and multiplying it by the number of months remaining in such period.

**4. Security Deposit**

- (a) Prior to the Commencement Date and before taking possession of the Leased Premises, Lessee shall pay Lessor a security deposit ("Security Deposit") of \$ \_\_\_\_\_. The Security Deposit shall be held in escrow by an interest-bearing savings account in the joint names of Lessor and Lessee, and shall be held in escrow by an independent stakeholder as security for the performance by Lessee of Lessee's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Lessor's damages in case of default by Lessee.

- (b) Lessor may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrears of rent or to satisfy any other covenant or obligation of Lessee hereunder. Following any such application of the Security Deposit, Lessee shall pay to Lessor on demand the amount so applied in order to restore the Security Deposit to its original amount.
- (c) If Lessee is not in default at the Expiry Date or earlier termination of this Lease or any extension or renewal thereof, the Security Deposit (or remaining balance after deductions for arrears of rent or other amounts owing by Lessee, if any) shall be returned by Lessor to Lessee. The party who is eventually entitled to the fund in whole or in part shall also be entitled to the interest accrued or its pro rata share of the interest accrued.
- (d) If Lessor transfers its interest in the Premises during the term of this Lease, Lessor may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

*(Delete the following section if it is not applicable.)*

**5. Percentage Rent**

Lessee shall pay, as additional rent, a percentage rent ("Percentage Rent") calculated as set out below.

- (a) Within 45 days following the end of each Lease Year (as hereinafter defined), Lessee shall provide Lessor with a written statement certified by Lessee setting out Lessee's total gross sales for the preceding Lease Year, together with a check for a sum equal to five percent (5%) of such gross sales, less the Base Rent for such Lease Year (if previously paid), and copies of the monthly state sales tax returns.
- (b) "Lease Year" shall mean each period of 12 consecutive calendar months during the term of the Lease, commencing on the Commencement Date, provided that if the term shall commence on a day between the 1<sup>st</sup> of the month and the 14<sup>th</sup> of the month, the Lease Year shall be deemed to start on the 1<sup>st</sup> of the then current month. If the term shall commence on a day between the 15<sup>th</sup> and the end of the month, the Lease Year shall be deemed to start on the 1<sup>st</sup> day of the following month. Gross sales for the period falling outside of that period shall be adjusted and calculated pro rata on a daily basis.
- (c) The term "gross sales" as used herein shall mean the total amounts received, whether for cash or on credit, for sales and services of every kind made upon the Leased Premises, less the amount Lessee is obligated to pay on account of all retail sales taxes.
- (d) Lessee shall keep complete and accurate books and accounts of its daily gross sales in every part of its business operating at any time during the currency of this Lease in any part of the Leased Premises. Lessor and its agents and employees shall have the right at any time during regular business hours to examine and inspect all the books and accounts of Lessee related to gross sales, including sales tax reports, tax returns, or other reports to any governmental agency, for the purpose of verifying the accuracy of any statement of gross sales provided under sub-clause (a) hereof. Lessor may, at its option and no more than once in any consecutive 12-month period, cause an audit of Lessee's business to be performed by a certified public accountant of Lessor's choice. If such audit shows that any statement of gross sales previously made by Lessee is more than ten percent (10%) less than the amount of gross sales determined by such audit, the cost of such audit shall be borne by Lessee; otherwise it shall be borne by Lessor.

*(Delete the following section if it is not applicable.)*

**6. Cost of Living Increases**

Since the Base Rent is predicated upon the retail cost of living index remaining constant, then, should this Lease be for more than one year, and should the Statistical Abstract of the United States, as published by the United States Government, evidence that on the January next following the first year of this Lease the retail cost of living index has increased, then the amount of each monthly rent payment hereunder shall be increased by the same percentage, beginning with the first rent payment due following the date that Lessor serves written notice on Lessee of such increase, with a copy or citation of the governmental reference reflecting and verifying the increase. Any increase in Base Rent from a cost of living increase shall be retroactive to the date that such cost of living increase first became effective according to the government publication.

**7. Use of Premises**

The Leased Premises shall be used solely for the purpose of Lessee's business, specifically:

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Lessee agrees to use the Leased Premises for reasonable business, commercial, retail, warehousing or industrial uses which do not materially damage the Leased Premises. Lessee's use of the Leased Premises shall be in a lawful, careful, safe, and proper manner, and Lessee shall carefully preserve, protect, control and guard the same from damage, at Lessee's sole expense. Lessee shall not use the parking area or the ingress and egress area of the Premises in an unreasonable manner so as to interfere with the normal flow of traffic or the use of such areas by occupants of properties adjacent to the Leased Premises. Lessee shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device. Lessee shall, on the Expiry Date or, if earlier terminated upon such termination, surrender possession of the Leased Premises without further notice to quit, in as good condition as reasonable use will permit. Lessee shall not use the Leased Premises for living quarters or as a residence. Lessee shall not use the Leased Premises for any unlawful, immoral or improper purpose, or in any manner which is contrary to law or to any directions, rules, regulations, regulatory bodies, or officials having jurisdiction thereof or which shall be injurious to any person or property.

**8. Absolutely Net Net Net Lease**

This Lease shall at all times be construed as a triple net lease, and accordingly all taxes, charges, levies, costs and expenses assessed in respect of the Leased Premises, the subject tenancy, the revenue derived therefrom and the improvements shall be borne by Lessee, including but not limited to: realty taxes; sales taxes; fire, casualty, theft and liability insurance; water, gas, electricity and other utilities; trash removal; repairs and maintenance, and all improvements. SAVE AND EXCEPT ONLY THAT Lessor shall be solely responsible for Lessor's own income taxes and any other charges which may be expressly stipulated herein to be the sole responsibility of Lessor. All operating expenses of Lessee, of whatever nature, are the sole obligation of Lessee.

### **9. Sublease and Assignment**

Lessee shall have the right without Lessor's consent, to assign this Lease to a corporation with which Lessee may merge or consolidate, to any subsidiary of Lessee, to any corporation under common control with Lessee, or to a purchaser of substantially all of Lessee's assets. Except as set forth above, Lessee shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Lessor's written consent, such consent not to be unreasonably withheld or delayed. Provided, however, that no assignment of this Lease, whether by act of Lessee or by operation of law, and no sublease of the Leased Premises, or any part thereof, by or from Lessee, shall relieve or release Lessee from any of its obligations hereunder.

### **10. Maintenance and Repairs**

- (a) Subject to anything contained herein with respect to destruction of, damage to or condemnation of the Leased Premises, Lessee shall, at its sole cost and expense, keep and maintain the Leased Premises, including without limitation, the roof, exterior, foundation, structural and operational parts (cooling, heating, air conditioning, plumbing equipment and fixtures), windows, doors, locks and security systems, paving and landscaping, snow and ice removal, interior maintenance (floors, doors, toilets, light replacement, etc.), and all other elements or systems of the Leased Premises, in a condition and repair similar to its original condition and repair, reasonable wear and tear excepted.
- (b) Except as otherwise hereinafter provided, Lessor shall have no obligation whatsoever with respect to the maintenance and repair of the Leased Premises.
- (c) Replacement and repair parts, materials, and equipment used by Lessee to fulfill its obligations hereunder shall be of a quality equivalent to those initially installed within the Leased Premises. All repair and maintenance work shall be done in compliance with the then existing federal, state, and local laws, regulations and ordinances pertaining thereto.
- (d) If Lessee refuses or neglects to commence repairs within ten (10) days after receipt of written demand from Lessor, or fails to adequately complete such repairs without liability to lessor for any loss or damage that may accrue to Lessee's stock or business by reason thereof, Lessor may at its option make such repairs and Lessor shall pay to Lessor, on demand as additional rent, the costs thereof with interest at the maximum rate allowable by law calculated from the date such repairs commenced until the date Lessee pays Lessor in full for such repairs.

### **11. Alterations and Improvements**

Lessee shall have the right to make, at no expense to Lessor, improvements, alterations, or additions (hereinafter collectively referred to as "Alteration") to the Leased Premises, whether structural or nonstructural, interior or exterior, provided that:

- (a) no Alteration shall be made without the prior written consent of Lessor, which consent shall not be unreasonably withheld;
- (b) no structural Alteration shall be made without first obtaining Lessor's written approval of plans and specifications;
- (c) no Alteration shall materially alter the character or substantially lessen the value of the Leased Premises;
- (d) no Alteration shall be commenced until Lessee has first obtained and paid for all required permits and authorizations of all regulatory bodies with respect to such Alteration;
- (e) any Alteration shall be made in a good workmanlike manner and in compliance with all laws, ordinances, regulations, codes, and permits;
- (f) Lessee shall not decorate or paint the exterior of the Leased Premises, or any part thereof, except in such manner and of such color(s) as are approved by Lessor;
- (g) any Alteration shall become and remain the property of Lessor unless Lessor otherwise agrees in writing.

### **12. Liens**

Lessee shall keep the Leased Premises and the improvements thereon, at all times during the currency of this Lease, free of mechanics and materialmen's liens and other liens of like nature, except for liens created and claimed by reason of any work done by or at the direction of Lessor, and shall indemnify and hold Lessor harmless from and against any mechanics or materialmen's liens and claims for work, labor, or materials supplied to the Leased Premises at the direction of Lessee and against all attorneys' fees and other costs and expenses arising out of or incurred by reason or on account of any such liens and claims. In the event that any such liens or claims shall be filed for work, labor or materials supplied to the Leased Premises at the direction of Lessee, Lessee shall, at Lessor's option, either escrow an amount equal to the amount of the lien or claim being filed, or obtain a bond for the protection of Lessor in an amount not less than the amount of the lien or claim being filed

### **13. Taxes and Assessments**

- (a) Lessee shall pay all real estate taxes and assessments becoming due and payable with respect to the Leased Premises and improvements thereon during the Initial Term and any extension or renewal thereof, and all taxes or other charges imposed during the Initial Term and any extension or renewal thereof with respect to any business conducted on the Leased Premises by Lessee or any personal property used by Lessee in connection therewith. Taxes, assessments or other charges which Lessee is obligated to pay or cause to be paid hereunder and which relate to any fraction of a tax year at the commencement or termination of this Lease shall be prorated based upon the ratio that the number of days in such fractional tax year bears to 365.
- (b) If Lessee shall fail to pay any tax or assessment set out in subclause (a) hereof, Lessor may pay the same on Lessee's behalf, and Lessee shall reimburse Lessor for the same. Lessee shall hold Lessor harmless on account of any of such taxes and assessments.
- (c) If at any time during the currency of this Lease, the method of taxation prevailing at the commencement of the Initial Term shall be altered so as to cause the whole or any part of the taxes, assessments, or charges now or hereafter levied, assessed or imposed on real estate and improvement thereon to be levied, assessed

or imposed wholly or partially as a capital levy, or otherwise, on the rents received therefrom, Lessee shall pay and discharge the same with respect to the rents due hereunder.

- (d) Nothing contained in this Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Lessor, or Lessor's federal income tax, state income tax, or excess profits or revenue tax, unless such taxes are in substitution for real property taxes as a result of a change in the method of taxation described in subclause (c) above.
- (e) If Lessee wishes to contest any assessment or levy of taxes on the Leased Premises, Lessor covenants and agrees that it will execute such documents and do all such things as are necessary to aid Lessee in contesting or litigating said assessment, provided, however, that such contest or litigation shall be at the sole cost and expense of Lessee. Any resulting reduction or rebate of taxes paid or to be paid by Lessee shall belong to Lessee.

#### 14. Sales and Transaction Tax

Lessee shall pay with each rent payment the amount of any sales or transaction tax on the rental transaction. If any sales or similar tax shall be levied or assessed by the United States Government, any state, county, municipality, district or agency or instrumentality thereof, upon or against Lessor by reason of the execution of this Lease, or upon the rentals reserved thereby, then in such case Lessee shall forthwith, upon demand, reimburse Lessor for the amount of any such taxes or assessments paid by Lessor.

#### 15. Insurance

- (a) Lessee shall, at its sole cost and expense, obtain and thereafter maintain in full force and effect, at all times during the Initial Term and any extension or renewal thereof, fire and extended coverage insurance in the amount of no less than eighty percent (80%) of the full insurable value of the Leased Premises. Lessee shall maintain fire insurance coverage on all of Lessee's stock in trade, furniture, fixtures and other property within the Leased Premises, in an amount equal to the full insurable value thereof. Lessee shall promptly deliver to Lessor copies of any and all such policies of insurance. Lessee covenants that any insurance coverage in this regard shall contain a waiver of the insurer's right of subornation against Lessor.
- (b) Lessor hereby releases Lessee, to the extent of its insurance coverage, from any and all liability for loss or damage caused by fire or any of the extended coverage casualties, notwithstanding such fire or other casualty shall be due to the fault or negligence of Lessee or its agents or employees, provided, however, that this release shall be in full force and effect only with respect to loss or damage occurring during such time as the policies for such fire and extended coverage insurance shall contain a clause to the effect that this release shall not affect such policies or the right of Lessor to recover thereunder. Lessee agrees that such insurance policies shall include such clause as long as the same can be included without extra costs.
- (c) If Lessee shall fail at any time to maintain the insurance coverage required under this Section, Lessor may at its option pay for the same on Lessee's behalf, and Lessee shall reimburse Lessor for the same.
- (d) Lessee shall not carry any item of inventory, or do any act, or fail to do any act in or about the Leased Premises which will in any way impair or invalidate any policy of insurance on or in reference to the Leased Premises.
- (e) The parties shall use good faith efforts to have any and all fire, extended coverage, and material damage insurance which may be carried on the Leased Premises endorsed with the following subornation clause:

"This insurance shall not be invalid should the insured waive in writing, prior to a loss, any and all right of the coverage against any party for a loss occurring to the property described herein."
- (f) The parties mutually agree that any right of subornation afforded to the insurance carriers of their respective property insurance policies with respect to real or personal property situated in or on the Leased Premises is waived, and the parties undertake to give their respective insurance carriers notice of this waiver.
- (g) Lessee shall, at its sole cost and expense, obtain and thereafter maintain in full force and effect, at all times during the Initial Term and any extension or renewal thereof, procure and maintain in force policies of liability insurance, with Lessor as an additional insured thereunder, insuring Lessee:
  - (i) to the amount of \$\_\_\_\_\_ against any loss or damage, or any claim thereof, resulting from injury or death of any one person, and
  - (ii) to the amount of \$\_\_\_\_\_ against any loss or damage, or any claim thereof, resulting from injury or death of any number of persons from any one accident,

as a result of or by reason of the ownership by Lessor of the Leased Premises, parking area and adjacent areas owned by Lessor or the use and occupancy thereof by Lessee; and to procure and maintain in full force and effect, during the term specified, a policy or policies of insurance, with Lessor as additional insured thereunder, in an amount not less than \$\_\_\_\_\_, insuring Lessor against any loss or damage or any claim thereof resulting from the damage to or destruction of any property belonging to any person whomsoever as a result or by reason of the ownership by Lessor of the Leased Premises, parking area and adjacent areas owned by Lessor or the use and occupancy thereof by Lessee.

- (h) All insurance policies required under this Section shall contain a written obligation of the insurer to notify Lessor in writing at least ten (10) days prior to any cancellation thereof.

**THIS IS A 13-PAGE DOCUMENT, including Table of Contents and attachments.**