

COMMERCIAL LEASE WITH OPTION TO PURCHASE

AGENCY RELATIONSHIP CONFIRMATION. The following agency relationship is hereby confirmed for this transaction and supersedes any prior agency election (if no agency relationship, insert "NONE"):

LISTING AGENT: _____ is the agent of (check one):
(Print Firm Name)

the Lessor exclusively; or both the Lessee and the Lessor.

SELLING AGENT: _____ (if not the same as the Listing Agent) is the agent of (check one):
(Print Firm Name)

the Lessee exclusively; or the Lessor exclusively; or both the Lessee and the Lessor.

Note: This confirmation DOES NOT take the place of the AGENCY DISCLOSURE form which may be required by law.

RECEIVED FROM _____ hereinafter referred to as LESSEE, the sum of \$ _____ (_____ dollars), evidenced by _____ as a deposit which will belong to Lessor and will be applied as follows:

	TOTAL	RECEIVED	BALANCE DUE PRIOR TO OCCUPANCY
Non-refundable option consideration	\$ _____	\$ _____	\$ _____
Rent for the period from _____ to _____	\$ _____	\$ _____	\$ _____
Security deposit (not applicable toward last month's rent)	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
TOTAL	\$ _____	\$ _____	\$ _____

LEASE

In the event this Lease is not accepted by the Lessor **within** _____ **days**, the total deposit received will be refunded.

Lessee offers to lease from Lessor the premises commonly known as _____
(Street Address)

_____ consisting of approximately _____ square feet, upon the following terms and conditions:
(City/State/Zip)

- 1. TERM.** The term will commence on (date) _____, and end on (date) _____.
- 2. RENT.** The base rent will be \$ _____ per month payable on the _____ day of each month. After the first 12 months the rent will be adjusted as follows: effective upon the first day of the month immediately following the expiration of 12 months from date of commencement of the term, and upon the expiration of each 12 months thereafter, in accordance with changes in the U.S. Consumer Price Index for All Urban Consumers (1982-84 = 100), or (other index) _____ ("CPI"). The base rent will be increased to an amount equal to the monthly rent, multiplied by a fraction, the numerator of which is the CPI for the second calendar month immediately preceding the adjustment date, and the denominator of which is the CPI for the second calendar month preceding the commencement of the Lease term; provided however, that the monthly rent will not be less than that immediately preceding the adjustment.
 All rents will be paid to Lessor or his or her authorized agent, at the following address _____ or at such other places as may be designated by Lessor from time to time. In the event rent is not received by Lessor **within** _____ **days** after due date, Lessee agrees to pay a **late charge** of \$ _____ plus interest at _____ % per annum on the delinquent amount. Lessee further agrees to pay \$ _____ for each dishonored bank check. The late charge period is **not** a grace period, and Lessor is entitled to make written demand for any rent if not paid when due.
- 3. COMMON AREA EXPENSES.** If checked Lessee agrees to pay, in addition to the base monthly rental set forth in item 2, _____ % of common area operating expenses, including utility and service costs, insurance and real property taxes. Tenant's monthly share of said expenses at the commencement of the term is \$ _____.
- 4. USE.** The premises are to be used for the operation of _____ and for no other purpose, without prior written consent of Lessor. Lessee will not commit any waste upon the premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.
- 5. USES PROHIBITED.** Lessee will not use any portion of the premises for purposes other than those specified. No use will be made or permitted to be made upon the premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering the property. Lessee will not conduct or permit any sale by auction on the premises.
- 6. ASSIGNMENT AND SUBLETTING.** Lessee will not assign this Lease or sublet any portion of the premises without prior written consent of the Lessor, which will not be unreasonably withheld. Any such assignment or subletting without consent will be void and, at the option of the Lessor, will terminate this Lease.

Lessee [_____] [_____] and Lessor [_____] [_____] have read this page.

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Property Address _____

7. ORDINANCES AND STATUTES. Lessee will comply with all statutes, ordinances, and requirements of all municipal, state and federal authorities now in force, or which may later be in force, regarding the use of the premises. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the premises will, at the option of the Lessor, be deemed a breach of this Lease.

8. MAINTENANCE, REPAIRS, ALTERATIONS. Unless otherwise indicated, Lessee acknowledges that the premises are in good order and repair. Lessee will, at his or her own expense, maintain the premises in a good and safe condition, including plate glass, electrical wiring, plumbing and heating and air conditioning installations, and any other system or equipment. The premises will be surrendered, at termination of the Lease, in as good condition as received, normal wear and tear excepted. Lessee will be responsible for all repairs required during the term of the lease, except the following which will be maintained by Lessor: roof, exterior walls, structural foundations (including any retrofitting required by governmental authorities) and: _____

Lessee will, will not maintain the property adjacent to the premises, such as sidewalks, driveways, lawns, and shrubbery, which would otherwise be maintained by Lessor.

No improvement or alteration of the premises will be made without the prior written consent of the Lessor. Prior to the commencement of any substantial repair, improvement, or alteration, Lessee will give Lessor at least **two (2) days written notice** in order that Lessor may post appropriate notices to avoid any liability for liens.

9. ENTRY AND INSPECTION. Lessee will permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises, and will permit Lessor, at any time **within sixty (60) days** prior to the expiration of this Lease, to place upon the premises any usual "For Lease" signs, and permit persons desiring to lease the premises to inspect the premises at reasonable times.

10. INDEMNIFICATION OF LESSOR. Lessor will not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the premises. Lessee agrees to hold Lessor harmless from any claims for damages arising out of Lessee's use of the premises, and to indemnify Lessor for any expense incurred by Lessor in defending any such claims.

11. POSSESSION. If Lessor is unable to deliver possession of the premises at the commencement date set forth above, Lessor will not be liable for any damage caused by the delay, nor will this Lease be void or voidable, but Lessee will not be liable for any rent until possession is delivered. Lessee may terminate this Lease if possession is not delivered within _____ days of the commencement term in Item 1.

12. LESSEE'S INSURANCE. Lessee, at his or her expense, will maintain plate glass, public liability, and property damage insurance insuring Lessee and Lessor with minimum coverage as follows: _____

Lessee will provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The policy will require **ten (10) day's written notice to Lessor prior to cancellation or material change of coverage.**

13. LESSOR'S INSURANCE. Lessor will maintain hazard insurance covering one hundred percent (100%) actual cash value of the improvements throughout the Lease term. Lessor's insurance will not insure Lessee's personal property, leasehold improvements, or trade fixtures.

14. SUBROGATION. To the maximum extent permitted by insurance policies which may be owned by the parties, Lessor and Lessee waive any and all rights of subrogation against each other which might otherwise exist.

15. UTILITIES. Lessee agrees that he or she will be responsible for the payment of all utilities, including water, gas, electricity, heat and other services delivered to the premises, except: _____

16. SIGNS. Lessee will not place, maintain, nor permit any sign or awning on any exterior door, wall, or window of the premises without the express written consent of Lessor, which will not be unreasonably withheld, and of appropriate governmental authorities.

17. ABANDONMENT OF PREMISES. Lessee will not vacate or abandon the premises at any time during the term of this Lease. If Lessee does abandon or vacate the premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee left on the premises will be deemed to be abandoned, at the option of Lessor.

18. CONDEMNATION. If any part of the premises is condemned for public use, and a part remains which is susceptible of occupation by Lessee, this Lease will, as to the part taken, terminate as of the date the condemnor acquires possession. Lessee will be required to pay such proportion of the rent for the remaining term as the value of the premises remaining bears to the total value of the premises at the date of condemnation; provided, however, that either party may, at his or her option, terminate this Lease as of the date the condemnor acquires possession. In the event that the premises are condemned in whole, or the remainder is not susceptible for use by the Lessee, this Lease will terminate upon the date which the condemnor acquires possession. All sums which may be payable on account of any condemnation will belong solely to the Lessor; except that Lessee will be entitled to retain any amount awarded to him or her for his or her trade fixtures and moving expenses.

Lessee [_____] [_____] and Lessor [_____] [_____] have read this page.

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Property Address _____

19. **TRADE FIXTURES.** Any and all improvements made to the premises during the term will belong to the Lessor, except trade fixtures of the Lessee. Lessee may, upon termination, remove all his or her trade fixtures, but will pay for all costs necessary to repair any damage to the premises occasioned by the removal.
20. **DESTRUCTION OF PREMISES.** In the event of a partial destruction of the premises during the term, from any cause except acts or omission of Lessee, Lessor will promptly repair the premises, provided that such repairs can be reasonably made within sixty (60) days. Such partial destruction will not terminate this Lease, except that Lessee will be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs interferes with the business of Lessee on the premises. If the repairs cannot be made **within sixty (60) days**, this Lease may be terminated at the option of either party by giving written notice to the other party **within the sixty (60) day period**.
21. **HAZARDOUS MATERIALS.** Lessee will not use, store, or dispose of any hazardous substances upon the premises, except the use and storage of such substances that are customarily used in Lessee's business, and are in compliance with all environmental laws. Hazardous substances means any hazardous waste, substance or toxic materials regulated under any environmental laws or regulations applicable to the property. Lessee will be responsible for the cost of removal of any toxic contamination caused by lessee's use of the premises.
22. **INSOLVENCY.** The appointment of a receiver, an assignment for the benefits of creditors, or the filing of a petition in bankruptcy by or against Lessee, will constitute a breach of this Lease by Lessee.
23. **DEFAULT.** In the event of any breach of this Lease by Lessee, Lessor may, at his or her option, terminate the Lease and recover from Lessee: (a) the worth at the time of award of the unpaid rent which had been earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (d) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform his or her obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, that portion of any leasing commission paid by lessor and applicable to the unexpired term of the lease.
Lessor may, in the alternative, continue this Lease in effect, as long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of Lessor's rights and remedies under the Lease, including the right to recover the rent as it becomes due under the Lease. If said breach of Lease continues, Lessor may, at any time thereafter, elect to terminate the Lease.
These provisions will not limit any other rights or remedies which Lessor may have.
24. **SECURITY.** The security deposit will secure the performance of the Lessee's obligations. Lessor may, but will not be obligated to, apply all or portions of the deposit on account of Lessee's obligations. Any balance remaining upon termination will be returned to Lessee. Lessee will not have the right to apply the security deposit in payment of the last month's rent.
25. **DEPOSIT REFUNDS.** The balance of all deposits will be refunded **within three (3) weeks** (or as otherwise required by law), from date possession is delivered to Lessor or his or her authorized agent, together with a statement showing any charges made against the deposits by Lessor.
26. **ATTORNEY FEES.** In any action or proceeding involving a dispute between Lessor and Lessee arising out of the execution of this Lease, hether for tort or for breach of contract, and whether or not brought to trial or final judgment, the prevailing party will be entitled to receive from the other party a reasonable attorney fee, expert witness fees, and costs to be determined by the court or arbitrators).
27. **WAIVER.** No failure of Lessor to enforce any term of this Lease will be deemed to be a waiver.
28. **NOTICES.** Any notice which either party may or is required to give, will be given by mailing the notice, postage prepaid, to Lessee at the premises, or to Lessor at the address shown in Item 2, or at such other places as may be designated in writing by the parties from time to time. Notice will be effective **five (5) days after mailing**, or on personal delivery, or when receipt is acknowledged in writing.
29. **HOLDING OVER.** Any holding over after the expiration of this Lease, with the consent of Lessor, will be a month-to-month tenancy at a monthly rent equal to the rent for the month immediately preceding the expiration date, plus _____. The monthly rent shall be payable in advance and the occupancy subject to all of the other terms and conditions of this Lease, as applicable, until either party terminates the tenancy by giving the other party **thirty (30) days written notice**. No such holding over or extension of this Agreement will extend the time for the exercise of the Option to Purchase unless agreed upon in writing by Lessor.
30. **TIME.** Time is of the essence of this Lease.
31. **HEIRS, ASSIGNS, SUCCESSORS.** This Lease is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties.
32. **TAX INCREASE.** In the event there is any increase during any year of the term of this Lease in real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this Lease commences, Lessee will pay to Lessor an amount equal to _____% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the Lease, the obligation of Lessee will be prorated. Lessee will not be responsible for any tax increase occasioned solely by a sale or transfer of the premises by Lessor.

Lessee [_____] [_____] and Lessor [_____] [_____] have read this page.

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Property Address _____

OPTION

33. OPTION. So long as Lessee is not in default in the performance of any term of this Agreement, Lessee will have the option to purchase the real property described herein for a PURCHASE PRICE OF \$_____ (_____ dollars), upon the following TERMS and CONDITIONS:

34. DISCLAIMER. The parties acknowledge that the availability of financing and other purchase costs can not be ascertained with certainty. The parties agree that these items will not be conditions of performance of this Agreement, and the parties agree they have not relied upon any representations or warranties by Brokers, Lessor, or other parties which are not set forth in this Agreement.

35. FIXTURES. All items permanently attached to the property, including light fixtures and bulbs, attached floor coverings, all attached window coverings, including window hardware, windows and door screens, storm sash, combination doors, awnings, TV antennas, burglar, fire and smoke alarms (except leased systems), pool and spa equipment, solar systems, attached fireplace screens, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), are included in the purchase price free of liens, EXCLUDING: _____

36. PERSONAL PROPERTY. The following personal property, on the premises when inspected by Lessee, is included in the purchase price and will be transferred to Lessee free of liens and properly identified by a Bill of Sale **at close of escrow**: Unless itemized here, personal property is not included in the option. No warranty is made as to the condition of the personal property. _____

37. EXAMINATION OF TITLE. Lessor will convey title to the property subject only to: [1] real estate taxes not yet due; and [2] covenants, conditions, restrictions, rights of way and easements of record, if any, which do not materially affect the value or intended use of the property.

Within three (3) days from exercise of the Option to Purchase, Lessee will order a Preliminary Title Report and copies of CC&Rs if applicable. **Within ten (10) days of receipt,** Lessee will report to Lessor in writing any valid objections to title contained in such report (other than monetary liens to be paid upon close of escrow). If Lessee objects to any exceptions to the title, Lessor will use due diligence to remove such exceptions at his or her own expense **before close of escrow**. If such exceptions cannot be reasonably removed before close of escrow, this Agreement will terminate, unless Lessee elects to purchase the property subject to such exceptions. In the event there is a bond or assessment which has an outstanding principal balance and is a lien upon the property, such principal will be assumed by lessee without credit toward the purchase price, EXCEPT AS FOLLOWS: _____

38. EVIDENCE OF TITLE, in the form of a CLTA or ALTA policy of Title Insurance, issued by _____, paid by _____. **NOTE:** In addition to coverage under a CLTA policy, the ALTA policy may offer additional coverage for a number of unrecorded matters. Lessee should discuss the choice of a CLTA or ALTA policy with the title company of his or her choice at the time escrow is opened.

39. CLOSING COSTS. Escrow fees, if any, and other closing costs will be paid in accordance with local custom, except as otherwise provided herein.

40. CLOSE OF ESCROW. Within _____ days from exercise of the Option to Purchase, both parties will deposit with an authorized escrow holder, to be selected by the Lessee, all funds and instruments necessary to complete the sale in accordance with the terms of this Agreement.

41. PRORATIONS. Rents, taxes, and other expenses of the property will be prorated as of the date of recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits will be credited to Lessee.

42. EXPIRATION OF OPTION. This Option to Purchase may be exercised at any time after (date) _____, and will expire at midnight (date) _____. Upon expiration Lessor will be released from any obligation to sell property to Lessee.

43. EXERCISE OF OPTION. The Option to Purchase will be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this Option and by an additional payment, on account of the purchase price, in the amount of: \$_____ (_____ dollars) for account of Lessor to the authorized escrow holder **within 10 days after the exercise of the Option to Purchase.**

Lessee [_____] [_____] and Lessor [_____] [_____] have read this page.

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Notice, if mailed, will be by certified mail, return receipt requested, to the Lessor at the address set forth in Item 2, and will be deemed to have been given on the date shown on receipt or upon the third day following deposit in the U.S. Mail, whichever is earlier.

In the event the Option to Purchase is exercised, the consideration paid for the Option and _____% from the rent paid by Lessee prior to the exercise of the Option to Purchase will be credited toward the purchase price.

44. ENTIRE AGREEMENT. The foregoing constitutes the entire agreement between the parties and may be modified only in writing signed by all parties. The following exhibits are a part of this Agreement:

Exhibit A: _____

Exhibit B: _____

The undersigned Lessee hereby acknowledges that he or she has thoroughly read and approved each of the provisions contained in this Offer, and agrees to the terms and conditions specified.

Lessee _____ Date _____ Lessee _____ Date _____

Receipt for deposit acknowledged by _____ Date _____

ACCEPTANCE

The undersigned Lessor accepts the foregoing Offer and grants the Option to Purchase set forth above.

NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the Seller and Broker.

45. COMMISSION. Upon execution, the Lessor agrees to pay to _____, the Broker in this transaction, _____% of the option consideration for securing the Option plus the sum of \$_____ (_____ dollars) for leasing services rendered and authorizes Broker to deduct this sum from the deposit received from Lessee. In the event the Option is exercised, the Lessor agrees to pay Broker the additional sum of \$_____ (_____ dollars) from sale proceeds at close of escrow. This Agreement will not limit the rights of Broker provided for in any listing or other agreement which may be in effect between Lessor and Broker. In any action for commission the prevailing party will be entitled to reasonable attorney fees, whether or not the action proceeds to trial or final judgment.

Lessor acknowledges that he or she has read and understands the provisions of this Agreement, agrees to the terms and conditions specified, and acknowledges receipt of a copy.

Lessor _____
(Signature)

Lessor _____
(Signature)

(Please Print Name)

(Please Print Name)

Date _____ Time _____

Date _____ Time _____

Lessor's Address _____

Lessor's Address _____

Lessor's Telephone _____

Lessor's Telephone _____

Lessor's Fax _____

Lessor's Fax _____

Lessee acknowledges receipt of a copy of the accepted Lease on (date) _____ [_____] [_____] (initials)

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