

**IMPROVED PROPERTY COMMERCIAL LEASE AGREEMENT**

**BETWEEN**

**AS LANDLORD**

**AND**

**AS TENANT**

**Date:**

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

**LEASE INFORMATION SHEET**

1. **Landlord:**
2. **Tenant:**
3. **Tenant Address:**
4. **Tenant Phone Number:**
5. **Tax ID:**
6. **Leased Premises:**
7. **Lease Term:**
8. **Commencement Date:**
9. **Termination Date:**
10. **Base Rent:**
11. **Tenant's Pro Rata Share:**
12. **Security Deposit:**

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between Landlord and Tenant.

1. **LEASED PREMISES.** Subject to and upon the terms set forth in this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Leased Premises for the Lease Term. Tenant has inspected the Leased Premises and accepts it in its present (as is) condition.

2. **LEASE TERM.** This Lease shall continue in force during a period beginning on the Commencement Date and continuing until the expiration of the Lease Term, unless this Lease is sooner terminated or extended to a later date under any other term or provision hereof. Notwithstanding that the Lease Term does not commence until the Commencement Date, this Lease evidences a binding contract between Landlord and Tenant effective as of the date hereof.

3. **RENT.**

**3.01. Base Rent.** Tenant shall pay the Base Rent to Landlord during the Lease Term in the manner as set forth below. Except as otherwise expressly provided in this Lease, all Rent shall be due and payable in advance monthly installments on the first day of each calendar month during the Lease Term. Rent shall be paid to Landlord at its address shown on the signature page or to such other person or at such other address as Landlord may from time to time designate in writing. Rent shall be paid in legal tender of the United States of America. If the Lease Term commences or ends on other than the first or the last day of a calendar month, Rent for the partial month shall be prorated on the basis of the number of days during the month for which the Lease Term was in effect.

**3.02. Late Payments.** If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay landlord a late charge equal to 10% of the amount due.

4. **USE.** Tenant will not (a) use, occupy or permit the use or occupancy of the Leased Premises in any manner which violates any Legal Requirement, or is dangerous to life or property, or creates a public or private nuisance, or for a use other than the Permitted Use; (b) commit or permit any waste to the Leased Premises; or (c) install or permit to remain any Improvements to the Leased Premises which exceed the structural loads of floors or walls of the Building, or which materially and adversely affect the mechanical, plumbing or electrical systems of the Building or affect the structural integrity of the Building in any way. Absolutely no one is permitted on the roof without written consent from Landlord.

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

**5. SECURITY DEPOSIT.** Within 60 days after Tenant surrenders the Leased Premises and provides Landlord written notice of Tenants forwarding address, Landlord will refund security deposit less any amounts applied toward amounts owed by Tenant.

**6. UTILITIES.** All services to the Leased Premises shall be separately metered and paid for by the tenant with the exception of water. Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenants intended use.

**7. IMPROVEMENTS.**

**7.01. General.** Except as otherwise provided in this Lease, all installations and improvements hereafter placed on the Leased Premises shall be for Tenant's account and at Tenant's cost.

**7.02. Signs.** Tenant may not post or paint any signs or place any decoration outside the leased premises or on the property without landlords written consent. Failure to abide will be a breach of contract.

**8. ALTERATIONS.**

**8.01. General.** Tenant will not make, or permit to be made, any structural alteration, improvement or addition to the Leased Premises without the prior written consent of Landlord. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of the Lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Leased Premises to the condition existing at the Commencement Date, normal wear excepted. So long as no Tenant Default exists, Tenant may remove Tenant's inventory and other personal property in the Leased Premises. Tenant shall promptly repair all damage caused by such removal.

**8.02. No Liens.** Tenant shall not permit any lien to be placed on the Leased Premises resulting from any work performed, materials furnished, or obligation incurred by or at the request of Tenant. If any lien or claim against the interest of Landlord or Tenant in the Leased Premises is filed, then Tenant shall cause the same to be discharged of record or bonded around within five (5) days after the filing date. If Tenant shall fail to discharge the lien or claim within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the lien or claim by paying the amount claimed to be due. Any amount paid by Landlord for the satisfaction of a lien or claim shall be paid by Tenant to Landlord on demand, with interest at the Default Rate from the date Landlord notifies Tenant such amount has been paid through the date Landlord is reimbursed by Tenant.

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

**9. REPAIR AND MAINTENANCE.**

**9.01. By Landlord.** Landlord shall repair and maintain the foundation, exterior walls, roof and structural components of the Building in a good, safe and operable condition. Landlord shall maintain the Leased Premises in conformance with all Legal Requirements.

**9.02. By Tenant.** Tenant shall maintain the inside of the Leased Premises in a clean, safe, and operable condition. Tenant will not allow to remain any waste or damage to any portion of the Leased Premises. Tenant at Tenants expense is responsible to maintain and repair ballast and lamp replacements for all lighting fixtures inside of the Leased Premises.

**10. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, sublease, transfer or encumber this Lease or any interest therein without Landlord's prior written consent. Any assignment, sublease, transfer or encumbrance of this Lease in violation of this Section shall be null and void. Consent by Landlord to one or more assignments or sublets shall not operate as a waiver of Landlord's rights as to any subsequent assignment or subletting. However, Tenant shall remain primarily liable and responsible for all sums due under this, and any sublease agreement to Landlord. No such sublease shall be allowed in any event. Tenant shall not attempt any sublease without Landlord's prior written consent. If Tenant is delinquent or tardy in any of its obligations under this Lease, Tenant shall not be entitled to sublet the premises. Landlord must be a signatory party to any such sublease.

**11. ACCESS BY LANDLORD.** Landlord shall have the right to enter the Leased Premises, after providing Tenant prior notice thereof, to (a) inspect, clean, maintain, or repair the Leased Premises, or (b) show the Leased Premises to prospective purchasers or prospective Tenants, or c) in cases of emergency. Tenant may not change the locks on the Leased Premises without prior permission from Landlord.

**12. CASUALTY.** If the Building is totally destroyed, or if more than twenty-five percent (25%) of the floor area of the Building is destroyed, then Landlord may, at its option exercisable by the giving of written notice to Tenant within twenty (20) days after the casualty, terminate this Lease as of the date of the casualty. If the Building is totally destroyed, then Tenant may, at its option exercisable by the giving of written notice to Landlord within twenty (20) days after the casualty, terminate this Lease as of the date of the casualty. If this Lease is not terminated as a result of a casualty, Landlord shall promptly restore the Leased Premises to the same quality and character as existed prior to the casualty. Landlord shall not be required to restore any inventory, trade fixtures or personal property of Tenant. During the period of restoration, Rent shall be abated to the extent the Leased Premises are rendered untenable. If Landlord fails to restore the Leased Premises to the condition required herein within ninety (90) days after the

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

casualty, then Tenant shall have the right to terminate this Lease by giving written notice thereof to Landlord.

**13. INSURANCE.**

**13.01. Tenant's Insurance.** Tenant shall obtain and maintain throughout the Lease Term a policy of liability insurance against claims in or about the Leased Premises, such insurance to afford protection to the limits of not less than a) \$2,000,000.00 General Aggregate Limit; b) \$2,000,000.00 Products/Completed Operations Aggregate Limit; c) \$1,000,000.00 Personal and Advertising Injury Limit; d) \$1,000,000.00 Each Occurrence Limit; e) \$300,000.00 Fire Damage Limit; and e) \$10,000.00 Medical Expense Limit. Tenant shall deliver to Landlord, prior to the Commencement Date, certificates of such insurance and shall, at all times during the Lease Term, deliver to Landlord upon request additional certificates of insurance evidencing such coverage. The liability policy described above shall (i) name Landlord as an additional insured; and (ii) provide that it will not be canceled or reduced in coverage without thirty (30) days' prior written notice to Landlord. In the event Landlord's insurance carrier determines that such limits identified herein should be increased, Tenant shall obtain such increased insurance limits within five (5) days of being notified by Landlord of such increased insurance requirements. Such insurance shall NOT exclude damage to the building or premises, and shall specifically cover such damages to the premises and building. Tenant shall also maintain an adequate amount of Business Interruption insurance coverage.

**13.02. Landlord's Insurance.** Landlord shall obtain and maintain throughout the Lease Term a policy of fire and extended coverage insurance for the Leased Premises against damage or destruction by fire and other casualties, such insurance to be in an amount equal to the full replacement costs, without depreciation, of the Leased Premises.

**13.03. Waiver of Subrogation.** Landlord and Tenant each hereby waives all claims, rights of recovery and causes of action against the other party or against any of the other party's officers, directors, shareholders, partners or employees for any loss or damage that may occur to the Leased Premises, any improvements thereto or any personal property therein by reason of fire or other casualty, or by reason of any other cause (including the negligence of a party hereto or its officers, directors, shareholders, partners or employees), that could have been insured against under the terms of a standard fire and extended coverage insurance policy or policies or for which Landlord or Tenant may be reimbursed as a result of insurance coverage affecting any loss suffered by either party hereto, regardless of cause or origin. Landlord and Tenant hereby agree to cause an endorsement to be issued to their respective insurance policies (including any contents, fire and casualty insurance) recognizing this waiver of subrogation.

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

**14. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT.**

**14.01. Subordination and Non-Disturbance.** This Lease, Tenant's leasehold estate created hereby and all of Tenant's rights, titles and interests hereunder and in and to the Leased Premises are and shall be subject and subordinate to any Mortgage presently existing or hereafter placed upon all or any portion of the Leased Premises; provided, however, as a condition to this subordination, so long as no Tenant Default exists hereunder, Tenant's tenancy and its rights under this Lease shall not be disturbed, nor shall this Lease be affected by any default under any Mortgage. In the event of foreclosure or enforcement of any rights in connection with any Mortgage, the rights of Tenant under this Lease shall survive and this Lease shall in all respects continue in full force and effect. Tenant hereby agrees that Landlord and any Mortgagee shall each have the right, exercisable by either of them at any time upon the giving of written notice to Tenant to make this Lease, and the aforesaid leasehold estate and rights, titles and interests, superior to any Mortgage.

**14.02. Attornment.** Upon the written request of any person or party succeeding to the interest of Landlord under this Lease, Tenant shall automatically become the tenant of and attorn to such successor in interest without any change in any of the terms of this Lease. The subordination, non-disturbance and attornment clauses of Sections 13.01 and 13.02 shall be self-operative and no further instruments of subordination, non-disturbance or attornment need be required by any Mortgagee or successor in interest thereto. Nevertheless, upon the written request of Landlord or any Mortgagee, Tenant agrees to execute, have acknowledged and deliver such instruments as may be reasonably requested to confirm the same.

**15. THIRD PARTIES.** Landlord shall not have any responsibility or liability to Tenant, or to Tenant's officers, directors, shareholders, partners, employees, agents, contractors or invitees, for bodily injury, death, property damage, business interruption, loss of profits, loss of trade secrets or other direct or consequential damages occasioned by (a) the acts or omissions of any owners or Tenants of adjacent property or Tenant's officers, directors, shareholders, partners, employees, agents, contractors or other invitees; (b) vandalism, theft, burglary and other criminal acts (other than those committed by Landlord or its employees).

**16. QUIET ENJOYMENT.** Tenant, on paying the Rent and performing all of Tenant's other obligations contained herein, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Leased Premises during the Lease Term subject to the provisions of this Lease. Landlord agrees to warrant and forever defend Tenant's right to occupancy of the Leased Premises against the claims of any and all persons whomsoever lawfully claiming the same or any part thereof, subject to the provisions of this Lease.

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

**17. DEFAULT BY TENANT**

**17.01. Tenant Default.** Each of the following occurrences shall constitute a "Tenant Default":

(a) Tenant fails to pay Rent as and when due hereunder and such failure continues for a period of five (5) days after the due date thereof;

(b) Tenant fails to perform, comply with or observe any other agreement, obligation or undertaking of Tenant, or any other term, condition or provision in this Lease, and such failure continues for a period of five (5) days after written notice from Landlord to Tenant specifying the failure;

(c) A petition is filed by or against Tenant and is not dismissed within sixty (60) days of filing (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under the Bankruptcy Code or any similar debtor relief law; or (iii) for the appointment of a liquidator or receiver for all or substantially all of the property of Tenant or for Tenant's interest in this Lease; or

(d) Tenant abandons the Leased Premises or ceases to use the Leased Premises for the permitted use.

**17.02. Remedies of Landlord.** Upon any Tenant Default, Landlord may, at Landlord's option, and in addition to all other rights, remedies and recourses afforded Landlord hereunder or at law or in equity, do any one or more of the following:

(a) Terminate this Lease by the giving of written notice to Tenant, in which event Tenant shall pay to Landlord the sum of (i) all Rent and other amounts accrued hereunder to the date of termination, (ii) all amounts due under Section 16.03 and the total Rent that Tenant would have been required to pay for the remainder of the Lease Term.

(b) Terminate Tenant's right to possession of the Leased Premises without terminating this Lease by the giving of written notice to Tenant, in which event Tenant shall pay to Landlord (i) all Rent and other amounts accrued hereunder to the date of termination of possession, (ii) all amounts due from time to time under Section 16.03 and (iii) all Rent and other sums required hereunder to be paid by Tenant during the remainder of the Lease Term, diminished by any sums thereafter received by Landlord through reletting the Leased Premises during said period. Reentry by Landlord in the Leased Premises will not affect the obligations of Tenant hereunder for the unexpired Lease Term. Landlord may bring action against Tenant to collect amounts due by Tenant on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease Term. If Landlord elects to proceed under this subsection (b), it may at any time elect to terminate this Lease pursuant to subsection (a).

(c) Pay or perform the underlying obligation for the account of Tenant. Tenant shall

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

reimburse Landlord upon demand for all reasonable expenses incurred by Landlord in paying or performing the underlying obligation for the account of Tenant, plus interest from the date of demand to repayment at the rate of 5% interest.

**17.03. Payment by Tenant.** Upon any Tenant Default, Tenant shall also pay to Landlord all costs and expenses incurred by Landlord, including court costs and attorney's fees, in (a) retaking or otherwise obtaining possession of the Leased Premises, (b) removing and storing Tenant's or any other occupant's property, and (c) repairing any damage to the Leased Premises required to be repaired by Tenant under this Lease.

**18. RIGHT OF REENTRY.** Upon the expiration or termination of the Lease Term, Tenant shall immediately, quietly and peaceably surrender to Landlord possession of the Leased Premises in "broom clean" and good order, condition and repair, except only for ordinary wear and tear and repairs to be made by Landlord pursuant to this Lease. If Tenant fails to surrender possession as herein required, Landlord may initiate any and all legal action as Landlord may elect to dispossess Tenant and all of its property, and all persons or firms claiming by, through or under Tenant and all of their property from the Leased Premises, and may remove from the Leased Premises and store any such property at Tenant's cost and expense. For so long as Tenant remains in possession of the Leased Premises after such expiration or termination, Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance, subject to all of the obligations of Tenant under this Lease, except that the daily Base Rent shall be one hundred twenty-five percent (125%) of the per day Base Rent in effect immediately prior to such expiration or termination. No such holding over shall extend the Lease Term.

**19. MISCELLANEOUS.**

**19.01. Time of Essence.** Time is of the essence with respect to each date or time specified in this Lease by which an event is to occur.

**19.02. Applicable Law.** THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS. All monetary and other obligations of Landlord and Tenant are performable in the county in which the Leased Premises are located.

**19.03. Assignment by Landlord.** Landlord shall have the right to assign, in whole or in part, any or all of its rights, titles or interests in and to the Leased Premises or this Lease and, upon any such assignment, Landlord shall be relieved of all unaccrued liabilities and obligations hereunder to the extent of the interest so assigned.

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

**19.04. Estoppel Certificates.** From time to time at the request of either party, each party to this Lease agrees to promptly execute, have acknowledged and deliver a certificate stating (a) the Commencement Date and the date of expiration of the Lease Term; (b) the rights (if any) of Tenant to extend the Lease Term; (c) the Rent (or any components of the Rent) currently payable hereunder; (d) whether this Lease has been amended in any respect and, if so, submitting copies of or otherwise identifying the amendments; (e) whether, within its knowledge, there are any existing breaches or defaults hereunder and, if so, stating the defaults with reasonable particularity; and (f) such other information pertaining to this Lease as may be reasonably requested.

**19.05. Notices.** All notices and other communications given pursuant to this Lease shall be in writing, addressed as set forth in this Section, and sent by (i) U. S. registered or certified mail, postage prepaid, return receipt requested, (ii) overnight delivery service providing proof of receipt, (iii) facsimile or telecopier provided a confirming copy thereof is thereafter sent in accordance with (i), (ii) or (iv), or (iv) hand delivery. Notice shall be deemed given upon receipt or upon refusal to accept delivery. For the purposes of notice, the address of Landlord and Tenant shall be the address recited on the signature page hereof. Each party shall have the continuing right to change its address for notice hereunder by the giving of five (5) days' prior written notice to the other party in accordance with this Section.

**19.06. No Waiver.** Provisions of this Lease may not be waived orally or impliedly, but only by the party entitled to the benefit of the provision evidencing the waiver in writing. Thus, neither the acceptance of Rent by Landlord following a Tenant Default (whether known to Landlord or not), nor any other custom or practice followed in connection with this Lease, shall constitute a waiver by a party of such default. Further, the failure by a party to complain of any action or inaction by the other party, or to assert that any action or inaction by the other party constitutes (or would constitute, with the giving of notice and the passage of time) a default hereunder, regardless of how long such failure continues, shall not extinguish, waive or in any way diminish the rights, remedies and recourses of that party with respect to such action or inaction. No waiver by either party of any provision of this Lease or of any breach by the other party of any obligation hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by the other party of the same or any other provision hereof.

**19.07. Entire Agreement, Amendment and Binding Effect.** This Lease constitutes the entire agreement between Landlord and Tenant relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. This Lease may be amended only by a written document duly executed by Landlord and Tenant, and any alleged amendment which is not so documented shall not be effective as to either party. The provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns; provided, however, that this Section shall not

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

negate, diminish or alter the restrictions on assignment or subletting set forth elsewhere in this Lease.

**19.08. Severability.** This Lease is intended to be performed in accordance with and only to the extent permitted by all Legal Requirements. If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**19.09. Attorneys' Fees.** In the event Landlord is required to employ an attorney to enforce any provision of this Lease, or if Tenant defaults in the performance of any of the terms of this Lease and the Landlord employs an attorney in connection therewith, the Tenant agrees to pay all of the Landlord's attorneys' fees, costs and expenses incurred in connection therewith.

**19.10. Incorporation by Reference.** All Exhibits and written addenda attached hereto are incorporated herein for any and all purposes.

**19.11. Multiple Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

**20. INDEMNITY.** To the fullest extent permitted by law, the Tenant shall defend, indemnify and hold harmless, the Landlord from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the occupancy or used of the Leased Premises by Tenant provided that: (a) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury or destruction of tangible property including the loss of use resulting therefrom; or (b) caused or alleged to be caused in whole or in part by any negligent act or omission of the Tenant or anyone directly or indirectly employed by the Tenant or for anyone whose acts the Tenant may be liable, regardless of whether it is caused in part by the negligence of the Landlord.

**21. ACKNOWLEDGMENT OF UNDERSTANDING OF ENTIRE LEASE TERMS**

Tenant acknowledges and represents that Tenant has read and understands this entire Lease Agreement.

Tenant \_\_\_\_, \_\_\_\_

Landlord \_\_\_\_, \_\_\_\_

EXECUTED to be effective as of the date and year shown above.

Landlord's Address for Notice:

**LANDLORD:**

Newport Investments

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Tenant's Address for Notice:

**TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

