

Return to: Durham County Attorney's Office (W. Darby)
200 E. Main St., Durham, NC 27701

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**COMMERCIAL LEASE AGREEMENT
2102 Fay Street Durham, NC 27704**

This **COMMERCIAL LEASE AGREEMENT** (Hereinafter **Lease**), made and entered into this 1st day of _____, 20__ by and between Thomas L. Hawkins, a sole proprietor whose address is 10 Sagamore Place Hillsborough, NC 27278, (hereinafter "**Landlord**"), and **THE COUNTY OF DURHAM**, a political subdivision of the State of North Carolina, (hereinafter "**Tenant**"), whose address is 200 East Main Street, Durham, NC 27701.

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, parties hereto agree as follows:

1. Premises: Landlord does hereby lease unto Tenant and Tenant hereby leases from Landlord the Premises defined herein as 2102 Fay Street, Suite Area #6, Durham, NC 27704, pursuant to the terms set forth in this Lease. This Lease includes 25 designated parking spaces located on the premises that are at all times assigned and reserved for Tenant. The Premises controlled by this Lease is further defined in Exhibit A to this Lease.
2. Commencement, Term and Renewal: The Term of this Lease shall commence on _____, 2019 and shall expire on June 30, 2024, unless terminated sooner as provided herein (hereinafter the "Term"). Tenant may, at Tenant's sole discretion, exercise an Option to Renew the Lease for 5 consecutive one-year periods upon written notification to Landlord at least 90 days prior to the termination of the then-current Term. All terms and conditions of this Lease shall remain in effect for all renewal periods.
3. Tenant Upfit: All costs of design and construction of Tenant Upfit included in the Scope of Work in Exhibit B to this Lease, including without limitation the costs of all space planning, architectural and engineering work related thereto, all governmental and quasi-governmental approvals and permits required therefor, all demolition costs, all direct and indirect construction costs, insurance, bonds and other requirements, any changes, and the

Construction Supervision Fee (Collectively “Construction Costs”) shall be paid by Landlord.

4. **Base Rent:** Tenant shall pay to the Landlord the annual rental amount of \$49,131.00 for Lease Periods one through five, in equal monthly payments of \$4,094.25. Landlord shall abate all rent payments while tenant upfit construction is ongoing in accordance with Sec. 3 of this Lease. Rent shall commence immediately upon delivery of a Certificate of Occupancy issued by the Durham City-County Inspections Department to Landlord for the demised space. Tenant shall remit rent payment on the first day of each calendar month following completion of all construction, and each month thereafter. If Tenant takes possession on any day other than the first day of the month, rent shall be prorated. The term “rent” shall mean all amounts of Base Rent as well as all additional rent or other payments which tenant is obligated to pay to Landlord. Bathroom supplies are included in the rent amount. Parties agree that the initial Lease Period may be longer than 12 months if the Certificate of Occupancy is issued before July 1, 2019.

- a.) **Option Year Rent:** The base rent shall increase by 3 percent over the previous fiscal year’s annual base rent for each year the Option to Renew is exercised by the Tenant.

Lease Period	From	Through	Annual Rate	Monthly Rate
Lease Period 1	Date Certificate of Occupancy is Delivered	June 30, 2020	\$49,131.00 Plus pro-rated monthly rate if occupied before July 1, 2019	\$4,094.25
Lease Period 2	July 1, 2020	June 30, 2021	\$49,131.00	\$4,094.25
Lease Period 3	July 1, 2021	June 30, 2022	\$49,131.00	\$4,094.25
Lease Period 4	July 1, 2022	June 30, 2023	\$49,131.00	\$4,094.25
Lease Period 5	July 1, 2023	June 30, 2024	\$49,131.00	\$4,094.25
Option Period 1	July 1, 2024	June 30, 2025	\$50,604.93	\$4,217.08
Option Period 2	July 1, 2025	June 30, 2026	\$52,123.08	\$4,343.59
Option Period 3	July 1, 2026	June 30, 2027	\$53,686.77	\$4,473.90
Option Period 4	July 1, 2027	June 30, 2028	\$55,297.37	\$4,608.11
Option Period 5	July 1, 2028	June 30, 2029	\$56,956.29	\$4,746.36

- b.) **Failure to Exercise Option:** If Tenant declines to exercise its Option to Renew the lease in any Option Period, Landlord shall collect a prorated portion of the agreed-upon tenant upfit construction cost per Exhibit B, plus any change orders that may have been requested by Tenant in writing, and agreed to by the Landlord in writing, in accordance with the terms and conditions of the Lease.

Option Year	Prorated Construction Cost Owed to Landlord If Option is not exercised
Option Year 1	\$ 15,647.50
Option Year 2	\$ 12,518.00
Option Year 3	\$ 9,388.50
Option Year 4	\$ 6,259.00
Option Year 5	\$ 3,129.50

- 4.1 Service Charge: Tenant recognizes and acknowledges that if Rent is not received when due, Landlord will suffer damages and additional expense and Tenant agrees, in addition to such other remedies available to Landlord, to pay as additional rent (if not waived by Landlord) a service charge equal to five percent (5%) of any sum due hereunder which is not paid within seven (7) days of its due date. If Tenant fails to pay rent within fifteen (15) days of its due date, such payment, as increased by the 5% service charge, shall bear an interest rate of Eighteen percent (18%) per annum.
- 4.2 Security Deposit: Tenant shall deposit with Landlord, upon execution hereof, Four Thousand Ninety-Four Dollars and Twenty-Five Cents (\$ 4,094.25) (the Security Deposit) as security for the faithful performance of Tenant's obligations hereunder. The Security Deposit shall not constitute an advance payment of any amounts owed by Tenant under this Lease. Landlord may, without prejudice to any other remedy, use the Security Deposit to the extent necessary to remedy any default in the payment of Rent or to satisfy any other obligation of Tenant hereunder, and Tenant shall promptly, on demand, restore the Security Deposit to its original amount. If Landlord transfers its interest in the premises during the term, Landlord may assign the Security Deposit to the transferee who shall become obligated to Tenant for its return pursuant to the terms of this lease, and thereafter Landlord shall have no further liability for its return. Tenant shall not offset any payment due hereunder by the Security Deposit or any part thereof. The conditions under which Landlord will hold (and be subsequently to return) the security deposit are as follows: a) the full term as expired and Tenant has complied with all terms and conditions of this Lease; b) Tenant vacates the premises at the expiration date of the lease and returns all keys to the premises; and c) there are no amounts of Rent, including but not limited to any unpaid late charges, delinquent rents, court cost or attorneys' fees or other monies owed by Tenant to Landlord. If Tenant has complied with each of the above requirements, Landlord agrees that the Security Deposit will be returned within thirty (30) days.
5. Landlord and Tenant Obligation: Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Premises shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable Service Obligations prior to delinquency. The responsibility to pay for a Service Obligation shall

include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

Utilities, Services and Obligations	Landlord	Tenant
Property Taxes	X	
Water/ Sewer	X	
Electric	X	
Telephone jacks & lines provided	X	
Gas	X	
Facility Maintenance, including HVAC (in-house maintenance or service contract)	X	
Back-up Generator	X	
Security System – Common Area Interior and Exterior	X	
Internet and Phone Service		X
Janitorial/Cleaning Inside Lease Space		X
Janitorial/Cleaning and Stocking Restrooms	X	
Trash/Dumpster	X	
Landscaping/Maintenance	X	
Pest Control quarterly	X	
Parking Lot Snow and Ice Removal	X	

6. Use of Premises: Tenant shall use and occupy the Premises for the sole purpose of providing office space for Durham County Government Departments. Tenant shall comply with all applicable laws, ordinances, orders, rules and regulations prescribed by lawful governmental authority relating to the Premises, including those concerning cleanliness, safety, occupancy and use of the Premises.
7. Assignment and Sublease: Tenant shall not assign, mortgage or encumber this Lease, the Premises or any improvements on the Premises, nor sublet the Premises or any part thereof without the written consent of Landlord.
8. Title to Improvements: Alterations and permanent improvements to the Premises shall immediately become and be the sole and absolute property of Landlord and shall remain on the Premises and shall not be removed unless otherwise determined by Landlord; and, at the expiration or sooner termination of this Lease, the same shall be surrendered to

Landlord in good condition and repair, reasonable wear and tear excepted, unless otherwise determined by Landlord.

9. Repairs and Maintenance:

- a.) Landlord shall be responsible for (and Tenant will not be responsible for,) repairs to all building structures and systems, including roof, windows, parking lots, fences, HVAC, plumbing, electrical, and exterior security systems, exterior lighting, access panels. Landlord shall maintain all building structures and systems in good working order at all times.
- b.) Tenant shall, at its own expense, make any repairs to the Premises caused by negligence, reckless or careless behavior of Tenant or its employees, agents, or guest.
- c.) Tenant shall document, and photograph, if requested, any conditions that it believes require Landlord to repair and provide a copy of the documentation and photographs to Landlord. Landlord shall make every effort to provide any maintenance and repairs deemed necessary in a timely manner. In the event Landlord fails to make repairs in a timely manner, Tenant reserves the right to have repairs made and invoice Landlord for the total cost of the repair. If Landlord requires the alteration or closure of any portion of the Property in order to perform its obligations hereunder, Landlord shall attempt to give Tenant no less than twelve (12) hours prior notice thereof.
- d.) Tenant shall, at its own expense, during the Term, keep the premises in good order and condition. Maintenance requests should be submitted to the Landlord or the Landlord's agents as soon as reasonably possible. Tenant shall also replace all interior lightbulbs and maintain the floors and walls in a clean condition.
- e.) Tenant will take trash to their dumpster on a daily basis to deter pests. Tenant will pay for any pest control exceeding the quarterly service contract if pests become a nuisance in the leased premises.
- f.) Tenant shall only be responsible for any fines or penalties issued by the Police or Fire department for false security alarms caused by the Tenant. A fee of \$100.00 will be paid by Tenant to Landlord in the event Landlord has to come to the premises during afterhours for a false alarm. The term "afterhours" are defined as the hours between 5:00 pm and 7:00 am Monday through Friday, and all hours during weekends and holidays.

10. Personal Property of the Tenant. All personal property belonging to Tenant in or near the Premises or Property, shall be at the Tenant's sole risk. Upon the expiration of the Term of this Lease, or termination of this Lease for any reason whatsoever, Tenant shall, on or before said date, remove all such personal property from the Premises, and all property not so removed shall be deemed abandoned by the Tenant. Tenant shall repair or reimburse Landlord for the cost of repairing any damages to the Premises resulting from the installation or removal of personal property of Tenant.

11. Mechanic's Liens: Tenant shall not do or suffer anything to be done whereby the Premises may be encumbered by any mechanics or materialman's lien. Whenever and as often as

any mechanic's lien is filed against said Premises purporting to be for labor or material furnished or to be furnished to Tenant, Tenant shall discharge same of record within ten (10) days after the date of filing. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or materialman's lien or other security interest of any kind whatsoever for any such labor or materials shall attach to or affect Landlord's interest in and to the Premises.

12. Taxes: All assessments levied against the Premises or Tenant's leasehold interest in the Premises, by any governmental entity, including any special assessments imposed on or against the Premises for the construction or improvement of public works in, on, or about the Premises, shall be paid before they become delinquent, by Landlord.

13. Insurance: Tenant shall maintain, at its expense, the following minimum insurance coverage:

\$2,000,000 --- Bodily Injury Liability, and
\$ 500,000 --- Property Damage Liability, or
\$4,000,000 ---Combined Single Limit Bodily Injury and Property Damage

Tenant upon request by Landlord shall furnish a certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to Landlord verifying the existence of any insurance coverage required by Landlord.

14. Fire or Casualty: If the improvements on the Premises shall be damaged or destroyed by fire or other casualty during the term of this Lease or to the extent that they cannot be repaired or reconstructed at a cost of less than 50% of the fair market value of such improvements immediately before said damage or destruction, Tenant shall have the right to cancel this Lease. If said option to cancel is not exercised by Tenant, or if the improvements shall be damaged or destroyed by fire or other casualty to the extent that they can be repaired or reconstructed at a cost of less than 50% of their fair market value immediately before said damage or destruction, and so long as such damage or destruction occurs prior to the termination or expiration of this Lease, Landlord shall, as soon as reasonably possible, effect the required repairs and reconstruction of the Premises to place them in substantially the same condition as existed immediately prior to such damage or destruction. Any other provisions contained herein notwithstanding, the Landlord shall be required and obligated to effect repairs or reconstruction only to the extent of any sums of money, if any, which are received by Landlord under Landlord's insurance coverage as a direct result of said fire or other casualty. Notice of cancellation pursuant to the terms of this section shall be given within thirty (30) days of the damage or destruction. Estimates of percentage of destruction shall be made in good faith by Landlord.

15. Event of Default:

a.) The occurrence of any of the following shall constitute an Event of Default of this Lease:

- (i) Tenant abandons or vacates the Premises without written notification to the Landlord.
 - (ii) Failure by either party to observe and perform any obligation of this Lease, other than the failure to pay rent or make any other payment required to be made by Tenant hereunder, where such failure continues for thirty (30) days after written notice thereof by the non-breaching party to the breaching party; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period. A party shall not be deemed to be in default if that party shall within such period commence to cure and thereafter diligently prosecute the same to completion.
 - (iii) The filing by or against either party of a petition seeking relief under the Bankruptcy Act or any Federal or State statute intended to provide relief for private persons or entities which are insolvent or unable to meet their obligations as they mature.
 - (iv) Failure of either party to comply with any security or privacy rules provided by the other party, including but not limited to unauthorized access to the Premises, theft or unauthorized use of personal information found or obtained on the Property.
 - b.) Landlord's Remedies. The terms and conditions of this Lease shall be enforceable by Landlord by actions for specific performance in addition to any other remedies available at law or in equity. Pursuit of any remedy under this Lease shall not preclude the pursuit of any other remedy provided for in this Lease or any other remedy provided in law or equity, nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any amounts due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, and covenants contained in this Lease.
 - c.) Tenant's Remedies. Upon the occurrence and during the continuance of any Event of Default by Landlord, Tenant shall have the right, in addition to all other rights and remedies available to Tenant at law or in equity, to terminate this Lease. No other property or assets of Landlord, disclosed or undisclosed, shall be subject to levy, execution, or the enforcement procedure for the satisfaction of Tenant's remedies. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Landlord or its officers, elected officials, or their respective heirs, legal representatives, successors, and assigns on account of this Lease or any covenant, undertaking, or agreement in this Lease.
16. Condition of Premises Upon Termination: Upon the termination or expiration of this Lease, Tenant shall return the Premises to Landlord in substantially the same condition as received, ordinary wear and tear and approved improvements excepted.
17. Holding Over: In the event Tenant remains in possession after the expiration of the Term without the execution of a new lease, its tenancy shall be on a month-to-month basis and, shall otherwise be subject to all of the conditions, provisions and obligations of this Lease

insofar as the same shall be applicable, except that the monthly Base Rent due and payable hereunder shall be 125% of the Base Rent applicable just prior to termination of this lease, plus the Additional Charges pursuant to the Lease. Tenant shall not acquire any right, title or interest in or to the Premises or Landlord's Personal Property.

18. Indemnification:

a.) Tenant: To the fullest extent permitted by law, Tenant shall indemnify, defend and hold harmless Landlord, its agents and employees from any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any activity, work or things which may be permitted or suffered by Tenant in or about the Premises and shall further indemnify, defend and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provision of this Lease or arising from any negligence of Tenant or any of its agents, or employees. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of Tenant, which immunity is hereby reserved to Tenant.

b.) Landlord: To the fullest extent permitted by law, Landlord shall indemnify, defend and hold harmless Tenant, its agents and employees from any and all claims arising from Landlord's ownership of the Premises suffered by Tenant while a Tenant of the Premises and shall further indemnify, defend and hold Tenant harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the provision of this Lease or arising from any negligence or willful misconduct or any of its agents, or employees.

19. Sign Control. Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises or Property, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.

20. Telephone, Internet and Utilities: Tenant shall be responsible for the cost of telephone and Internet services rendered or supplied upon or in connection with the Premises, unless otherwise agreed to in writing between the parties. All other utilities will be provided to the Premises by the Landlord.

21. Subordination: This Lease and the rights of Tenant are subordinate to and shall remain subordinate to the lien of any mortgage or deed of trust (hereinafter called "Mortgage") whether such Mortgage is currently a lien on the Premises or hereafter becomes a lien on the Premises and no further agreements or documents shall be required to render this Lease and the Tenant's rights subordinate to such Mortgage. At Tenant's request and at the

Tenant's expense, Landlord shall endeavor to obtain for Tenant a non-disturbance agreement in recordable form providing in substance that Tenant's tenancy shall not be disturbed nor affected by any default under the Mortgage provided that Tenant is not in default under any of the terms, conditions and covenants hereof.

22. Condemnation: If the entire Premises are taken or condemned for a public or quasi-public use, then this Lease shall terminate at the later of the vesting of title in the condemning authority or the acquisition of possession thereby. If any part of the Premises shall be taken or condemned for a public or quasi-public use and a part thereof remains which is reasonably suitable for the Tenant's use, this Lease shall not terminate. The aforesaid partial condemnation shall be without prejudice to the rights of either Landlord or Tenant to directly recover compensation from the condemning authority for any of its loss or damage caused by such condemnation. Neither Landlord nor Tenant shall have any rights in and to any award made to the other by such condemning authority.
23. Additions, Alterations, Changes and Improvements: Tenant shall not make, and shall not have the right to make any alterations, changes or improvements, structural or otherwise, in or to the Premises without written approval of Landlord.
24. Easements, Restrictions and Rights of Way: The Premises are demised subject to all easements, restrictions and rights of way legally affecting the Premises.
25. Applicable Law: This Lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of this State. All actions relating in any way to this Lease shall be brought in the General Court of Justice in the County of Durham and State of North Carolina.
26. Compliance with Laws: Tenant represents that it is and shall remain in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented.
27. Severability: The provisions of this Lease are independent covenants, and should any provision or provisions contained in this Lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable, and the remaining provisions hereof shall remain in full force and effect.
28. Notices: All notices and written consents required under this Lease shall be in writing and shall be sent to the Landlord at 10 Sagamore Place Hillsborough, NC 27278, , and to the Tenant at Real Property Management, 201 East Main Street, 5th Floor, Durham, North Carolina 27701.
29. Waiver: Failure or delay of either party to insist upon the strict performance of the covenants, agreements, or conditions of this Lease, or any of them, shall not be construed as a waiver or relinquishment of that party's right to enforce such, but the same shall continue in full force and effect.

30. Binding Effect/Entire Agreement: The covenants and agreements contained herein shall apply to and inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns. This Lease contains the entire agreement between the parties and no oral statements or representations or prior written matter not contained in this Lease shall have any force or effect. This Lease shall not be modified in any way except by a writing executed by both parties.
31. Remedies Cumulative: The remedies given to Landlord and Tenant are cumulative and not alternative and are in addition to any other rights Landlord and Tenant may have at law or in equity or otherwise.
32. Covenant of Title and Quiet Enjoyment: Landlord covenants and warrants to Tenant that Landlord has full right and lawful authority to enter into this Lease for the Term hereof and that, provided Tenant is not in default hereunder, Tenant's quiet and peaceable enjoyment of the Premises shall not be disturbed by anyone claiming through Landlord.
33. Dispute Resolution: The Parties agreed that all disputes, except for Summary Eviction, shall be subject to mediation according to the Rules of Mediation of the North Carolina Superior Court, prior to the filing of any litigation.
34. Landlord's right to Enter Premises: Tenant agrees to permit Landlord or Agent to enter the Premises at any reasonable time for the purpose of determining the condition of the Premises and making repairs thereto. Barring any unforeseen emergency circumstances including acts of God, Landlord shall make reasonable effort to notify Tenant at least 12 hours in advance of entry and shall not be liable for inconvenience to or disturbance of Tenant by reason of any such entry.

IN TESTIMONY WHEREOF, This Lease has been executed by the parties hereto, as of the date first above written.

For Landlord:

ATTEST:

COUNTY OF DURHAM

Monica Toomey
INTERIM CLERK TO THE BOARD

BY: _____
Wendell M. Davis
COUNTY MANAGER

For Tenant:
ATTEST:

THOMAS L. HAWKINS

BY: _____
Thomas L. Hawkins
SOLE PROPRIETOR

Acknowledgement of Landlord:

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, _____, a Notary Public for _____ County, certify that Monica Toomey personally came before me this day and acknowledged that she is Interim Clerk to the Board of the County of Durham, and that by authority duly given and as the act of the County, the foregoing instrument was signed in its name by its County Manager, sealed with its seal, and attested by herself as its Clerk to the Board.

Witness my hand and official seal, this the _____ day of _____, 2019

(SEAL)
Notary Public
My commission expires: _____

Acknowledgement of Tenant:

STATE OF _____
COUNTY OF _____

I, a Notary Public in and for the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she _____ of the _____, a _____ corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____, sealed with its corporate seal and attested by _____ as its _____.

Witness my hand and notarial seal this ____ day of _____, 2019.

Notary Public (SEAL)

My commission expires:

EXHIBIT A

TO BE PROVIDED BY LANDLORD