

# Executive Suite Lease Agreement

This Commercial Lease Agreement ("Lease") is made and effective \_\_\_\_\_, \_\_\_\_\_, by and between DCG Development Co., 240 Clifton Corporate Parkway, Clifton Park, New York 12065 ("Landlord") and \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, NY \_\_\_\_\_ ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as legally described as follows (the "Building"): 855 Route 146, Clifton Park, Saratoga County, New York 12065. Landlord makes available for lease space within the Building designated as Suite #\_\_\_\_\_ (the "Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

## 1. Term

Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

## 2. Rental

Tenant shall pay to Landlord during the initial one year Term a rental fee of \$\_\_\_\_\_. payable in installments of \$\_\_\_\_\_ per month for \_\_\_\_\_, \_\_\_\_\_ through \_\_\_\_\_, \_\_\_\_\_. The first month's Rent of \$\_\_\_\_\_ is due upon the execution of said lease. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at the above address or at such other place designated by written notice from Landlord or Tenant. If rent is not received by the 10<sup>th</sup> of each month a late charge of 2% of the unpaid amount being added to the balance due. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

## 3. Security Deposit

Tenant shall pay to Landlord a "Security Deposit" in the amount of \$\_\_\_\_\_ upon the execution of said lease, unless this lease is a renewal. The Security Deposit shall be held by Landlord, without liability for interest and as security for the performance by Tenant of Tenant'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 Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If

Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit. **Under no circumstances may Tenant use this deposit to pay rent, including rent for the last month of this lease.** The rent must be paid on or before the tenth day of each month, *including the last month of occupancy.*

#### 4. **Use**

Tenant shall use and occupy said premises for general office use.

Tenant shall comply with all Federal, State and Local regulations, including occupational licensing and zoning regulations. Notwithstanding the forgoing, Tenant 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.

#### 5. **Sublease and Assignment**

Tenant shall have the right with Landlord's consent, to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant's assets. Except as set forth above, Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

#### 6. **Repairs**

During the Lease term, Landlord shall make, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises, damaged or worn through normal occupancy, mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

#### 7. **Alterations and Improvements**

Tenant shall not make any alterations or improvements without Landlord's prior *written* consent. If Landlord grants written consent, Tenant, at Tenants expense, will return leased premises to its prior condition in all respects.

#### 8. **Insurance**

A. Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at Tenants expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

B. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

C. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

#### 9. **Utilities**

Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilize excessive electrical energy, water or sewer which may, in Landlord's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

#### 10. **Signs**

Landlord will provide all signage. No other signage other than that provided by Landlord will be used or permitted.

#### 11. **Entry**

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises. Landlord shall have the right to enter the premises in any emergency at any time, to examine the premises and make such repairs as necessary to the emergency.

#### 12. **Parking**

During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within reasonable proximity to the Building, for Tenant and Tenant's agents and employees.

#### 13. **Building Rules**

Tenant will comply with the rules of the Building adopted and altered by Landlord from time to time and will cause all of its agents, employees, invitees and visitors to so comply.

#### 14. **Damage and Destruction**

Subject to Section 8 C. above,

A. **Tenant Notice to Landlord.** Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. If the Premises cannot be used because of fire or other casualty, Tenant is not required to pay rent for the time the Premises are unusable. If part of the Premises cannot be used, Tenant must pay rent for the usable part. Landlord shall have the right to decide which part of the Premise is usable. Landlord need only repair the damaged structural parts of the Premises. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under Landlord's control.

B. If the fire or other casualty is caused by an act or neglect of Tenant, Tenant's employees or invitees, or at the time of the fire or casualty Tenant is in default in any term of this Lease, then all repairs will be made at Tenant's expense and Tenant must pay the full rent with no adjustment. The cost of the repairs will be added rent.

C. Landlord has the right to demolish or rebuild the Building if there is substantial damage by fire or other casualty. Landlord may cancel this Lease within thirty (30) days after substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. The Lease will end thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the Premises to Landlord on or before the cancellation date in the notice and pay all rent due to the date of the fire or casualty. If the Lease is cancelled Landlord is not required to repair the Premises or Building. The cancellation does not release Tenant of liability in connection with the fire or casualty. This Section is intended to replace the terms of New York Real Property Law Section 227.

**15. Default**

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for five (5) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for fifteen (15) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

**16. Quiet Possession**

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

**17. Condemnation**

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

**18. Compliance with Laws—Landlord's Warranty**

Landlord represents and warrants to Tenant that on the date of delivery of possession of the Premises to Tenant the Premises will be in compliance with all laws, ordinances, orders, rules, regulations, and other governmental requirements relating to the use, condition, and occupancy of the Premises for the purposes allowed by this Lease

**19. Compliance with Environmental Laws**

Tenant represents, warrants, and covenants to Landlord that:

(a) Tenant and the Premises will remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment. Tenant will obtain and comply with all governmental permits relating to the use or operation of the Premises required by applicable Environmental Laws.

**20. Subordination**

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

**21. Notice**

Notice required under this lease shall be given by Tenant and Landlord in writing, certified mail, return receipt requested, or by personal delivery during normal business hours at the above-mentioned addresses or at any other address that the parties may direct.

**22. Waiver**

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

**23. Memorandum of Lease**

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be so filed.

**24. Authority**

If Tenant signs this lease as a corporation, each of the persons executing this Lease on behalf of Tenant warrants to Landlord that Tenant is a duly authorized and existing corporation, that Tenant is qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

**25. Successors**

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

**26. Consent**

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

**27. Compliance with Law**

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

**28. Final Agreement**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

**29. Governing Law**

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of New York.

**30. Premises Relocation**

Landlord reserves the right from time to time to substitute for the Premises other premises ("New Premises") so long as (a) the new premises are similar to the Premises in square footage; (b) Landlord gives Tenant at least thirty (30) days notice before making such change; (c) if Tenant has already taken possession of the Premises, Landlord pays reasonable direct out-of-pocket expenses of Tenant in moving from the Premises to the New Premises, and Landlord improves the New Premises to a condition substantially similar to the Premises (exclusive of trade fixtures, personal property, inventory and equipment). Landlord will not have any liability to Tenant for the loss or damage of Tenant's property or business arising in connection with moving to the New Premises. At Landlord's request, Tenant will execute and deliver to Landlord an amendment to the Lease confirming the change of the Premises, and, if necessary, adjusting the Monthly Rent.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

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**A. Rick Eaglestone  
DCG Development Co.  
Authorized Representative**

**Date**

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**Print Name:** \_\_\_\_\_  
**Company Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Date**

