# FIFTH AMENDMENT TO LEASE

THIS FIFTH AMENDMENT TO LEASE (the "**Amendment**") is entered into this _____ day of _____, 2016, between LANDLORD ("**Landlord**"), CO-TENANT 1 ("**Co-Tenant 1**"), and CO-TENANT 2 ("**Co-Tenant 2**") (Co-Tenant 1 and Co-Tenant 2 each "**Co-Tenant**" and collectively "**Tenant**").

Landlord and Tenant are parties to a certain Lease (the "**Original Lease**") dated _____, between Landlord's predecessor-in-interest, PREDECESSOR 1 ("**Predecessor 1**"), and Tenant, as amended by (i) a First Amendment to Lease (the "**First Amendment**") dated _____, between Predecessor 1 and Tenant, (ii) a Second Amendment to Lease (the "**Second Amendment**") dated _____ _____, between Landlord's predecessor-in-interest, PREDECESSOR 2, and Tenant, (iii) a Third Amendment to Lease (the "**Third Amendment**") dated _____, between Landlord and Tenant, and (iv) a Fourth Amendment to Lease (the "**Fourth Amendment**") dated _____ (the Original Lease, the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment are hereinafter referred to together as the "**Lease**"). The Lease covers premises located on the _____ floor of the building located at _____, consisting of an area containing 2,834 rentable square feet, as described in the Original Lease (the "**Premises**"). The Term currently has a scheduled Expiration Date of _____.

Landlord, Co-Tenant 1, and Co-Tenant 2 desire to amend the Lease so as to make Co-Tenant 2 a Co-Tenant under the Lease.

Pursuant to the Fourth Amendment, following the completion of certain improvements, including the construction of a demising wall (such improvements being defined in the Fourth Amendment as the "**RP Work**"), Tenant was to vacate and surrender 888 rentable square feet of the Premises (such surrender space being defined in the Fourth Amendment as the "**Surrender Space**") and continue to occupy the remaining 1,946 of rentable square feet of the Premises until the Expiration Date.

Notwithstanding the foregoing, with the mutual agreement of Landlord and Tenant, the RP Work was not performed and Tenant has not vacated and surrendered the Surrender Space and as of the date hereof, Tenant has continued to occupy, and the Lease has remained in full force and effect as to, the entire Premises.

Landlord and Tenant desire to amend the Lease, as amended by the Fourth Amendment, to provide (i) for Tenant to continue to lease the entire Premises until the Expiration Date, (ii) for Landlord to perform the Tenant Work (as hereinafter defined) instead of the RP Work, and (iii) for Tenant to receive a partial rent abatement as provided hereinafter, subject to and in accordance with the terms and conditions set forth in this Amendment.

In consideration of the foregoing and of the mutual promises contained in this Amendment, and for other good and valuable consideration the receipt and sufficiency of which is acknowledged by

Landlord and Tenant, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

1. The foregoing recitals are incorporated herein by reference.

2. Unless otherwise provided herein, capitalized terms shall have the meanings set forth in the Lease.

3. Sections 3 and 4 of the Fourth Amendment are deemed to be void ab initio.

4. Notwithstanding anything in the Fourth Amendment to the contrary, Landlord and Tenant acknowledge and agree that the Fixed Rent for the first year of the Extension Period (i.e., _____ _____) was equal to _____ DOLLARS ($_____) (i.e., $_____per rentable square foot of the Premises) per annum, payable in equal monthly installments of _____ DOLLARS ($ _____).

5. Notwithstanding anything in the Fourth Amendment to the contrary, during the remainder of the Term (i.e., from April 1, 2016 through the Expiration Date), the Fixed Rend shall equal the following amounts for the following periods:

(a) From April 1, 2016, through March 31, 2017, the Fixed Rent shall equal _____ _____ DOLLARS ($_____) (i.e., $_____per rentable square foot of the Premises) per annum, payable in equal monthly installments of _____ DOLLARS ($_____);

(b) From April 1, 2017, through March 31, 2018, the Fixed Rent shall _____ _____ DOLLARS ($_____) (i.e., $_____per rentable square foot of the Premises) per annum, payable in equal monthly installments of _____ DOLLARS ($_____);

(c) From April 1, 2018, through March 31, 2019, the Fixed Rent shall equal _____ _____ DOLLARS ($_____) (i.e., $_____per rentable square foot of the Premises) per annum, payable in equal monthly installments of _____ DOLLARS ($_____); and

(d) From April 1, 2019, through March 31, 2020, Fixed Rent shall equal _____ _____ DOLLARS ($_____) (i.e., $_____per rentable square foot of the Premises) per annum, payable in equal monthly installments of _____ DOLLARS ($_____).

Provided that Tenant is not then in default under the Lease beyond the expiration of any applicable grace, notice or cure period, Tenant shall be entitled to a partial abatement in the amount of _____ of each the monthly installments of Fixed Rent for first (1st) six (6) consecutive full months following the date of this Amendment. If Tenant thereafter is in default under the Lease beyond any applicable notice and cure period, the Fixed Rent payments which Landlord had waived in the preceding sentence shall be immediately due and payable. Tenant acknowledges that Tenant shall remain obligated for all other payments due from Tenant pursuant to this Lease during the period for which Landlord has waived Fixed Rent.

6. Tenant is in possession of and accepts the Premises in its “as is” condition, subject to the substantial completion of the Tenant Work. Notwithstanding the foregoing, Landlord, at Landlord's sole cost and expense, shall (i) clean the carpeting throughout entire Premises (provided that upon Tenant’s reasonable request, Landlord shall replace designated areas of carpeting with building-grade carpet selected by Tenant from Landlord’s available selections), and (ii) paint areas of the Premises to be

designated by Tenant, with building standard paint of colors selected by Tenant from Landlord's available selection (such work being herein called the "**Tenant Work**"). Landlord may conduct the Tenant Work during regular business hours provided that Landlord shall endeavor to avoid materially interfering with Tenant's use of the Premises. Tenant shall not impede Landlord's access to the Premises or otherwise interfere with or delay Landlord's performance of the Tenant Work.

7. Landlord and Tenant acknowledge that Tenant's Proportionate Share through the Expiration Date shall based upon the 2,834 rentable square feet of the Premises.

8. Tenant represents that Co-Tenant 1 has obtained its Franchise Renewal (as defined in the Fourth Amendment) and Landlord and Tenant acknowledge that the right of Termination set forth in Section 8 of the Fourth Amendment has, therefore, become null and void.

9. (a) Co-Tenant 2 acknowledges Co-Tenant 1 is in current possession of the Demised Premises under the Lease. Landlord, Co-Tenant 1, and Co-Tenant 2 hereby agree that effective as of the date hereof, Co-Tenant 1 and Co-Tenant 2 shall each be a Co-Tenant under the Lease. Tenant agrees and accepts the Demised Premises in its "as-is" condition.

(b) Each Co-Tenant shall be jointly and severally liable to Landlord under the Lease for any and all obligations of Tenant under the Lease, including but not limited to Fixed Rent, Additional Rent, and Utility Charges. Upon an Event of Default by either Co-Tenant, Landlord may exercise any and all of its rights and remedies under the Lease and at law or equity against either or both Co-Tenants.

(c) Each Co-Tenant agrees that Landlord may, at Landlord's sole discretion, accept any notice, request or demand given only by Co-Tenant 1 as a notice, request or demand made on behalf of Tenant or Landlord may require that both Co-Tenants give such notice, request or demand. Any statements, notices, or other communications sent in accordance with the Lease to either of the following addresses shall also be deemed sufficient notice as to Co-Tenant 2:

_____

_____

(d) Notwithstanding anything in this Amendment to the contrary, each Co-Tenant acknowledges and agrees that the option of Tenant to renew the Term of the Lease may be exercised solely by and solely for the benefit of Co-Tenant 1, except as Landlord may otherwise consent in writing (which consent Landlord may deny its sole discretion).

(e) Co-Tenant 2 acknowledges that the Security Deposit was paid by Co-Tenant 1 and Co-Tenant 2 waives all right and interest in the Security Deposit.

10. Tenant confirms that as of the date hereof, (i) Landlord has fully complied with all of its obligations according to the Lease and (ii) no event has occurred and condition exists which, with the passage of time or giving of notice, or both, would constitute a default by Landlord under the Lease.

11. Tenant represents and warrants to Landlord that Tenant has not dealt with any party to whom a commission might be owing in connection with this Amendment, other than _____, and shall indemnify, defend and hold harmless Landlord from and against the claim of any party other than Broker claiming a commission owing due to its dealings with Tenant in connection with this Amendment.

Landlord shall pay any commission owing to Broker pursuant to a separate agreement or agreements.

12. If there is any conflict between the terms and provisions of the Lease and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall prevail. Landlord and Tenant ratify and affirm the Lease as modified by this Amendment. Except as modified by this Amendment, the Lease shall remain unmodified, in full force and effect. Except as herein otherwise expressly provided, or except as the terms of the Lease may be in conflict with or inconsistent with the terms of this Amendment, all of the terms, covenants and provisions of the Lease are hereby incorporated into and made a part of this Amendment as if fully set forth herein.

13. This Amendment shall not be binding upon on Landlord unless and until a fully executed copy of this Amendment has been executed by both Landlord and Tenant and delivered to Tenant by Landlord.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the day and year first above written.

LANDLORD:
**LANDLORD**

By: _____
its managing member

By: _____
Name: _____
Title: _____

CO-TENANT:
**CO-TENANT 1**

By: _____
Name: _____
Title: _____

CO-TENANT:
**CO-TENANT 2**

By: _____
Name: _____
Title: _____