

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective as of **November 6th, 2015** (the "Effective Date"), by and between **BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION** ("Landlord") and **FWAVE, LLC** ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as **921 S. BURLESON BLVD., BURLESON, TX 76028** and legally described as follows (the "Leased Premises"):

A 6.561 acre parcel located at 921 S. Burleson Blvd, Johnson County, Texas, which property is more fully described as Lot 1, Block 1 of the Housing of the Future Addition to the City of Burleson, Johnson County, Texas

Landlord makes available for lease the Leased Premises, including, but not limited to: (1) 30,000 square foot manufacturing building, (2) 1,650 square foot office building, and (3) the area surrounding such buildings within the Leased 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.

- A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning on the Effective Date and ending December 31, 2018. 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 deliver the Leased Premises to Tenant by November 15, 2015, Tenant shall be entitled to receive a credit against Base Rent next becoming due under this Lease in the amount of two (2) days' rental that becomes due during the first year of the Term for each day thereafter until the Leased Premises are so delivered to Tenant.
- B. Tenant may renew the Lease for two (2) extended term(s) of ONE YEAR each. Tenant may exercise such renewal option, if at all, by giving written notice to Landlord not less than sixty (60) days prior to the expiration of the Initial Term, or the previously extended term, as the case may be. The extension of the Lease will be granted only with consent of both parties and not to be unreasonably withheld. The renewal term shall be at the rental set forth below, and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. Rental.

- A. Tenant shall pay to Landlord during the Initial Term rental of \$4.50 per square foot or ONE HUNDRED FORTY-TWO THOUSAND, FOUR HUNDRED TWENTY-FIVE DOLLARS (\$142,425.00) per year, payable in installments of ELEVEN THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS AND SEVENTY-FIVE CENTS (\$11,868.75) per month. Each installment payment shall be due in advance on the first day of each calendar month during the Lease term to Landlord at **BURLESON CITY HALL, 141 W. RENFRO ST., BURLESON, TX 76028 ATTN: FINANCE DEPARTMENT** or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.
- B. The rental for the first year of renewal lease term, if created as permitted under this Lease, shall be ONE HUNDRED SEVENTY-FOUR THOUSAND SEVENTY-FIVE DOLLARS (\$174,075.00) per year payable in installments of FOURTEEN THOUSAND FIVE-HUNDRED SIX DOLLARS AND TWENTY-FIVE CENTS (\$14,506.25) per month.

- C. The rental for the second year of renewal lease term, if created as permitted under this Lease, shall be TWO HUNDRED FIVE THOUSAND SEVEN HUNDRED TWENTY-FIVE DOLLARS (\$205,725.00) per year payable in installments of SEVENTEEN THOUSAND ONE HUNDRED FORTY-THREE DOLLARS AND SEVENTY-FIVE CENTS (\$17,143.75) per month.

3. Use

Tenant may use the Leased Premises for any lawful purpose. Notwithstanding the forgoing, except as set forth below, 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 in violation of any applicable law unless otherwise approved by Landlord. For the avoidance of doubt, Landlord hereby agrees that the storage, manufacturing, selling, or use of the items listed on Schedule A, attached hereto, among other things, shall not violate the terms of this Paragraph 3.

4. Assignment.

Tenant may not assign any part of this Lease or sublease any part of the Leased Premises without prior written consent or approval by the Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the assignee agrees in writing to comply with each term in the Lease. Notwithstanding the foregoing, Tenant shall have the right, without the consent of Landlord and without otherwise being subject to or complying with the provisions of this Paragraph 4, to: (a) permit occupancy of the Leased Premises by, assign this Lease to or sublet the Leased Premises or any portion thereof to, any entity that controls, is controlled by, or is under common control with Tenant; or (b) assign this Lease to the surviving entity in any merger, consolidation or reorganization including Tenant, or to the purchaser of all or substantially all of the assets of Tenant at the Leased Premises; provided that Tenant provides Landlord with a fully executed copy of such assignment or sublease.

5. Repairs.

During the Lease term, Tenant shall make, at Tenant's expense, 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, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease. Landlord shall warrant all equipment and systems serving the Leased Premises for a period of one (1) year after the commencement date and shall repair such equipment and systems promptly at Landlord's sole cost and expense.

6. Alterations and Improvements.

Tenant, at Tenant's expense, shall have the right following Landlord's written consent, which will not be unreasonably withheld, conditioned, or delayed, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials, and do not unreasonably diminish the future utility of the Leased Premises. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

7. Property Taxes.

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments as may be required coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises. Any



income, franchise, margin, gift, inheritance, capital levy and estate taxes attributable to or arising out of this Lease shall not be payable by Tenant.

8. Insurance.

- A. If any part of the Leased Premises is damaged by fire or other casualty resulting from any willful act or gross 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.
- B. Landlord shall maintain fire and extended coverage insurance on the Leased Premises in an amount equal to the full replacement value. Tenant shall maintain, at its expense, fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.
- C. 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 on the Leased Premises with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord and Tenant, 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. Each party shall be listed as an additional insured on the other party's policy or policies of comprehensive general liability insurance, and each party shall provide the other party with current certificates of insurance evidencing compliance with this Paragraph. Landlord shall not be required to maintain insurance against thefts within the Leased Premises.

9. Utilities.

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. Notwithstanding anything in this Lease to the contrary, (a) if an interruption of services is the result of Landlord's negligence or misconduct, all rent shall be abated for each day of such interruption of services; (b) if an interruption of services continues for five (5) consecutive days, regardless of the cause, all rent shall be abated for each day thereafter until all services are fully restored; and (c) if an interruption of services continues for thirty (30) consecutive days, regardless of the cause, Tenant shall have the right to terminate this Lease.

10. Signs.

Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11. Entry.

Landlord shall have the right to enter upon the Leased Premises during Tenant's regular business hours and following twenty-four (24) hour prior notice to inspect the same and, in the final six months of the Lease, with the prior consent of the Tenant, which consent shall not be unreasonably withheld, to market the Leased Premises to prospective tenants, provided that, in any event, Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises or allow any third party to observe any trade secrets or confidential information of Tenant. During any entry of the Lease Premises, Landlord shall comply with all requirements of Tenant.

12. Parking.

During the term of this Lease, Tenant shall have the exclusive use of the automobile parking areas, driveways, and other access to the Leased Premises.



13. Damage and Destruction.

Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes unless such inoperability or unfit condition is the result of Tenant's gross negligence. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes, except as provided in this Paragraph 13.

14. Tenant Default.

In the event Tenant fails to fulfill its obligations under this Lease or materially breaches any of the material terms and conditions of this Lease, then Tenant after the expiration of the notice and cure periods described herein, shall be in default of this Lease, unless Tenant is taking measures reasonably agreeable to the Landlord to cure any such breach, with such agreed measures to cure to include a stated plan and time frame for completion. In the event of such a default, Landlord shall give Tenant written notice of such breach and/or default, and if Tenant has not cured such breach or default within ninety (90) days after receipt of such notice, or is not taking such reasonably agreed measures to cure any such breach or default at such time, the Landlord may cure the default on behalf of Tenant and Tenant shall be obligated to reimburse Landlord for any actual and reasonable expenses incurred by Landlord to cure such default. This 90-day cure period shall not apply, however, to the failure to pay rent when due, which obligation shall not be excused or extended for any reason except as expressly provided in this Lease.

Notwithstanding any provision in this Lease to the contrary, (a) Tenant shall not be liable for any consequential, exemplary or punitive damages or lost profits; (b) Landlord shall not be entitled to lock Tenant out of the Leased Premises absent a court order; (c) Landlord shall use good faith, commercially reasonable efforts to mitigate Landlord's damages; (d) Tenant shall be entitled to vacate the Leased Premises for all or part of the Term of this Lease without penalty provided Tenant continues to pay Rent in accordance with the terms of this Lease.

15. 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.

16. Condemnation.

If any legally, constituted authority condemns any part of the Leased Premises, which shall make the Leased Premises unsuitable for Tenant's use, 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.

17. 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, 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. Notwithstanding the foregoing, this Lease shall not be subject to or subordinate to any lease, lien, deed of trust, indenture or mortgage unless and until the lessor or holder thereof executes and delivers to Tenant a non-disturbance agreement, in form reasonably acceptable to

Tenant, pursuant to the terms of which the lessor or holder agrees not to interfere with Tenant's use or enjoyment of the Leased Premises except as provided under this Lease.

18. Landlord's Lien.

Notwithstanding any provision in this Lease to the contrary, Landlord shall not have and hereby expressly waives any and all constitutional, statutory and contractual liens against the assets or property of Tenant, and Tenant may remove such items at any time and from time to time. Landlord agrees to execute and deliver to Tenant within twenty (20) days after receipt of a written request therefor, such documents as may be reasonably requested by Tenant or its lender to evidence and confirm such waiver.

19. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

BURLESON 4A EDC
141 W. RENFRO ST.
BURLESON, TX 76028
ATTN: JUSTIN BOND, DIRECTOR OF
DEVELOPMENT SERVICES

If to Tenant to:

FWAVE, LLC
9C BEATRICE TINSLEY CRESCENT
ALBANY, AUCKLAND, 0632
NEW ZEALAND
ATTN: ANDREW HAYNES, CEO

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this Paragraph by written notice thereof to the other party.

20. Brokers.

Tenant represents that Tenant has not entered into any written agreement with any real estate broker or agent regarding the Leased Premises and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

21. 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.

22. Record of Lease.

The parties hereto contemplate that this Lease shall be filed for record as a public document with the City of Burleson, Texas, as a result of Landlord being known as a municipal corporation and subject to the requirements of the Texas Open Meetings Act.

23. Headings.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

24. Successors.

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

25. Consent.

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

26. Landlord's Performance.

In the event Landlord fails to fulfill its obligations under this Lease or materially breaches any of the material terms and conditions of this Lease, Tenant may, at its option and without affecting any other remedy hereunder, cure such default, unless Landlord is taking measures reasonably agreeable to the Tenant to cure any such breach, with such agreed measures to cure to include a stated plan and time frame for completion. In the event of such a default, Tenant shall give Landlord written notice of such breach and/or default, and if Landlord has not cured such breach or default within forty-five (45) days after receipt of such notice, or is not taking such reasonably agreed measures to cure any such breach or default at such time, Tenant may deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures. Tenant may pursue any rights and remedies as may be available under this Lease, at law or in equity, in its sole discretion following any Landlord default.

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 shall be the final document related to the lease terms of the Leased Premises. 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 Texas.

[Signature page follows.]



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

LANDLORD:

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION,
a Texas municipal development corporation

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

FWAVE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

Schedule A

Permitted Storage, Manufacturing, Selling, and Uses

- Polymers
- Hot Melt type adhesives
- Calcium Carbonate
- Magnesium Hydroxide
- Plastic Packaging
- Cardboard Packaging
- Wooden pallets
- Ink and thinners, primarily for the inkjet printers
- Lubricants, oils, solvents, etc., primarily for cleaning and maintenance
- Fuel and gas containers, primarily for use of forklifts
- Office supplies
- Glass fibers
- Diesel or petrol

A handwritten mark, possibly a signature or initials, in blue ink, located in the bottom right corner of the page.