ROOFTOP AIR RIGHTS OPTION AND PURCHASE AGREEMENT

This Air Rights Option (the “Agreement”) made this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 202\_, between [Name] with its principal offices located at [address] hereinafter designated “Purchaser” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company registered and duly incorporated in the State of [State] hereinafter designated “Seller”. Seller and Purchaser are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

OPTION. In consideration of the following mutually beneficial contractual terms In consideration of payment of $\_\_\_\_, Seller hereby grants to Purchaser an option to purchase an easement for use of a portion of the real property described on the attached Exhibit A (the “Option”) for Air Rights, on the terms and conditions set herein and in a to be executed Purchase Agreement (the “PSA”). The Option shall be for an initial term of \_\_\_\_ months, commencing on Effective Date (defined below) (the “Option Period”). The Option Period may be extended by Purchaser for additional 12 month periods upon written notice to Seller and payment of the sum of $\_\_\_\_\_ (“Option Extension Fee”) at any time prior to the end of the then current Option Period.

# During the Option Period and any extension thereof, and during the term of this Lease, Seller agrees to cooperate with Purchaser in obtaining, at Purchaser's expense, all Governmental Approvals, including appointing Purchaser as agent for all land use and zoning permit applications, and Seller agrees to cooperate with and to allow Purchaser, at no cost to Seller, to obtain a title report, zoning approvals and variances, land-use permits, and Purchaser expressly grants to Purchaser a right of access to the Property (as defined in **Exhibit A**) to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Purchaser's use of the Space (as defined in **Exhibit A**) will be compatible with Purchaser's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Purchaser may not change the zoning classification of the Property without first obtaining Seller’s written consent. During the Option Period and any extension thereof, Seller agrees that it will not interfere with Purchaser’s efforts to secure other licenses and permits or authorizations that relate to property other than the Property. During the Option Period and any extension thereof, Purchaser may exercise the Option by so notifying Seller in writing, at Seller's address.

1. **PURCHASE AND SALE OF EASEMENT AND ASSIGNMENT OF AIR RIGHTS AGREEMENTS.** Seller owns certain real property located at as more fully described in the legal description attached hereto as Exhibit A (the “**Property**”). Seller hereby grants and conveys to Purchaser an exclusive easement (the “**Air Rights Easement**”) for the Term (as defined below) of this Agreement, in, to, under and over portion or portions of the as more fully described in Exhibit B attached hereto (the “ **Premises**”).
2. **PURCHASE PRICE.** On or about the Effective Date, Purchaser shall pay to Seller a one-time, lump-sum payment in an amount equal to **$** (the “**Purchase Price**”).**TERM.** Commencing on (the “Commencement Date”), the term of this Agreement and the Air Rights Easement shall be 99 years. Seller may not terminate this Agreement.
3. **REPRESENTATIONS AND COVENANTS OF SELLER.** Seller represents and warrants to Purchaser, as of the date hereof, that: (a) the execution, delivery and performance by Seller of this Agreement does not and will not violate any agreement to which Seller is a party including mortgages and deeds of trust, or violate or conflict with any law, rule, regulation, judgment, order or decree to which Seller is subject; (b) Seller has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Air Rights Easement (or any portion thereof All representations and covenants by Seller contained herein or made in writing pursuant to this Agreement are intended to and shall remain true and correct as of the time of closing, shall be deemed to be material, and shall survive the execution, commencement and delivery of this Agreement, the Easement Agreement (attached hereto as Exhibit D), and recordation thereof.
4. **INTENTIONALLY OMITTED**.
5. **REPRESENTATIONS OF PURCHASER.** Purchaser represents and warrants to Seller, as of the date hereof, that: (a) this Agreement and all other documents executed by Purchaser constitute the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with their terms; and

(b) Purchaser is a validly existing limited liability company and the signatory of this document has the authority to do so under the documents forming the existence of the limited liability company. The execution, delivery and performance by Purchaser of this Agreement does not and will not violate or conflict with any provision of Purchaser's organizational documents or of any agreement to which Purchaser is a party or conflict with any law, rule, regulation, judgment, order or decree to which Purchaser is subject.

1. **INDEMNIFICATION.** Seller and Purchaser shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including attorney fees) caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, or contractors of the indemnifying party.
2. **FURTHER ASSIGNMENT.** Upon the Effective Date Purchaser may pledge, assign, mortgage, grant a security interest, or otherwise encumber its interest in and to this Agreement. This Agreement and the Air Rights Easement may be assigned to secured parties, successors-in-interest, acquiring entities or individuals.
3. **NOTICES.** All notices, requests, demands and other communications hereunder shall be delivered by Certified Mail Return Receipt Requested, and/or a nationally recognized Overnight courier. Notice shall be deemed accepted upon proof of delivery. Notices shall be delivered to **Seller** at

and to **Purchaser**: c/o\_\_\_\_\_.

1. **MISCELLANEOUS.**
   1. **Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE]. In the event that any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability. The remaining provisions of this Agreement shall remain in full force and effect.
   2. **Amendments, Etc.** This Agreement may not be amended or modified unless in writing signed by the parties and consented to by any lender of Purchaser that has delivered notice of its status and its notice address to Seller. No act or failure to act shall be deemed to constitute an amendment, modification or termination hereof. This Agreement may be executed in counterparts each of which, when taken together, shall constitute a single agreement.
   3. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and successors and assigns of the parties to this Agreement. The rights of Purchaser under the Air Rights Easement shall run with the land upon which the Air Rights Easement is located.
   4. **Recording and Memorandum.** Seller and Purchaser shall, on or after the Effective Date, acknowledge, execute and record the exchange of rights created under this Agreement in the Form of Air Rights Easement attached as Exhibit D. Purchaser’s interest in this Agreement and the Air Rights Easement is intended to be, and shall be, an interest in real property. Seller and Purchaser shall record this transaction on the blockchain and a token minted as a certificate of ownership and Seller and Purchaser both acknowledge as proof of ownership in any future legal disputes. Seller and Purchaser shall both sign electronically and accept that as conveying all rights under this Agreement.
   5. **Attorneys’ Fees**. In any action or proceeding brought to enforce any provision of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys’ fees and costs, whether through arbitration or a court of competent jurisdiction. All damages or other sums payable by one party to another hereunder shall bear interest from the date incurred or payable until paid at a rate equal to the greater of (a) ten percent (10%) per annum or (b) the highest rate permitted by applicable law.
   6. **Further Assurances**. Seller and Purchaser hereby agree that Purchaser shall, at any time and from time to time, in its reasonable discretion, require the Seller to execute such documents or instruments and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and consummate the transactions contemplated in the this Agreement. The covenant contained in this clause shall survive the execution, delivery and recordation of the Air Rights Easement contemplated hereby.
   7. **Specific Performance**. The parties understand and agree that the Air Rights Easement is unique and for that reason, among others, Purchaser will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of any breach or default in or of this Agreement or any of the warranties, terms or provisions hereof by Seller, Purchaser shall have, in addition and without prejudice to any right or remedy available at law or in equity, the right to demand and have specific performance of this Agreement

**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound, have caused this Agreement to be duly executed as of the date first written above.

**SELLER:**

[ ]

By: Name: Its:

**Date:**

**PURCHASER:**

[ ]

By: Name: Title: Authorized Signatory

Date:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

EXISTING AIR RIGHTS LEASE AREA IF ANY

EXHIBIT C

EXISTING AIR RIGHTS AGREEMENT(S) IF ANY