

## MAKERSMITHS LEASE AGREEMENT

**THIS LEASE AGREEMENT** is between the Town of Purcellville, Virginia, a municipal corporation ("Landlord"), and Makersmiths, Inc., a Virginia corporation ("Tenant").

The parties agree as follows:

1. Leased Premises. The Landlord hereby leases unto the Tenant, and the Tenant hereby leases from the Landlord, for the term and upon the conditions hereinafter set forth, a 5.366-acre portion ("**Leased Premises**") of the 8.87-acre property located at 785 South 20<sup>th</sup> Street and 787 South 20<sup>th</sup> Street, Purcellville, Virginia and further identified in the Loudoun County land records as Tax Map Number /44//43/////B/ and Parcel Identification Number 489-28-1645-000 (the "**Property**").

The Leased Premises is shown on Exhibit A to this Lease Agreement and is comprised of a 1.124-acre portion that is reserved exclusively for use by the Tenant, which portion is shown on Exhibit A as "Makersmiths Use Only," and a 4.242-acre portion that is for the shared use of both the Landlord and the Tenant, which portion is shown on Exhibit A as "Combined Town and Makersmiths Use,"

The 1.124-acre portion of the Leased Premises that is reserved exclusively for use by the Tenant includes the following four structures: a building with approximately 3,900 square feet shown as "785" on Exhibit A (the "**785 Building**"), a building with approximately 1,364 square feet shown as "787" on Exhibit A (the "**787 Building**"), and two storage sheds. Each of the four structures is located on, and is a part of, the Leased Premises.

2. Commencement Date; Term. This Lease Agreement shall become effective on the date it is signed by both parties ("**Lease Commencement Date**") and shall remain effective for five years thereafter ("**Term**").
3. Rent; Rent Commencement Date. The Tenant shall pay rent monthly. Rent is due on the first day of each month during the Term, commencing on the first day of the month immediately following the Lease Commencement Date. Rent shall be ~~\$250.00 per month for the first year of the Term, \$1,250 per month for the second year of the~~

**Commented [S1]:** General comments: Appears oriented to lease of BUILDINGS as opposed to property. Appears to be silent on parking, storage, ability to add to things not in buildings.-Bev

Should we consider adding drone allowance.-Bev

**Commented [S2]:** Do we have the exhibits?-Bev

Yes, see the PDF in the shared folder.-Scott

**Commented [S3]:** Per Dave's initial markup.

I concur-Scott

~~Term, and~~ \$2,250 per month for ~~the third, fourth, and fifth years of~~ the Term.

4. Late Rent. If Tenant fails to pay rent on or before the fifth day of the month for which rent is due, then Tenant shall pay a late payment penalty for that month of \$ 100.00.
5. Deposit. ~~No later than 30 days after the Lease Commencement Date, the Tenant shall pay Landlord a~~ security deposit in the amount of \$2,250 ("**Deposit**"), ~~paid by the Tenant in the previous lease of March 2017, shall be retained for the term of this lease.~~  
Upon termination of this Lease, the Deposit shall be refunded to the Tenant within (30) days of Tenant's vacation of the Leased Premises, less any deductions properly chargeable against the Deposit, together with a written itemization of any such deductions made and withheld by the Landlord. Tenant shall be given an opportunity to remedy any item which Landlord may deem as chargeable against the Deposit. In the event the Landlord sells the property, the Deposit shall be transferred to the new owner(s).
6. Use of Leased Premises; Certificate of Occupancy. The Tenant may use the Leased Premises only as a community workshop for makerspace activities including woodworking, metalworking, electronics and robotics fabrication, classroom instruction, computer coding, 3-D printing, ~~crafting~~, drone operation, and other similar activities. The Tenant shall not use, nor shall the Tenant permit others to use, the Leased Premises for any improper, illegal, or immoral purpose, including, but not limited to, use of the Leased Premises in violation of the Declaration of Restrictive Covenants recorded in the land records of Loudoun County, Virginia as Instrument Number 20071219-0087614, attached to this Lease Agreement as Exhibit B. In addition, the Tenant shall use the Leased Premises in accordance with all local zoning regulations, including Special Use Permit "SUP16-04," as they may be amended. For ease of reference, the conditions associated with SUP 16-04, as those conditions exist on the Lease Commencement Date, are attached to this Lease Agreement as Exhibit C.

It is acknowledged that the Tenant will spend time at the outset of the Term making the Leased Premises suitable for occupancy for makerspace activities. The Landlord will make reasonable efforts of time to assist the Tenant, upon request, to obtain a Certificate of Occupancy from Loudoun County, without incurring expenses.

7. Signage. The Tenant may affix signage to the Leased Premises only with a sign permit issued by the Town of Purcellville.

**Commented [S4]:** Per Dave's initial markup.

I concur-Scott

Typically deposits held in excess of a year have to be escrowed and accrue interest...-Bev

Only for residential, and not since 2014-Scott

**Commented [S5]:** Bev raised the subject of drones? Some believe this is covered under similar activities, others think it should be explicitly called out. Still an open item.

8. Laws. The Tenant agrees to comply with all Federal, State and local laws and regulations concerning the use and occupancy of the Leased Premises.
9. Condition, Maintenance, and Improvement of the Leased Premises.
- a. As-Is Condition. The Tenant acknowledges that it has inspected the Leased Premises and accepts possession of the Leased Premises in its present ~~condition~~ ~~subject to the Landlord performing the following two improvements: (1) removing two inoperable vehicles located behind the 787 Building, and (2) improving the entrance shown on Exhibit A as the "South Entrance" so that passenger vehicles can enter and exit the Leased Premises.~~
- b. Maintenance of Leased Premises. The Tenant shall (i) keep the Leased Premises clean, sanitary, and reasonably safe condition, (ii) dispose from the Leased Premises ~~weekly~~ regularly all rubbish, garbage and other organic or flammable waste in a clean, safe and sanitary manner, (iii) properly use, operate, and maintain all electrical, gas, plumbing, and heating appurtenances, fixtures and appliances. Tenant shall be responsible for all repairs to the Leased Premises necessitated by normal wear and tear, or by damages caused by the negligent or intentional acts of the Tenant, its guests or invitees. All maintenance and repair shall be at the sole expense of the Tenant.
- c. Inspection. The Tenant shall permit the Landlord entry to the Leased Premises for the purpose of inspection of the Leased Premises, upon reasonable notice and within reasonable hours.
- d. Capital Improvements; Fixtures. The Tenant ~~shall~~ may perform capital improvements to the Leased Premises ~~subject to required permitting and inspections each year of the Lease Term, at a value of no less than \$25,000 per year. The capital improvements valuation may include both costs to the Tenant and the reasonable value of materials and services donated to the Tenant. In all cases, Tenant's capital improvements shall be performed only by persons who are qualified and insured to perform the work, and in accordance with all applicable laws. Further, all plumbing and electrical work required by Loudoun County to have a building permit shall be supervised by someone who is licensed to perform the work and shall pass inspection performed by a Loudoun County building inspector.~~

**Commented [S6]:** Per Dave's initial markup.

I would propose that we request that the driveway paving be completed to facilitate snow removal, but recognize this might slow down the review and approval process. There is also the issue of the lower building roof. Added for discussion.-Scott

Any possibility of them taking on the roof since that's more typically a landlord item? -Bev

Hold off for now on driveway and roof and use in response to any proposed rent increase or changes from the town.-Dave

**Commented [S7]:** Per Dave's initial markup (changed to bi-weekly).

Biweekly can mean every other week or twice a week. Also, we have budgeted for monthly dumpster service for 2021, should we consider saying monthly? Should we consider "regularly"?-Scott

Leave as weekly-Dave, Scott, Brad

Change to regularly, exploring trash removal-Bev

No consensus yet, still an open item.

Change to weekly agreed to 11/30.

~~The nature of the capital improvements may be selected by the Tenant at the Tenant's sole discretion. Prior to entering into a contract for capital improvements or commencing such work, the Tenant shall notify the Landlord.~~

~~of (i) the nature of the capital improvement, and (ii) the persons selected to perform the work. Once the capital improvement is completed, the Tenant shall provide the Landlord with documentation demonstrating the value of the capital improvement.~~ Such capital improvements shall remain with the Leased Premises and become property of the Landlord upon termination of this Lease.

The Tenant may remove and dispose of any building fixture that reaches the end of its useful life so long as such removal would not cause a significant degradation to the structure. Once removed, the Tenant may, at its option, replace such building fixture and, if replaced, may locate the fixture in the same, or at a different location in the structure.

The Landlord has no duty or obligation to make any capital improvement or repair to the Property, including the Leased Premises, except as expressly required under this Lease Agreement.

10. Permits; regulations. Prior to occupying the building located on the Leased Premises, the Tenant shall obtain all permits required to occupy the building. In addition, the Tenant shall obtain all permits and licenses required to engage in any activity on the Leased Premises prior to engaging in such activity. Tenant shall promptly provide Landlord with a copy of all permits and licenses obtained to occupy the Leased Premises, or to engage in activity on the Leased Premises, Tenant shall at all times fully comply with all permits, laws, and regulations governing its use and maintenance of the Leased Premises.
11. Neighbors. The Tenant shall conduct itself and require other persons on the Leased Premises, whether known by the Tenant or not, to conduct themselves in a manner that will not disturb the neighbors' peaceful enjoyment of their premises.
12. Operating Expenses. Tenant shall obtain all services and pay all expenses to operate and maintain the Property. Such services and expenses include, but are not limited to, snow removal, heating, cooling, water, sewer, electric, repairs, lawn, and landscaping.
  - a. Electrical Energy. Tenant shall be responsible for payment to Dominion Virginia Power, or other provider as may be the case, for electrical energy to the Leased Premises and for the replacement as needed of wiring and lighting components on the Leased Premises, including bulbs, tubes, ballasts and starters.

Commented [S8]: Is there an agreement on the meaning?-Bev

Commented [S9]: Negotiation item: Get town electrical rates.-Dave

- b. Heating, Ventilation and Air Conditioning. Tenant shall pay for and maintain all serviceable equipment, systems, facilities, and service costs associated with heating, ventilating, and cooling the Leased Premises. Tenant shall notify Landlord of any non-serviceable equipment, and coordinate with Landlord regarding the disposition of non-serviceable items. ~~Heat is available from kerosene fuel stored in an above-ground storage tank on the Leased Premises. The Tenant may utilize the kerosene, but shall replace the kerosene tank with a propane tank and propane service no later than August 30, 2018. Upon the Tenant's transition to propane, the Tenant shall notify the Landlord, and the Landlord shall dispose of the kerosene tank within a reasonable time thereafter in accordance with all laws.~~
- c. Water and Sewer. Tenant shall pay all water and sewer charges assessed against the Leased Premises. The Tenant shall keep all plumbing fixtures in good repair. The Landlord shall not be responsible for repairs or replacements related to plumbing, with the sole exception of repairs or replacements required to underground water lines and sewer lines located between the Leased Premises and the public right-of-way.
- d. Taxes. Landlord shall be responsible for the payment of real estate taxes assessed against the Leased Premises. The Tenant shall be responsible for the payment of all personal property taxes.
- e. Grounds, Lawn, Landscaping, and Snow. The Tenant shall be responsible for grounds maintenance, to include parking lots, trimming grass and weeds, landscaping, and snow removal on the portion of the Leased Premises that is shown on Exhibit A as "Makersmiths Use Only," with all to be performed in accordance with local regulations as applicable.

The Landlord shall be responsible for snow removal at the North Entrance, from its intersection with South 20<sup>th</sup> Street and extending to the ~~portion of the Leased Premises reserved for "Makersmiths Use Only."~~ South Entrance at its intersection with South 20<sup>th</sup> Street. The Landlord shall perform this obligation no later than 24 hours after snow ceases to fall.

Commented [S10]: Per Dave's initial markup.

I concur-Scott

Formatted: Superscript

13. Liability; Insurance. The Landlord shall have no obligation to maintain insurance on the personal property or contents of the structures on the Leased Premises, nor to pay for any loss of such personal property or contents.

The Tenant shall maintain in full force at all times Commercial General Liability coverage on the Leased Premises in an amount not less than \$2,000,000, naming the Landlord as an Additional Insured. The Landlord's additional insured status shall be shown on an endorsement issued by the Tenant's insurance company and shall also be listed on the Tenant's certificate of insurance.

The Landlord shall maintain in full force at all times an insurance policy that fully insures the Leased Premises against (i) damage or destruction to the land, (ii) damage or destruction to the 785 Building at an amount not less than \$353,756, (iii) damage or destruction to the 787 Building at an amount not less than \$363,128. Upon making capital improvements to the Leased Premises over the Term of this Lease Agreement, the Tenant shall promptly inform the Landlord of both the nature of and the value of the improvements; the Landlord, at its sole option, may adjust the insured value of the structures on the Leased Premises as needed to reflect any increased value.

14. Endorsement; Certificate of Insurance. Prior to taking occupancy of the Leased Premises, the Tenant shall submit to the Landlord both an endorsement to the Tenant's insurance policy and a certificate of insurance, issued by Tenant's insurance carrier, demonstrating the insurance requirements set forth in this Lease Agreement.
15. Notice of Defects or Malfunction. The Tenant shall give the Landlord prompt notice of any known defect of, breakage to, malfunction of, or damage to any portion of the Leased Premises.
16. Liens Upon Leased Premises. The Tenant shall not incur any debt or make any charge against the Landlord or create any lien upon the Leased Premises for any labor or materials furnished in connection with any repairs, modifications or additions to the Leased Premises. Should any lien of any nature be filed against the Leased Premises as a result of the actions or inactions of the Tenant, Tenant shall cause said lien to be released and removed by substitution of collateral, posting of bond or other appropriate action within thirty days of its filing.
17. Sale of Property by Landlord. The Landlord may assign any or all of Landlord's rights under this Lease at any time and without the necessity of obtaining any prior consent

**Commented [S11]:** Just a note to confirm this against the policy John circulated and to verify we've had a COI issued to the Town.-Bev

\$2,000,000 amount confirmed. Sent email to President requesting confirmation on 11/24-Scott

John verified.

**Commented [S12]:** Do we want to add a right of first refusal for any sale or transfer? -Scott

of the Tenant, provided, however that Landlord shall offer the Tenant the first right of refusal to acquire the property on comparable terms and conditions offered to a third party. The Tenant shall have 30 days to meet the terms. If the Tenant fails to exercise said option then the Landlord shall notify Tenant of any such transfer or assignment at least sixty (60) days prior to the effective date of such transfer or assignment.

18. Sublease and Assignment. The Tenant shall not assign this Lease Agreement or sublet any portion of the Leased Premises without prior written consent of the Landlord. Any such assignment or subletting without consent shall be void and, at the option of the Landlord, may terminate this Lease.

19. Holdover. Upon termination of this Lease, the Tenant shall deliver possession of the Leased Premises to the Landlord together with a written instrument evidencing such termination and delivery of possession. Any holding over after the expiration hereof, with the consent of the Landlord, shall be construed as a tenancy from month to month at the rental rate in effect upon the Lease's termination and in accordance with the terms of this Lease, as applicable.

20. Termination with Cause.

- a. Notice. Either the Landlord or Tenant may terminate this Lease Agreement with cause at any time for the other party's failure to perform its obligations under this Lease, or to otherwise adhere to the terms and conditions of this Lease, by delivery of written notice to the other party of the intent to so terminate. Such notice shall be delivered at least 20 calendar days prior to the date of termination and shall be given in accordance with the requirements of this Lease for the delivery of notices.
- b. Default. The Tenant agrees that any of the following shall be deemed a failure to perform its obligations under this Lease: (a) a failure to make when due any payment to the Landlord required under this Lease Agreement, (b) failure of the Tenant to perform any provision, covenant or condition of this Lease Agreement, and (c) the abandonment, desertion or vacation of the Leased Premises by the Tenant.
- c. Cure. If the recipient of a notice to terminate with cause cures the failure to perform, or to otherwise adhere to the terms and conditions of this Lease, to the other party's satisfaction, as indicated in writing to the other party during this 20 calendar day period, then the notice of termination with cause shall be deemed null and void.

**Commented [S13]:** We have holdover rights, so that is a little pressure off.-Scott

**Commented [S14R13]:** It is uncertain what happens at the end of lease transition. We need to seek the advice of a Virginia Real Estate attorney on this issue.-Scott



21. Termination without Cause.

- a. Notice. Either the Landlord or Tenant may terminate this Lease Agreement

without cause by delivery of written notice to the other party of the intent to so terminate. Such notice shall be delivered at least ~~120~~180 calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Lease Agreement for the delivery of notices.

Commented [S15]: Do we want to make this 180 days or more? -Scott

- b. Effect. Upon such notice of termination, the Landlord and Tenant shall continue to be liable for all of their respective obligations under the Lease up to the time the termination is effective.

22. Removal of Certain Appurtenances. At the termination of this Lease Agreement, the Tenant shall remove from the Leased Premises the following items if they were installed by the Tenant and were not credited toward the capital improvements required of the Tenant under this Lease Agreement: signage, commercial display cabinets, interior furnishings, machinery, easily removable decorations, technology components related to computer networks, phone networks, and security access systems (including, but not limited to security access readers, hardware panels, and other equipment paid for by the Tenant). The Tenant shall not remove or cause to be removed from the Leased Premises any building fixtures.

Any damage caused by such removal will be repaired by Tenant at its sole expense to a commercially reasonable standard acceptable to Landlord. Removal shall be done in a professional manner so as not to impede the ability of Landlord to show the property to prospective new tenants. The Tenant agrees not to remove any interior coverings, bathroom fixtures, air conditioning systems, electrical supply systems, or plumbing supply systems.

23. Waiver. The waiver by either party of any term or condition of this Lease shall not be deemed to constitute either a continuing waiver thereof or a waiver of any further or additional right that such party may hold under this Lease.

24. Notice. Any notice provided for or permitted by this Lease must be given in writing by registered or certified United States mail, postage prepaid, return receipt requested, addressed to, if the Landlord: Town Manager, Town of Purcellville, 221 South Nursery Avenue, Purcellville, Virginia 20132, and if to the Tenant: President, Makersmiths, Inc., 106 Royal St. SW, Leesburg, VA 20175-2914 and shall be deemed conclusively to have been given on the date of delivery.

25. Headings. Headings used in this Lease Agreement are for convenience only and shall not be considered when construing the Lease provisions.
26. Mutual Covenants. This Lease constitutes the entire agreement between the parties and may not be modified except by written instrument executed by all of the parties hereto.
27. Governing Law. All issues and questions concerning the construction, enforcement, interpretation and validity of this Lease Agreement, or the rights and obligations of the Landlord and the Tenant in connection with this Lease Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other Jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.
28. Construction and Interpretation. Each of the parties has had the opportunity to have its legal counsel review this Lease on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Lease, this Lease will be construed as if drafted jointly by the parties. Neither the form of this Lease, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.
29. Counterparts; Email. This Lease Agreement may be executed in counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument. The exchange of signature pages by email to all parties constitutes execution and delivery of this Lease Agreement,

Each party is signing this Lease Agreement on the date stated opposite the party's signature.

WITNESS the following signatures:

LANDLORD  
:  
THE TOWN OF PURCELLVILLE, VIRGINIA

By: \_\_\_\_\_

Date: \_\_\_\_\_

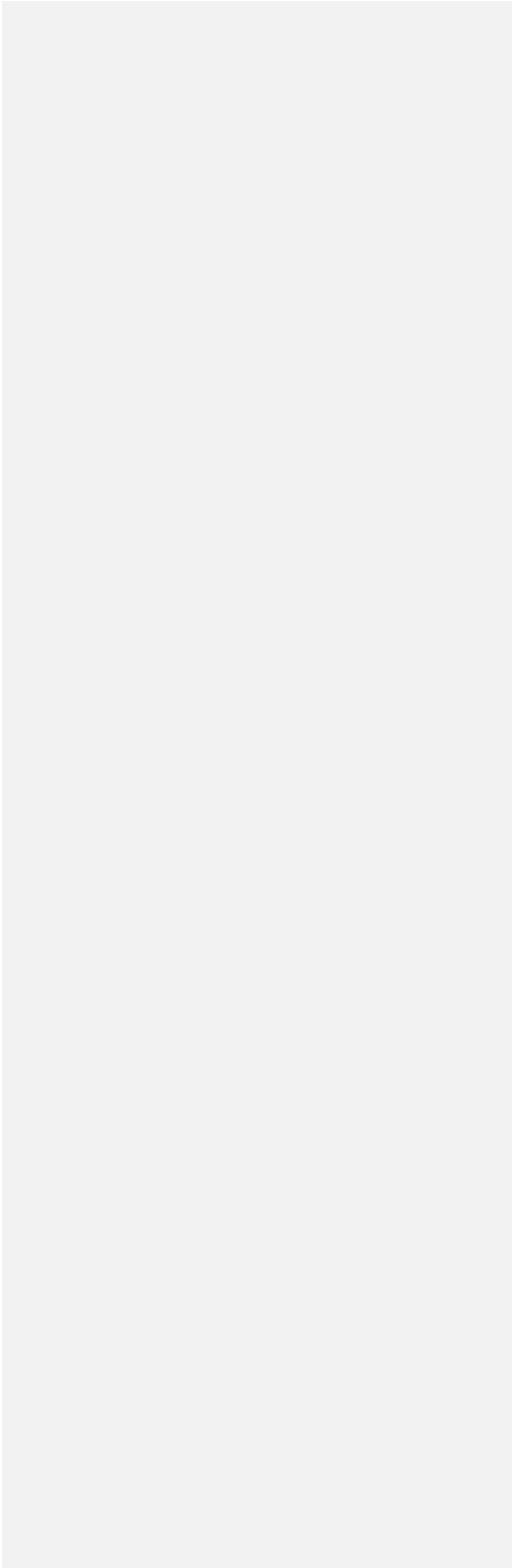
COMMONWEALTH OF VIRGINIA  
COUNTY OF LOUDOUN:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, as Town Manager of the Town of Purcellville, Virginia, whose name is signed to the foregoing Makersmiths Lease Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this        day of                20

My commission expires:

Notary Registration Number:



TENANT:  
MAKERSMITHS, INC.

**Commented [S16]:** "Patrick Scannell, Chief Executive Officer" with "David Painter, Chairman, on behalf of the Board of Directors of Makersmiths, Inc."-Bev

We can update these when we get a mutually agreeable version-Scott

By: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
COUNTY OF LOUDOUN:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, as duly Authorized Officer of Makersmiths, Inc., whose name is signed to the foregoing Makersmiths Lease Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_20

Notary Public

My commission expires:

Notary Registration Number: