

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“Agreement”) is made as of the ____ day of _____, 20____, by and among the **City of Crossville, Tennessee**, a municipal corporation organized under the laws of the State of Tennessee (the “Seller”), **Aviagen, Inc.**, a Delaware corporation (the “Purchaser”), and **Bradley Arant Boult Cummings, LLP** (“Escrow Agent”).

RECITALS:

A. Purchaser has agreed to purchase from Seller certain real estate located in the City of Crossville, Cumberland County, Tennessee, as more fully described on Exhibit A attached hereto (the “Property”), pursuant to the terms and conditions of that certain Agreement of Purchase and Sale dated _____ (collectively, the “PSA”). Any capitalized term used but not defined herein shall have the meaning given such term in the PSA.

B. Per the terms of the PSA, Purchaser and Seller agree that the Purchase Price shall be held in escrow for a period of up to a maximum of thirty-six (36) months from the date hereof (the “Escrow Period”) pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the amount of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and are hereby affirmed, agreed to and made a part of this Agreement.

2. **ESCROW FUNDS.** Simultaneous with the closing of the purchase and sale of the Property on the date hereof, Purchaser shall cause to be delivered to Escrow Agent the sum of \$91,850.00 (the “Escrow Funds”) to be held in escrow in accordance with the provisions of this Agreement. By executing this Agreement, Escrow Agent acknowledges receipt of the Escrow Funds.

3. **RELEASE OF ESCROW FUNDS TO SELLER.** If the Escrow Funds have not been fully disbursed to Purchaser pursuant to Section 4 below by the end of the Escrow Period, any and all remaining amounts of the Escrow Funds shall, at that time, be released to Seller.

4. **DISBURSAL TO PURCHASER.** Notwithstanding any provision to the contrary, Purchaser may, from time to time during the Escrow Period, request an Escrow Disbursement (as defined below), subject to the following terms and conditions:

(a) The Purchaser may submit a written request to the Escrow Agent to disburse an amount of the Escrow Funds (the appropriate amount thereof being determined by reference to Paragraph 4(d) hereof) to the Purchaser upon the occurrence of an Employment Benchmark (“Escrow Disbursement”).

(b) An “Employment Benchmark” shall have occurred when Purchaser, a subsidiary or affiliate of Purchaser, hires a full-time employee whose geographic location is in Cumberland County Tennessee. For purposes of this paragraph, a full-time employee is one whom works over 37.5 hours per week or is a salaried employee considered a full-time employee by Purchaser. For

purposes of this paragraph: (i) a “subsidiary” of Purchaser means a company in which the Purchaser owns a controlling shares, and (ii) an “affiliate” of Purchaser means either the parent company of Purchaser or a company in which the parent company of Purchaser owns a controlling share.

(c) In conjunction with a request for Escrow Disbursement under Section 4(a) hereof, the Purchaser shall submit to the Escrow Agent and to the Seller a statement of the new employee’s title, hire date, salary, and such other reasonable, non-confidential documentation as the Seller may request.

(d) If a notice of objection from Seller to a proposed Escrow Disbursement is not delivered to Purchaser and Escrow Agent within fifteen (15) business days after the Purchaser’s written request for Escrow Disbursement, time being of the essence, Escrow Agent is hereby authorized to disburse an amount from the Escrow Funds to the Purchaser, which amount shall be calculated as follows: (1) in the event that more than \$5,000.00 of the Escrow Funds remain undisbursed, the Escrow Agent shall disburse an amount of \$5,000.00 to the Purchaser from the Escrow Funds per Employment Benchmark; and (2) in the event that less than \$5,000.00 of the Escrow Funds remain undisbursed, the Escrow Agent shall disburse the remaining amount of the Escrow Funds. If Escrow Agent receives a notice of objection from the Seller within said period, or if for any reason Escrow Agent in good faith elects not to deliver the Escrow Fund, then Escrow Agent shall continue to hold the Escrow Funds, and thereafter pay it to the Purchaser when Escrow Agent receives (i) a notice from the Seller withdrawing the objection, or (ii) a notice signed by both parties directing disposition of the Escrow Fund, or (iii) a judgment or order of a court of competent jurisdiction. In the event of any dispute or doubt as to the genuineness of any document or signature, or uncertainty as to Escrow Agent’s duties, then Escrow Agent shall have the right either to continue to hold the Escrow Funds in escrow or to pay the Escrow Fund into court pursuant to relevant statute.

(e) At the conclusion of the Escrow Period, the Escrow Agent shall have no further obligation to disburse any remaining Escrow Funds to the Purchaser.

5. RESPONSIBILITIES OF ESCROW AGENT. Escrow Agent shall have the following duties and responsibilities in connection with the Funds:

(a) Holding of Funds. Escrow agent shall hold the Escrow Funds in escrow in accordance with the terms of this Agreement.

(b) Bank Accounts. Escrow Agent shall invest the Escrow Funds in an interest bearing account with a nationally-recognized financial institution. All interest earned on the Escrow Funds shall be deemed part of the Escrow Funds and shall be paid to the party entitled thereto.

(c) Disbursal. The Escrow Agent shall disburse amounts from the Escrow Funds pursuant to Section 3 and Section 4 hereof.

6. ESCROW AGENT.

(a) Purchaser and Seller shall and do jointly and severally indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this

Agreement or which may result from Escrow Agent's following of instructions from the parties, whether or not litigation is instituted.

(b) Escrow Agent shall not be liable (i) to any of the parties for any act or omission to act except for Escrow Agent's own negligence or willful misconduct, (ii) for any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection, or while those funds are on deposit in a financial institution, if such loss or impairment results from the failure, insolvency, or suspension of a financial institution, (iii) for the expiration of any time limit or other consequence of delay, unless a properly executed written instruction, accepted by Escrow Agent, has instructed Escrow Agent to comply with such time limit, (iv) for the default, error, action, or omission of any party to this Agreement other than Escrow Agent, or (v) for Escrow Agent's compliance with any legal process, subpoena, writs, orders, judgments, and decrees of any court, whether issued with or without jurisdiction, and whether or not subsequently vacated, modified, set aside, or reversed. Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection in accordance with the opinion of such counsel.

(c) Escrow Agent may (i) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be bona fide and genuine, (ii) assume the validity and accuracy of any statement contained in such a writing or instrument, and (iii) assume that any person purporting to give any writing, notice, advice, or instruments in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent's duties under this Agreement shall be limited solely to those provided in this Agreement. Each party to this Agreement acknowledges and agrees that nothing in this Agreement shall prohibit Escrow Agent from serving in a similar capacity on behalf of others.

7. **DISPUTES.** If, in Escrow Agent's sole opinion, any dispute arises among any of the parties to this Agreement and/or any third parties (whether concerning this Escrow Agreement, Escrow Agent's duties hereunder, the disposition of the Funds held in escrow or any other matters), or if Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive instructions, claims, or demands from any of the other parties to this Agreement and/or any third parties with respect to the Funds which in Escrow Agent's sole opinion, are in conflict with any provision of this Agreement, or if Escrow Agent is joined as a party to any court proceeding or arbitration by virtue of the fact that it is holding the Funds, Escrow Agent, upon giving written notice to all other parties to this Agreement, shall continue to hold the Funds in escrow, until such time as such dispute, uncertainty or proceeding shall have been resolved to Escrow Agent's satisfaction, or by a final, binding decision.

8. **ATTORNEY'S FEES, COSTS, AND EXPENSES.**

(a) Each party shall each bear its own attorneys' fees, costs, and expenses incurred in connection with this Agreement, except as specifically set forth to the contrary in this Agreement. Notwithstanding the foregoing, Purchaser shall be responsible for all fees payable to the Escrow Agent.

(b) In any dispute between the parties related to this Agreement, the party or parties not prevailing shall pay, and shall be jointly and severally liable for, (i) the reasonable attorneys' fees and costs of the other party or parties involved in the dispute, and (ii) one hundred percent (100%) of the amount owed to Escrow Agent under this Agreement for any attorneys' fees, costs, damages, or losses incurred by Escrow Agent in connection with such dispute.

9. **NOTICES.** Any and all notices required or permitted to be served pursuant to the terms of this Agreement shall be in writing and shall be delivered in accordance with Section 16 of the PSA.

10. **CHOICE OF LAW AND ARBITRATION.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without application of conflict of law principles. All disputes relating to enforcement, interpretation and performance under this Agreement must be resolved by binding arbitration. The parties will use the procedures adopted by the American Arbitration Association (“AAA”) for binding arbitration, or such other dispute resolution procedures to which the parties mutually agree, but in all cases unless the parties agree otherwise the following rules will apply: (a) the arbitration must be held in Cumberland County, Tennessee, unless otherwise agreed to by the parties; (b) the arbitrator must be a retired judge or licensed attorney with substantial experience in commercial real estate matters; (c) the arbitrator will be selected by agreement of the parties and if they fail to agree, by AAA; (d) the arbitrator may require one or more pre-hearing conferences; (e) the parties are entitled to conduct discovery in the same manner as if the matter were being tried in court and the arbitrator will oversee discovery and may issue and enforce discovery orders in the same manner as a trial court judge; (f) a stenographic record of the arbitration hearing may be made at the request of either party; (g) the arbitrator’s decision must be written and must contain findings of fact and conclusions of law, as applicable; and (h) the arbitrator will have the power to grant all forms of relief as if the matter were tried before a court. The arbitrator’s decision is binding upon the parties and judgment may be entered by filing the decision with the appropriate court located in the county in which the arbitration was held.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING ARBITRATION PROVISION AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

11. **WAIVER; MODIFICATION.** The waiver of any term, provision or condition of this Agreement shall be effective only if in writing and signed by all the parties to this Agreement, and then only in the specific instance and for the particular purpose for which it was given. No failure to exercise and no delay in exercising any right or power under this Agreement shall operate as a waiver thereof. No modification, amendment, cancellation or rescission hereof shall be valid and binding, unless it is in writing and signed by all parties to this Agreement.

12. **NO THIRD-PARTY BENEFICIARIES.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person or entity other than the parties hereto and their respective successors and assigns.

13. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement. This Agreement may be executed via facsimile, and facsimile counterparts shall have the same force and effect as original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be executed as of the date first above written.

WITNESS:

Name: _____

WITNESS:

Name: _____

WITNESS:

Name: _____

SELLER:

CITY OF CROSSVILLE, a municipal corporation organized under the laws of the State of Tennessee

By: _____
Its: _____

PURCHASER

AVIAGEN, INC, a Delaware corporation

By: _____
Its: _____

ESCROW AGENT:

BRADLEY ARANT BOULT CUMMINGS, LLP

By: _____
Its: _____

EXHIBIT A

Description of the Property