



# Commercial Leasing Contracts 101<sup>®</sup>

CE Course #43896

3 Credit Hours



Created & Taught by *Mish Guillory*  
COMMERCIAL  
REAL ESTATE  
INSTRUCTOR





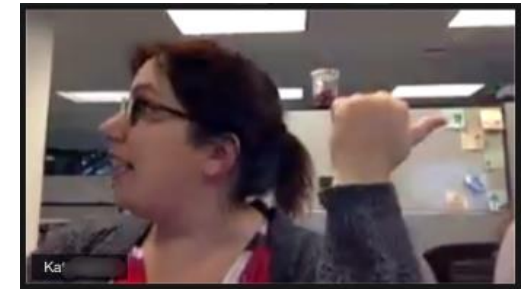
# A Little Quick Housekeeping

Introductions, Course  
Summary & House Rules

# Guidelines for Attending Broadcast CE Classes



- Login/check-in for class begins 20 minutes before the scheduled start time. Thank you for being ON TIME!
- If your tech fails, just pop back into Zoom. We'll be here! Same goes for ME!
- You must be visible on camera AT ALL TIMES to receive CE credit.
- Please resist the temptation to take phone calls and do computer-based work during class to receive credit. **We take VERY regular breaks!!!**
- Please resist the urge to hold side conversations...we can see you!
- Be sure not to “step away” from the camera. If an emergency arises, please use the “Chat” feature to privately notify the monitor of your situation.
- You and your camera must remain stable and UNMOVED during the course broadcast. §535.65(a)(3) “A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.”
- Be sure to complete your evaluation at the end of class and return it as soon as possible.
- **No “Story-telling,” please. For example, “I had a client whoooo....”**



*Mish  
Guilford*



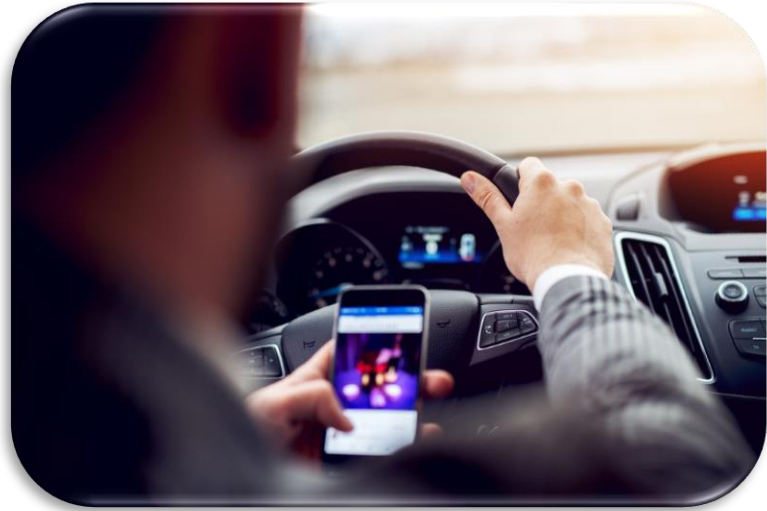
**DON'T  
FORGET!**

**THIS IS YOUR NEW  
CLASSROOM!**

**TREAT IT JUST AS YOU  
WOULD A LIVE CLASSROOM!**



# NO ZOOMING & DRIVING...IT'S THE LAW



## Texas Transportation Code

**§545.4251** – (b) An operator commits an offense if the operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped.

**§547.611** – (a) A motor vehicle may be equipped with video receiving equipment, including a television, a digital video disc player, a videocassette player, or similar equipment, only if the equipment is located so that the video display is not visible from the operator's seat unless the vehicle's transmission is in park or the vehicle's parking brake is applied.



For their safety, violators may be removed from class without notice or refund.

# About Your Instructor

Michica 'Mish' Guillory  
Broker, GRI, ITI, TACS, TRLP  
Texas REALTORS® 2021 Educator of the Year



2021 NAR RPAC (REALTOR® PAC) Major Investor



2022 TREPAC Advisory Group  
2022 Risk Management Advisory Group  
2022 Engage Conference Advisory Group  
"Houston REALTOR® Magazine" Contributor



2021-23 Board of Directors, Houston Association Representative  
2022 Commercial Committee, Vice Chair  
Commercial Forms Task Force  
2021 Educator of the Year  
Senior Continuing Education Instructor  
"Texas REALTOR® Magazine" Contributor



REALTORS® Property Resource, Certified Trainer  
"Commercial Connections Magazine," Contributor



Michica  
Guillory

# Other Career Highlights

For several years, broker Michica N. Guillory worked for several of commercial real estate's largest industry leaders including:

- CB Richard Ellis (CBRE) 
- Transwestern Retail 
- Jones Lang LaSalle 
- Tarantino Properties 
- Insignia ESG 

During her time with those companies, and on her own as an independent broker, she has had the pleasure of negotiating, renewing or administering lease contracts for a variety of global corporations, national franchises and even government entities.

The logos highlighted below represent just a few of those clients she's had the pleasure of either representing or negotiating with over the years.

She also designed the popular "Commercial Leasing 101" course series and appears regularly on Fox 26 in Houston as a real estate contributor.



# About The Class

Here's What You'll Learn...

- View 55 commercial contracts available from TR
- Learn basic lease types like “Triple Net” and “Gross”
- Landlord secrets that will benefit your clients
- How to best use Letters of Intent
- How to effectively communicate with the commercial community
- View real TR and “Landlord” lease docs
- Where to find YOUR clients



*Michela Mish Guillory*





# Let's Start With TR<sup>®</sup> Forms

Where to Find Them &  
How to Use Them

# TXR® Commercial Forms

## An Overview & Where to Find Them

### Commercial Listing Agreements - 1300

- 1301 – Exclusive Right to Sell
- 1302 – Exclusive Right to Lease
- 1303 – Exclusive Right to Sublease

### Listing Addenda & Related Forms - 1400

- 1408 – Property Condition Statement

### Buyer/Tenant Representation Agreements - 1500

- 1502 – Commercial Buyer/Tenant Representation Agreement

### Commercial Earnest Money Contracts – 1800

- 1801 – Commercial Contracts – Improved Property
- 1802 – Commercial Contracts – Unimproved Property
- 1803 – Commercial Letter of Intent to Purchase

### Contract Addenda & Related Forms - 1900

- 1921 – Condominium Resale Certificate
- 1930 – Commercial Contract Condominium Addendum
- 1931 – Commercial Contract Financing Addendum
- 1932 – Commercial Contract Amendment
- 1937 – Commercial Contract Exhibit (an 'exhibit' is like a sample)

### Contract Addenda & Related Forms – 1900 (con't)

- 1937 – Condominium Resale Certificate
- 1938 – Commercial Tenant Estoppel Certificate
- 1939 – Commercial Contract Termination Notice
- 1940 – Commercial Contract Special Provisions Addendum
- 1942 – Commercial Contract Critical Date List
- 1943 – Commercial Contract Assignment of Buyer's Interest
- 1946 – Condominium Addendum (Incomplete Construction)
- 1947 – Request for Evaluation Materials & Confidentiality Agreement

### Commercial Leases – 2100

- 2101 – Commercial Lease
- 2102 – Commercial Lease Addendum for Broker's Fee (your \$\$\$)
- 2103 – Commercial Lease Addendum for Expense Reimbursement
- 2104 – Commercial Lease Addendum for Extension of Term
- 2105 – Commercial Lease Right of First Refusal Addendum
- 2106 – Commercial Lease Addendum for Percentage Rent
- 2107 – Commercial Lease Addendum for Parking

# TXR<sup>®</sup> Commercial Forms

## An Overview & Where to Find Them

### Commercial Leases – 2100 (con't)

- 2108 – Commercial Landlord's Rules & Regulations
- 2109 – **Commercial Lease Guaranty**
- 2110 – Commercial Lease Addendum for Optional Space
- 2111 – Com. Construction Addendum (Landlord to Complete)
- 2112 – Com. Construction Addendum (Tenant to Complete)
- 2113 – Commercial Lease Acceptance Form
- 2114 – Commercial Lease Amendment
- 2115 – Commercial Lease Exhibit
- 2116 – Commercial Sublease
- 2117 – Commercial Landlord's Consent to Sublease
- 2118 – Commercial Sublease Addendum for Broker's Fee
- 2119 – Commercial Lease Addendum for Contingencies
- 2120 – Commercial Lease Application
- 2121 – Commercial Lease Inventory & Condition Form
- 2122 – **Commercial Letter of Intent to Lease**
- 2124 – Commercial Sublease Guaranty
- 2125 – Commercial Lease Special Provisions Addendum

### Property Management Agreements – 2200

- 2202 – Commercial Property Management Agreement
- 2203 – Commercial Amendment to Property Management Agreement
- 2208 – Notice Terminating Right of Occupancy
- 2209 – Late Notice or Notice of Other Breach of Lease
- 2210 – Notice to Tenant of Change in Management & Accountability for Security Deposit
- 2215 – Report of Incident Occurring on Property
- 2216 – Itemization of Security Deposit
- 2217 – Notice of Landlord's Intent Not to Renew

### Commission Registration Agreements – 2400

- 2403 – Commercial Registration Agreement Between Broker & Owner
- 2404 – Commercial Registration Agreement Between Brokers

6 Multi-Use Forms



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CONCERNING THE LEASED PREMISES AT \_\_\_\_\_ (Landlord)  
between \_\_\_\_\_ (Tenant)  
and \_\_\_\_\_

**Table of Contents**

No.	Paragraph Description	Pg.	ADDENDA & EXHIBITS (check all that apply)
1.	Parties .....	2	<input type="checkbox"/> Exhibit _____
2.	Leased Premises .....	2	<input type="checkbox"/> Exhibit _____
3.	Term .....	2	<input type="checkbox"/> Exhibit _____
4.	Rent and Expenses .....	3	<input type="checkbox"/> Commercial Property Condition Statement (TXR-1408)
5.	Security Deposit .....	5	<input type="checkbox"/> Commercial Lease Addendum for Broker's Fee (TXR-2102)
6.	Taxes .....	6	<input type="checkbox"/> Commercial Lease Addendum for Option to Extend Term (TXR-2104)
7.	Utilities .....	6	<input type="checkbox"/> Commercial Lease Addendum for Tenant's Right of First Refusal (TXR-2105)
8.	Insurance .....	7	<input type="checkbox"/> Commercial Lease Addendum for Percentage Rent (TXR-2106)
9.	Use and Hours .....	7	<input type="checkbox"/> Commercial Lease Addendum for Parking (TXR-2107)
10.	Legal Compliance .....	7	<input type="checkbox"/> Commercial Landlord's Rules and Regulations (TXR-2108)
11.	Signs .....	8	<input type="checkbox"/> Commercial Lease Guaranty (TXR-2109)
12.	Access by Landlord .....	8	<input type="checkbox"/> Commercial Lease Addendum for Tenant's Option for Additional Space (TXR-2110)
13.	Move-In Condition .....	9	<input type="checkbox"/> Commercial Lease Construction Addendum (TXR-2111) or (TXR-2112)
14.	Move-Out Condition .....	9	<input type="checkbox"/> Commercial Lease Addendum for Contingencies (TXR-2119)
15.	Maintenance and Repairs .....	9	<input type="checkbox"/> Information About Brokerage Services (TXR-2501)
16.	Alterations .....	11	<input type="checkbox"/> _____
17.	Liens .....	11	<input type="checkbox"/> _____
18.	Liability .....	11	<input type="checkbox"/> _____
19.	Indemnity .....	11	<input type="checkbox"/> _____
20.	Default .....	11	<input type="checkbox"/> _____
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# The Lease - Form 2101

The Form States...  
The top of all forms state: **“USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.”**

**So, can a non-REALTOR® use this or any other TR® forms?**

## Also Note on the TOC

- This is **NO LONGER** A GROSS lease. No need to attach an Expense Reimbursement addendum to make it NNN.
- Addenda are needed for all other features like Right of First Refusal
- Use it as a guide for LL-generated leases



**1. PARTIES:** The parties to this lease are:

Landlord: \_\_\_\_\_; and  
 Tenant: \_\_\_\_\_

**2. LEASED PREMISES:**

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (*Check only one box*):

(1) **Multiple-Tenant Property:** Suite or Unit Number \_\_\_\_\_ containing approximately \_\_\_\_\_ square feet of rentable area ("rsf") in \_\_\_\_\_ (project name) at \_\_\_\_\_ (address) in \_\_\_\_\_ (city), \_\_\_\_\_ (county), Texas, which is legally described on attached Exhibit \_\_\_\_\_ or as follows: \_\_\_\_\_

(2) **Single-Tenant Property:** The real property containing approximately \_\_\_\_\_ square feet of rentable area ("rsf") at: \_\_\_\_\_ (address) in \_\_\_\_\_ (city), \_\_\_\_\_ (county), Texas, which is legally described on attached Exhibit \_\_\_\_\_ or as follows: \_\_\_\_\_

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
- (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property. The rentable area  will  will be adjusted if re-measured.

**3. TERM:**

A. **Term:** The term of this lease is \_\_\_\_\_ months and \_\_\_\_\_ days, commencing on: \_\_\_\_\_ (Commencement Date) and ending on \_\_\_\_\_ (Expiration Date).

B. **Delay of Occupancy:** If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant for

## Understanding the "Parties"

- Clarify if you're working with a business or an individual.
- Get proof of authorization if someone claims to represent a company.

## Clarifying the "Leased Premises"

- Many tenants or just a single tenant?

## Understanding the "Term"

- Use months instead of years
- It's a little trickier when adding "free rent" periods...be clear!

## Know Your Dates

- Commencement vs. Execution vs. Expiration
- Commencement is tied to your \$\$\$!
- The complete term includes the months of "free rent," too!



Commercial Lease concerning: \_\_\_\_\_

such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. If Tenant is unable to occupy the leased premises after the \_\_\_\_\_ day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by clearances or repairs.

C. **Certificate of Occupancy:** Unless the parties agree otherwise, **Tenant is responsible** for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

**4. RENT AND EXPENSES:**

A. **Base Monthly Rent:** On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit \_\_\_\_\_ or as follows:

Dates		Rate per rentable square foot (optional)		Base Monthly Rent \$
From	To	\$ Monthly Rate	\$ Annual Rate	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	

B. **Additional Rent:** In addition to the base monthly rent, Tenant will pay Landlord the expense reimbursement detailed in Paragraph 4J (if applicable) and all other amounts, as provided by the attached (Check all that apply.):

- (1) Commercial Lease Addendum for Percentage Rent (TXR-2106)
- (2) Commercial Lease Addendum for Parking (TXR-2107)
- (3) \_\_\_\_\_

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

C. **First Full Month's Rent:** The first full monthly rent is due on or before \_\_\_\_\_

D. **Prorated Rent:** If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

E. **Place of Payment:** Tenant will remit all amounts due to Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

# Certificate of Occupancy

- This is a Tenant responsibility!!!
- Refer Tenants to LL for help with this.

# Notes About Rent Schedules

- Again, this grid is only about BASE RENT!!!
- You can use months or years for the rental "Rate"
- But use months for final Base Monthly Rent "Price"
- Be sure the calculate the "from" and "to" dates correctly if rent changes annually

# Other Notable Characteristics

- You'll might still use Form 2103 for NNN, Base Year, Percentage Rent, etc. **But 2101 has new features for this!**
- "The Place of Payment" is key to avoid defaulting when paying rent



F. **Method of Payment:** Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

G. **Late Charges:** If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 10% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.

H. **Returned Checks:** Tenant will pay \$\_\_\_\_\_ for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.

I. **Application of Funds:** Regardless of any notation on a payment, Landlord may apply funds received from Tenant first to any non-rent obligations of Tenant, including but not limited to: late charges and returned check charges, repairs, brokerage fees, periodic utilities and thereafter to rent.

(Check box only if Tenant reimburses Landlord for some or all expenses. Do not check for "gross" leases.)

J. **Expense Reimbursement.** In addition to base monthly rent stated in Paragraph 4A, Tenant will pay Landlord the expense reimbursement described in this Paragraph 4J. Tenant will pay the expense reimbursement as additional rent each month at the time the base-monthly rent is due. All amounts payable under this Paragraph 4J are deemed to be "rent" for the purposes of this lease.

(1) **Reimbursable Periods.** Additional rent under this Paragraph 4J is due for all months listed in the chart in Paragraph 4A, even if the base monthly rent is zero.

(2) **Definitions:**

(a) "Tenant's pro rata share" is \_\_\_\_\_%.

(b) "CAM" means all of Landlord's expenses reasonably incurred to maintain, repair, operate, manage, and secure the Property (for example, security, lighting, painting, cleaning, decorations, utilities, trash removal, pest control, promotional expenses, and other expenses reasonably related to the Property's operations); including all expenses incurred by Landlord under Paragraph 15, but not including expenses for structural components and roof replacement; CAM does not include capital expenditures, interest, depreciation, tenant improvements, insurance, taxes, or brokers' leasing fees. Notwithstanding the foregoing, CAM does include the amortized costs incurred by Landlord in making capital improvements or other modifications to the Property to the extent such improvements or modifications reduce CAM overall. These costs will be amortized over the useful life of the improvement or modification on a straight-line basis; however, in no event will the charge for such amortization included in CAM exceed the actual reduction in CAM achieved by the improvements and modifications.

(c) "Insurance" means Landlord's costs to insure the leased premises and the Property including but not limited to insurance for casualty loss, general liability, and reasonable rent loss.

(d) "Taxes" means the real property ad valorem taxes assessed against the leased premises and Property inclusive of all general and special assessments and surcharges.

## Late Charges

- The rent is due AT the place of payment. The mailbox is NOT the Landlord.

## New Expense Reimbursement Section

- This form incorporates clauses in TXR Form 2103.
- Notice that Expense Reimbursements begin immediately, even if Base Rent is \$0. If there is an exception to this, do not check consider amending this in Special Provisions as a Statement of Fact or Business Detail.
- Enter Pro Rata share, being mindful of gross leasable area (GLA) or gross leased and operated area (GLOA).

Commercial Lease concerning: \_\_\_\_\_

(e) "Structural" means all of Landlord's expenses reasonably incurred to maintain, repair, and replace the roof, foundation, exterior walls, load bearing walls and other structural components of the Property.

(f) "Roof" means all roofing components including, but not limited to decking, flashing, membrane, and skylights.

(3) Method: The additional rent under this Paragraph 4J will be computed under the following method (Check only one box): Note: "CAM" does not include taxes and insurance costs.

(a) Base-year expenses: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed the amount of the monthly base-year expenses for the calendar year \_\_\_\_\_ for:  taxes;  insurance;  CAM;  structural; and  \_\_\_\_\_

(b) Expense-stop: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed \$ \_\_\_\_\_ per square foot per year for:  taxes;  insurance;  CAM;  structural;  roof replacement; and  \_\_\_\_\_

(c) Net: Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property for:  taxes;  insurance;  CAM;  structural;  roof replacement; and  \_\_\_\_\_

(4) Projected Monthly Expenses: On or about December 31 of each calendar year, Landlord will project the applicable monthly expenses (those that Tenant is to pay under this lease) for the following calendar year and will notify Tenant of the projected expenses. The projected expenses are based on Landlord's estimates of such expenses. The actual expenses may vary.

Notice: The applicable projected expenses at the time the lease commences are shown in the table below. The total area of the Property presently used by Landlord for calculating expense reimbursements is \_\_\_\_\_ rentable square feet (including any add on factor for common areas).

Projected Expenses	
\$ Monthly Rate	\$ Annual Rate
/ rsf / month	/ rsf / year

(5) Reconciliation: Within 120 days after the end of each calendar year, Landlord will notify Tenant of the actual costs of the applicable expenses (those that Tenant is to pay under this lease) for the previous year. If the actual costs of the applicable expenses exceed the amounts paid or owed by Tenant for the previous year, Tenant must pay the deficient amount to Landlord within 30 days after Landlord notifies Tenant of the deficient amount. If the actual costs of the applicable expenses are less than the amounts paid by Tenant for the previous year, Landlord will refund the excess to Tenant or will credit the excess to Tenant's next rent payment(s). Tenant may audit or examine those items in Landlord's records that relate to Tenant's obligations under this Paragraph 4J. Landlord will promptly refund to Tenant any overpayment revealed by an audit or examination. If the audit or examination reveals an error of more than 5% over the amounts Landlord collected in a calendar year from Tenant under this lease, Landlord will pay the reasonable cost of the audit or examination. Landlord may not seek a deficiency from Tenant under this paragraph if Landlord fails to timely provide the required notice.

## Method of Reimbursement

- This is where we'll agree upon either a Base Year, Expense Stop or Triple Net reimbursement of the Landlord's expenses.

## How Much Is the Estimated Rate?

- This is where we'll insert the agreed upon first year of NNN (or other calculation) expense reimbursements. They'll likely increase, perhaps annually, but this is the definitive starting point.

## Uh Oh! The Tenant May Owe!

- The estimated amount initially quoted by the Landlord and billed to the Tenant may be too low. If the Tenant owes more in NNN, for example, they only have 30 days to pay the deficient amount.



Commercial Lease concerning: \_\_\_\_\_

**5. SECURITY DEPOSIT:**

- A. Upon execution of this lease, Tenant will pay \$ \_\_\_\_\_ to Landlord as a security deposit.
- B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.
- C. Within 60 days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.

**6. TAXES:** Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises. Tenant waives all rights to protest the appraised value of the leased premises and the Property, or appeal the same and all rights to receive notices of reappraisal set forth in sections 41.413 and 42.015 of the Texas Tax Code.

**7. UTILITIES:**

A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. (Check all that apply.)

	N/A	Landlord	Tenant
(1) Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Electric	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) Gas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) Telephone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) Internet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(8) Trash	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(9) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(10) All other utilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider, except that if Tenant selects the provider, any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.

C. **Notice:** Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.

D. **After-Hours HVAC Charges:** "HVAC services" mean heating, ventilating, and air conditioning of the leased premises. (Check one box only.)

- (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.

# Security Deposit

- This is highly negotiable and can be virtually anything. Equal to 1<sup>st</sup> month or last; the amount of 3 or even 6 months of rent, or more.


# Who Pays for What Bill?

- The contract says the LL will pay for property taxes in Paragraph 6...but this is NOT the end of the story. More later!
- And in selecting the correct boxes in Paragraph 7, you'll choose the box of the party that receives the initial bill from the service/utility provider (see ¶7B). This applies even if the Landlord passes the expense on to the Tenant later.

# Other Notable Characteristics

- Leave nothing unchecked
- Fill in all blanks, but it's not a requirement.



(2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ \_\_\_\_\_ per hour. 

(3) Tenant will pay for the HVAC services under this lease.

**8. INSURANCE:**

A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:

(1) commercial general liability insurance naming Landlord as an additional insured with policy limits on an occurrence basis in a minimum amount of: (check only (a) or (b) below)

- (a) \$1,000,000; or
- (b) \$2,000,000.

 If neither box is checked the minimum amount will be \$1,000,000.

(2) personal property damage insurance for the business operations being conducted in the leased premises and contents in the leased premises in an amount sufficient to replace such contents after a casualty loss; and

(3) business interruption insurance sufficient to pay 12 months of rent payments.

B. Before the Commencement Date, Tenant must provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.

C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:

- (1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or
- (2) exercise Landlord's remedies under Paragraph 20.

D. Unless the parties agree otherwise, Landlord will maintain in full force and effect insurance for: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property; and (2) any commercial general liability insurance in an amount that Landlord determines reasonable and appropriate.

E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8E will be equal to the actual amount of the increase in Landlord's insurance premium.

**9. USE AND HOURS:**

A. Tenant may use the leased premises for the following purpose and no other: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## After Hours HVAC

- **Calculators out! Time for a group exercise.**

## Interesting Clauses

- **If your client does not choose a minimum amount of liability insurance coverage per occurrence, the contract ASSUMES coverage.**
- **The form provides an option of Business Interruption Insurance, too. Many policies do NOT cover business closures as a result of endemic, pandemic, microorganisms, infectious diseases or viruses.**

## The Use Clause

- **Ask your client to fill this in based on how they will operate TODAY and in the FUTURE!**
- **Even if they don't ever "get around to it," secure the RIGHT to provide the service or product.**
- **Back it up with exclusivity, if needed!**



Commercial Lease concerning: \_\_\_\_\_

B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.

C. The Property maintains operating hours of (specify hours, days of week, and if inclusive or exclusive of weekends and holidays): \_\_\_\_\_

**10. LEGAL COMPLIANCE:**

- A. **Tenant may not use or permit any part of the leased premises or the Property to be used for:**
- (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
  - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
  - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
  - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
  - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
  - (6) the permanent or temporary storage of any hazardous material; or
  - (7) \_\_\_\_\_
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

**11. SIGNS:**

- A. Tenant may not post or paint any signs or place any decoration outside the leased premises or on the Property without Landlord's written consent. Landlord may remove any unauthorized sign or decorations, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign or decorations.
- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs or decorations that were placed on the Property or leased premises by or at the request of Tenant. Any signs or decorations that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

## Is This Really YOUR Responsibility?

- The Tenant, not you, is responsible for knowing the laws regarding their respective business.
- Don't volunteer what you think you know. This can land you in mediation or litigation. (Also see Paragraph 13!)
- Codes change frequently. Let inspectors handle that with the Tenant and their contractors.

**12. ACCESS BY LANDLORD:**

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last \_\_\_\_\_ days of this lease, Landlord may place a "For Lease" or similarly worded sign on the leased premises.

**13. MOVE-IN CONDITION:** Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease or in an addendum. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

**14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:**

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

**15. MAINTENANCE AND REPAIRS:**

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles.  Landlord  Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the property type. Tenant will maintain any grease trap on the Property which Tenant uses, including but not limited to periodic emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.
- B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.
- C. Repair and Maintenance Responsibility: Except as otherwise provided by this Paragraph 15, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises (if any). The specified items must be maintained in clean and good operable

## Landlord Access

- The Landlord can enter at any time, yet may NOT interfere with business. Have the client review Paragraph 12 carefully.

## Move-In Condition

- Tenant may be taking the space in "as-is" condition, this does not preclude negotiated construction and repairs in other sections.

## Back to Paragraph 13

- Paragraph 13 says neither the Landlord nor any agent have made any warranties about the condition or **permitted use of the property!!!**

condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. (Check all that apply.)

	N/A	Landlord	Tenant
(1) Foundation, exterior walls, and other structural components.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Roof replacement.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Roof repair.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) Glass and windows.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) Fire protection equipment.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) Fire sprinkler systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) Exterior and overhead doors, including closure devices, molding, locks, and hardware.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(8) Grounds maintenance, including landscaping and irrigation systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(9) Interior doors, including closure devices, frames, molding, locks, and hardware.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(10) Parking areas and walks.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(11) Plumbing systems, drainage systems and sump pumps.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(12) Electrical systems, mechanical systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(13) Ballast and lamp replacement.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(14) Heating, Ventilation and Air Conditioning (HVAC) systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(15) HVAC system replacement.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(16) Signs and lighting:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(a) Pylon.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Fascia.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Monument.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Door/Suite.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) Directional.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) Other:.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(17) Extermination and pest control, excluding wood-destroying insects..	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(18) Fences and Gates.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(19) Storage yards and storage buildings.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(20) Wood-destroying insect treatment and repairs.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(21) Cranes and related systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(22).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(23).....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(24) All other items and systems.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**D. Repair Persons:** Repairs must be completed by trained, qualified, and insured repair persons.

**HVAC Service Contract:** If Tenant maintains the HVAC system under Paragraph 15C(14), Tenant  is  is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and Tenant will reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 20.

# The Lease - Form 2101

## Interesting Aspects

- **Again, leave no box unchecked!**
- **Be super aware of Line Item 24!**
- **Bear in mind whether you're dealing with a retail client vs. an office building tenant.**
  - **HVAC is different – repair vs replacement**
  - **Electricity changes**
  - **Water may change (inquire about sub-metering!)**
  - **Note the condition of glass & windows!**
  - **Be clear on the difference between roof repair and roof replacement, particular for single tenancy.**



F. **Common Areas:** Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, or allocate areas for short term or reserved parking for specific tenants, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and regulations. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.

G. **Notice of Repairs:** Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.

H. **Failure to Repair:** Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

**16. ALTERATIONS:**

A. Tenant may not alter (including making any penetrations to the roof, exterior walls or foundation), improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.

B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.

C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order and in compliance with Paragraphs 16A and 17.

D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.

★ **17. LIENS:** Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.

**18. LIABILITY:** To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;

## The Lease - Form 2101

### Interesting Aspects

- A new addition to the form is that Landlords can "...allocate areas for short terms or reserved parking for special tenants...."
- This is the 1<sup>st</sup> time you're going to see Liens come up, but it won't be the last!
- NOTE: Who is responsible for clearing liens, per Paragraph 17?

B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, terrorism, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses.

**19. INDEMNITY:** Each party will indemnify, defend, and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

**20. DEFAULT:**

A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.

B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 20 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.

C. If Tenant is in default, Landlord may, with at least 3 days written notice to Tenant: (i) terminate this lease, or (ii) terminate Tenant's right to occupy the leased premises without terminating this lease and may accelerate all rents which are payable during the remainder of this lease or any renewal period. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:

- (1) any lost rent;
- (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
- (3) repairs to the leased premises for use beyond normal wear and tear;
- (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
- (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
- (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
- (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
- (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property; and
- (9) any other recovery to which Landlord may be entitled under this lease or under law.

**21. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.

**22. HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 150% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

# The Lease - Form 2101

## Interesting Aspects

- The Landlord is held responsible to perform under the terms of the Lease.
- The Holdover (Month-to-Month) clause starts on this page, and continues on the next.
- What percentage of Holdover rent is ideal for a Tenant?

## Chapter 93 Texas Property Code

- Discusses Landlord and Tenant rights and remedies regarding abandoned property, interruption of utilities, removal of the Tenant's property and LOCKOUTS!

**23. LANDLORD'S LIEN AND SECURITY INTEREST:** To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

**24. ASSIGNMENT AND SUBLETTING:** Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

**25. RELOCATION:**

- A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses incurred by Tenant payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationery, business cards, and marketing materials containing Tenant's address. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.
- B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

**26. SUBORDINATION:**

- A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:
  - (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
  - (2) all advances made under any such lien, encumbrance, or ground lease;
  - (3) the interest payable on any such lien or encumbrance;
  - (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
  - (5) any restrictive covenant affecting the leased premises or the Property; and
  - (6) the rights of any owners' association affecting the leased premises or Property.
- B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

**27. ESTOPPEL CERTIFICATES AND FINANCIAL INFORMATION:**

- A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.
- B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

# The Lease - Form 2101

## The Form States...

In Paragraph 23 ("Landlord's Lien & Security Interest"):

**"To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property."**

**This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code."**



# The Uniform Commercial Code Explained

**Definition:** “First published in 1952, it’s one of a number of uniform acts that have been put into law with the goal of harmonizing the law of sales and other commercial transactions across the U.S.

**Why do we need it?** The goal of harmonizing state laws is important because of the prevalence of commercial transactions that extend beyond one state. For example, goods may be **manufactured in State A, warehoused in State B, sold from State C and delivered in State D**. In other words, from state-to-state, companies conduct business in a similar way based on the code.

**So, what does it all mean for your Tenant?** In a nutshell, Article 9 states companies (Landlord) must properly document their goods to obtain a legal claim to a debtor’s (Tenant’s) collateral if the debtor does not satisfy its obligations. So, if a restaurant Tenant fails to pay the rent, the Landlord can claim the contents of the suite per the lease. *(NOTE: If a Tenant leases equipment like photocopiers or dishwashing machines, the Landlord can’t claim ownership of those items. With the same filing of its equipment-lease contract, the supply company can also claim its items and reassure the Landlord of its true ownership rights.)*

**Where are UCC filings made?** In the Texas Secretary of State’s office.

**23. LANDLORD'S LIEN AND SECURITY INTEREST:** To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

**24. ASSIGNMENT AND SUBLETTING:** Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

**25. RELOCATION:**

A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses incurred by Tenant payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationery, business cards, and marketing materials containing Tenant's address. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.

B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

**26. SUBORDINATION:**

A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:

- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
- (2) all advances made under any such lien, encumbrance, or ground lease;
- (3) the interest payable on any such lien or encumbrance;
- (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
- (5) any restrictive covenant affecting the leased premises or the Property; and
- (6) the rights of any owners' association affecting the leased premises or Property.

B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

**27. ESTOPPEL CERTIFICATES AND FINANCIAL INFORMATION:**

A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.

B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

## The Lease - Form 2101

### This Page Also States...

In Paragraph 25 ("Relocation"): "Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent."

But if one must go, what might a Tenant demand:

- 90 days notice to move
- New space must be of equal or larger size (smaller?)
- Landlord pays for the move
- Landlord pays for the build-out
- Rent ceases once the move begins until C of O
- Rental schedule (price/rate remains in effect)
- All stationery and collateral with an ADDRESS on it must be replaced!

Please note the SNDA ("Subordination") paragraph followed by the Estoppel paragraph.

# The Lease - Form 2101 Watch Out for Intermediary

- The good news is, intermediary is highlighted on a TR<sup>®</sup> contract in Paragraph 32 (“Brokers”).
- In Landlord leases, this clause is typically on the last pages and is easily overlooked by newcomers.
- Please note, it’s not uncommon to have a Landlord lease state that its broker is the “only broker to this transaction,” while giving no formal notice of intermediary.

## Other Notable Characteristics

- Notices:** The contract also consents to receive e-mail notices (on Page 16 of 18).

Commercial Lease concerning: \_\_\_\_\_

arranging or facilitating this lease or any transaction related to this lease for a Specially Designated and Blocked Person. Any party or any signatory to this lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

### 32. BROKERS:

A. The brokers to this lease are:

Principal Broker: \_\_\_\_\_ Cooperating Broker: \_\_\_\_\_

Agent: \_\_\_\_\_ Agent: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone & Fax: \_\_\_\_\_ Phone & Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

License No.: \_\_\_\_\_ License No.: \_\_\_\_\_

Principal Broker: (Check only one box) Cooperating Broker represents Tenant.

- represents Landlord only.
- represents Tenant only.
- is an intermediary between Landlord and Tenant.

B. Fees:

- (1) Principal Broker's fee will be paid according to: (Check only one box).
  - (a) a separate written commission agreement between Principal Broker and:
    - Landlord  Tenant.
  - (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).
- (2) Cooperating Broker's fee will be paid according to: (Check only one box).
  - (a) a separate written commission agreement between Cooperating Broker and:
    - Principal Broker  Landlord  Tenant.
  - (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

33. ADDENDA: Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

34. NOTICES: All notices under this lease must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, sent by a national or regional overnight delivery service that provides a delivery receipt, or sent by confirmed facsimile transmission to:

Landlord at: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_



**It's Time  
for a break!**

**10:00**  
**Stop**

**COMMERCIAL LEASE ADDENDUM FOR EXPENSE REIMBURSEMENT**

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**ADDENDUM TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE LEASED PREMISES AT \_\_\_\_\_**

In addition to rent stated in the lease, Tenant will pay Landlord the additional rent described in this addendum. Tenant will pay the additional rent each month at the time the base-monthly rent in the lease is due.

**A. Definitions:**

- (1) "Tenant's pro rata share" is \_\_\_\_\_ %.
- (2) "CAM" means all of Landlord's expenses reasonably incurred to maintain, repair, operate, manage, and secure the Property (for example, security, lighting, painting, cleaning, decorations, utilities, trash removal, pest control, promotional expenses, and other expenses reasonably related to the Property's operations); CAM does not include capital expenditures, interest, depreciation, tenant improvements, insurance, taxes, or brokers' leasing fees. Notwithstanding the foregoing, CAM does include the amortized costs incurred by Landlord in making capital improvements or other modifications to the Property to the extent such improvements or modifications reduce CAM overall. These costs will be amortized over the useful life of the improvement or modification on a straight-line basis; however, in no event will the charge for such amortization included in CAM exceed the actual reduction in CAM achieved by the improvements and modifications.
- (3) "Insurance" means Landlord's costs to insure the leased premises and the Property including but not limited to insurance for casualty loss, general liability, and reasonable rent loss.
- (4) "Taxes" means the real property ad valorem taxes assessed against the leased premises and Property inclusive of all general and special assessments and surcharges.
- (5) "Structural" means all of Landlord's expenses reasonably incurred to maintain, repair, and replace the roof, foundation, exterior walls, load bearing walls and other structural components of the Property.

**B. Method:** The additional rent will be calculated under the following method:

Note: "CAM" does not include taxes and insurance costs.

- (1) **Base-year expenses:** Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed the amount of the monthly base-year expenses for the calendar year \_\_\_\_\_ for:  taxes;  insurance;  CAM;  structural; and  \_\_\_\_\_.
- (2) **Expense-stop:** Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property that exceed \$ \_\_\_\_\_ per square foot per year for:  taxes;  insurance;  CAM;  structural; and  \_\_\_\_\_.
- (3) **Net:** Each month Tenant will pay Tenant's pro rata share of the projected monthly expenses for the Property for:  taxes;  insurance;  CAM;  structural; and  \_\_\_\_\_.

**C. Projected Monthly Expenses:** On or about December 31 of each calendar year, Landlord will project the applicable monthly expenses (those that Tenant is to pay under this addendum) for the following calendar

# Expense Reimbursement Form 2103

## Check the Pro Rata Share

- It's okay to verify space

## Method of Calculation

- Base Year: specifies a year
- Net: Allows for a single, double or triple net lease. Quadruple, too!
- Expense Stop: This doesn't exactly specify *where* the dollar amount comes from. Do you know how to calculate it?



Expense Reimbursement Addendum concerning \_\_\_\_\_

year and will notify Tenant of the projected expenses. The projected expenses are based on Landlord's estimates of such expenses. The actual expenses may vary.

**Notice:** The applicable projected expenses at the time which the above-referenced lease commences are shown in the table below. The total area of the Property presently used by Landlord for calculating expense reimbursements is \_\_\_\_\_ rentable square feet (including any add on factor for common areas).

Projected Expenses	
\$ Monthly Rate	\$ Annual Rate
/ rsf / month	/ rsf / year

D. **Reconciliation:** Within a reasonable time after the end of each calendar year, Landlord will notify Tenant of the actual costs of the applicable expenses (those that Tenant is to pay under this addendum) for the previous year. If the actual costs of the applicable expenses exceed the amounts paid or owed by Tenant for the previous year, Tenant must pay the deficient amount to Landlord within 30 days after Landlord notifies Tenant of the deficient amount. If the actual costs of the applicable expenses are less than the amounts paid by Tenant for the previous year, Landlord will refund the excess to Tenant or will credit the excess to Tenant's next rent payment. Tenant may audit or examine those items in Landlord's records that relate to Tenant's obligations under this addendum. Landlord will promptly refund to Tenant any overpayment revealed by an audit or examination. If the audit or examination reveals an error of more than 5% over the amounts Landlord collected in a calendar year from Tenant under this addendum, Landlord will pay the reasonable cost of the audit or examination. Landlord may not seek a deficiency from Tenant under this paragraph if Landlord fails to timely provide the required notice.

★ E. **Special Provisions:**



Landlord: \_\_\_\_\_

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

By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
By (signature): \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



# Expense Reimbursement Form 2103

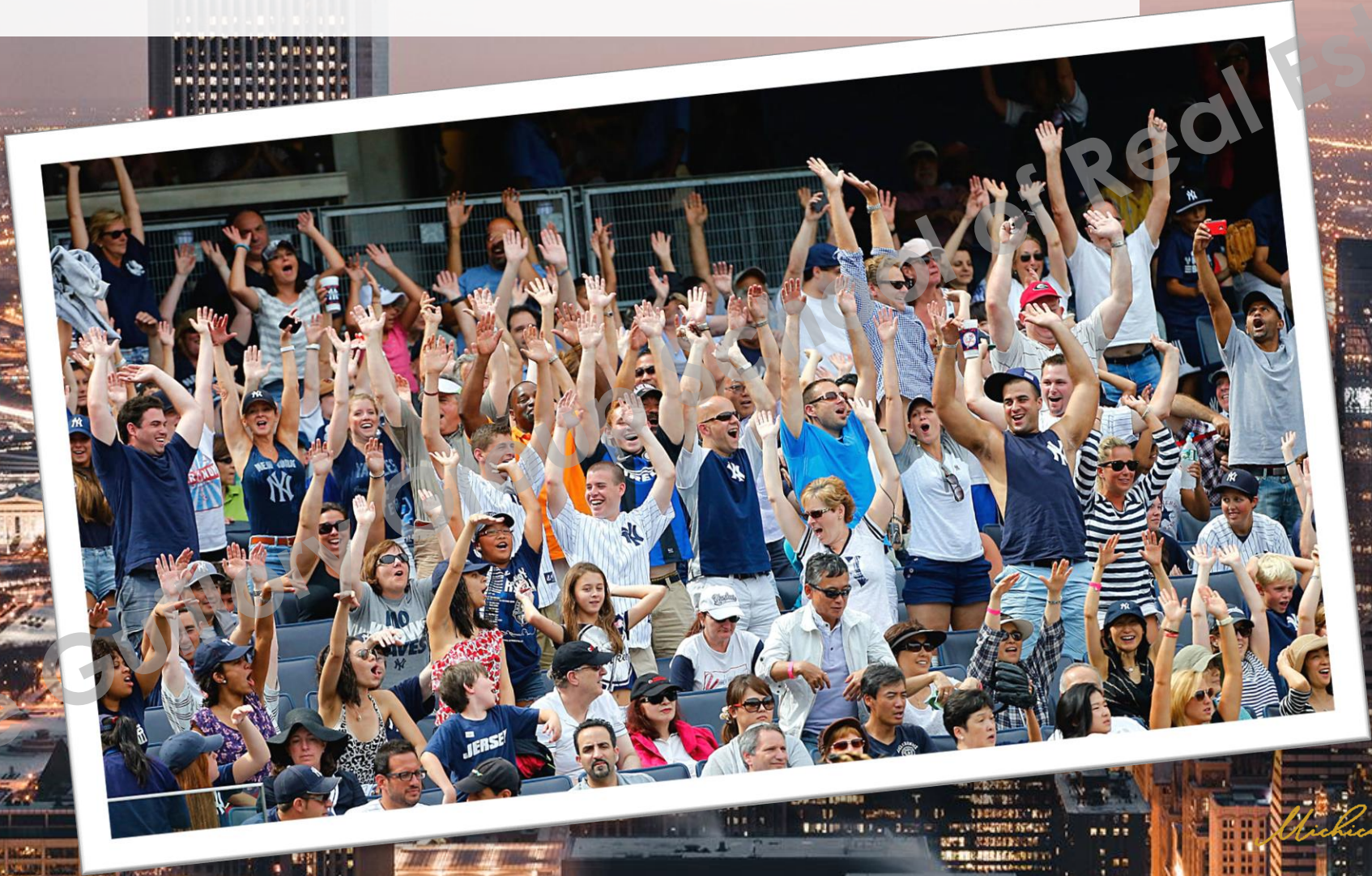
## The Form States...

- Tenants have \_\_\_\_\_ days to pay CAM Rec bill?
- But what if your client needs more time to pay?

## Changing the Clause...

- Let's say the Landlord grants your client a total of 180 days (6 mos.) to pay their CAM Rec bill.
- So, how do you effectively change Paragraph D without **accidentally "practicing law?"**
- Consider this Statement of Fact: **"In addition to the 30 days granted in Paragraph D, Landlord grants Tenant another 150 days to pay CAM Reconciliation bill."**
- **Just make sure this comes IN WRITING from your client and that you insert it verbatim!**

# It's Time to do The Wave!!!



*Micha Mish Guillory*

**ADDENDUM TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE LEASED PREMISES AT \_\_\_\_\_**

A. "Gross sales" means the total of all receipts of any business conducted on or from the leased premises. Gross sales includes the total sales price of any sales of merchandise, products, or services, but does not include any sales or excise taxes. A credit or installment sale is a sale for the full price in the month that the sale was made regardless of when Tenant receives payment.

B. In addition to any other rent, Tenant will pay, on or before the 10<sup>th</sup> day of each month, percentage rent that is equal to \_\_\_\_\_% (percentage rental rate) multiplied by Tenant's gross sales in the previous month that exceed:

- (1) the Base Monthly Rent. (i.e. natural break) ← **Natural Breakpoint**
- (2) \_\_\_\_\_ ← **Artificial Breakpoint**

C. With the percentage rent payment, Tenant will provide Landlord an accurate written statement of gross sales for the previous month and copies of all sales and excise tax reports required to be filed by Tenant, subtenants, or concessionaires with any governmental agency.

D. Tenant will maintain accurate financial books and records regarding gross sales. Landlord may inspect the books and records at any time during Tenant's normal business hours.

E. At the end of each calendar year the total gross sales for the year will be multiplied by the percentage rental rate and reconciled with the amount of percentage rent actually paid. Additional amounts due from Tenant will be paid to Landlord and excess payments will be refunded by Landlord to Tenant.

F. Special Provisions:

Landlord: _____	Tenant: _____
By: _____	By: _____
By (signature): _____	By (signature): _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
By: _____	By: _____
By (signature): _____	By (signature): _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____

# Percentage Rent Form 2106

## How to Use This Form

- It's only one page. That's it!
- You only have 2 choices for calculating Percentage Rent.
- Which method do you use?
- **Natural Breakpoint:** Considers the original relationship between Tenant and Landlord – payment of the rent.
- **Artificial Breakpoint:** Can be set arbitrarily or consider other factors. Proceed with caution!





# A Few Definitions

## Defining Breakpoints

### Breakpoint:

A preset level of sales, after which percentage rent begins. When a tenant reaches their breakpoint, then they begin to pay “percentage rent.”

### Natural Breakpoint:

A “natural” breakpoint is the volume of gross sales a tenant must generate to pay the fixed minimum rent, at a rate equal to the percentage to be used for percentage-rent calculations. It is calculated by dividing the fixed minimum rent by the percentage used for percentage-rent calculations.

### Artificial Breakpoint:

With the artificial breakpoint method, the numbers for fixed-minimum rent and percentage rent can be set independently of one another. The relationship may be arbitrary.

# So, the Landlord Says...

"I want 5% of your gross sales above your natural break point."

WHAT?

## Let's Define Gross Sales

- Paragraph A ("Gross Sales") has a rather thin definition.
- Be sure your **client** agrees with this paragraph.
- **Gross Sales** can also **exclude** things like customer refunds, employee discounts, accommodation sales (stamps, money orders, lottery tickets), coin-operated devices, commissions paid to debt collection firms, merchandise exchanged between stores, returns to manufacturers and sales taxes collected.
- Use "Special Provisions" if more specificity is needed and your client desires to expand this definition. Again, it must come **IN WRITING** from your client.

# Natural Breakpoint

Again, the Landlord says: "I want 5% of your gross sales above your natural breakpoint."

*Mish  
Guillory*

The Formula (Annually):

$$\begin{array}{rclcl} \text{Annual Fixed Rent} & \div & \text{Percentage Rent} & = & \text{Natural Breakpoint} \\ \$60,000 & \div & 5\% (.05) & = & \$1,200,000 \text{ (in sales per year)} \end{array}$$

The Formula (Monthly):

$$\begin{array}{rclcl} \text{Monthly Fixed Rent} & \div & \text{Percentage Rent} & = & \text{Natural Breakpoint} \\ \$5,000 & \div & 5\% (.05) & = & \$100,000 \text{ (in sales per month)} \end{array}$$

So, the landlord would collect 5% of the Tenant's **annual** gross sales above \$1,200,000. If annual gross sales equaled \$1,200,500 then the landlord would only get \$25.00. Yep...that's all! Here's what that looks like numerically.

$$\begin{array}{rclclclclcl} \text{Gross Sales (GS)/Yr.} & - & \text{Natural BP} & = & \text{GS Above BP} & \times & \text{Percentage} & = & \% \text{ Rent} \\ \$1,200,500 & - & \$1,200,000 & = & \$500 & \times & 5\% (.05) & = & \$25.00 \end{array}$$

# Artificial Breakpoint

How bad can it be?

Again, the Landlord says: "I want 5% of your gross sales above your artificial breakpoint."

No Formula: The Artificial Breakpoint is set at \$1,000,000 by the Landlord.  
(Did anyone check with the Tenant to see if this was reasonable?)

Then, the landlord would collect 5% of the annual gross sales above \$1,000,000. If annual gross sales equaled the same \$1,200,500 then the landlord would get an additional \$10,025 at the end of that year (or technically in January). Here's what that looks like numerically.

$$\begin{array}{rclclclcl}
 \text{Gross Sales} & - & \text{Artificial BP} & = & \text{GS Above BP} & \times & \text{Percentage} & = & \% \text{ Rent} \\
 \$1,200,500 & - & \$1,000,000 & = & \$200,500 & \times & 5\% (.05) & = & \$10,025.00
 \end{array}$$

**ADDENDUM TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED LANDLORD AND TENANT CONCERNING THE LEASED PREMISES AT \_\_\_\_\_**

A. **Leasing Fees:** All leasing fees are earned when the above referenced lease is executed.

(1) \_\_\_\_\_ will pay **Principal Broker** a leasing fee calculated and payable as follows:

- (a) \_\_\_\_\_% of all base monthly rents to be paid for the term of the lease and the same percentage of the expense reimbursements stated or estimated in the lease, payable as follows: one-half of such amount at the time Landlord and Tenant execute the lease and the remainder on the date the lease commences.
- (b) \_\_\_\_\_% of all base monthly rents to be paid for the term of the lease and the same percentage of the expense reimbursements stated or estimated in the lease, payable as follows: \_\_\_\_\_
- (c) \_\_\_\_\_

(2) \_\_\_\_\_ will pay **Cooperating Broker** a leasing fee calculated and payable as follows:

- (a) \_\_\_\_\_% of all base monthly rents to be paid for the term of the lease and the same percentage of the expense reimbursements stated or estimated in the lease, payable as follows: one-half of such amount at the time Landlord and Tenant execute the lease and the remainder on the date the lease commences.
- (b) \_\_\_\_\_% of all base monthly rents to be paid for the term of the lease and the same percentage of the expense reimbursements stated or estimated in the lease, payable as follows: \_\_\_\_\_
- (c) **Most Likely because it doesn't share expense reimbursements.**

B. **Renewal and Expansion Fees:** If Landlord and Tenant subsequently renew, extend, or expand the lease, including a new lease for more, less, or different space in the Property or in any other property owned, controlled, or managed by Landlord, the brokers will be paid the fees set forth below. The fees will be earned and payable when the extension, renewal, expansion, or new lease is executed or commences, whichever is earlier.

(1) \_\_\_\_\_ will pay **Principal Broker** a fee of:

- (a) \_\_\_\_\_% of all base monthly rents to be paid for the term of the renewal, extension, or new lease and the same percentage of the expense reimbursements stated or estimated in the lease governing the renewal, extension, or new lease;
- (b) \_\_\_\_\_% of all base monthly rents to be paid for the term of the expansion and the same percentage of the expense reimbursements stated or estimated in the lease governing the expansion; or



# Broker's Fee - Form 2102

## The Form States...

**In Paragraph A2: " \_\_\_\_\_ will pay Cooperating Broker a leasing fee calculated and payable as follows:**

**(a) \_\_\_\_\_% of all base monthly rents to be paid for the term of the lease and the same of the expense reimbursements stated or estimated in the lease, payable as follows: one-half of such amount at the time Landlord and Tenant execute the lease and the remainder on the date the lease commences."**

**(b) Says the same as above but allows you to insert different payment terms.**

**(c) You will likely use this clause to remove the addition of Expense Reimbursements from your commission calculation.**



(c) \_\_\_\_\_

(2) \_\_\_\_\_ will pay Cooperating Broker a fee of:

(a) \_\_\_\_\_% of all base monthly rents to be paid for the term of the renewal, extension, or new lease and the same percentage of the expense reimbursements stated or estimated in the lease governing the renewal, extension, or new lease;

(b) \_\_\_\_\_% of all base monthly rents to be paid for the term of the expansion and the same percentage of the expense reimbursements stated or estimated in the lease governing the expansion; or

(c) \_\_\_\_\_

C. **Fees in the Event of a Sale:** If, during any time the lease is in effect or during any time Tenant occupies the leased premises, including any extension, renewal, or expansion, Tenant agrees to purchase the leased premises or Property by oral or written agreement or option, brokers will be paid the additional fees set forth below. The additional fees will be earned at the time Landlord and Tenant enter into an agreement for the sale, purchase, or option for the leased premises or Property, and are payable at the time the sale or purchase closes.

(1) \_\_\_\_\_ will pay Principal Broker an additional fee of:

(a) \_\_\_\_\_% of the sales price for the purchase.

(b) \_\_\_\_\_

(2) \_\_\_\_\_ will pay Cooperating Broker an additional fee of:

(a) \_\_\_\_\_% of the sales price for the purchase.

(b) \_\_\_\_\_

D. **County:** All fees under this addendum are payable in \_\_\_\_\_ County, Texas.

E. **Attorney's Fees:** If Landlord, Tenant, or any broker is a prevailing party in any legal proceeding brought as a result of a dispute under this addendum or any transaction related to or contemplated by this addendum, such party will be entitled to recover from the non-prevailing parties all costs of such proceeding, prejudgment interest, and reasonable attorney's fees.

F. **Special Provisions:**

## Broker's Fee - Form 2102

### One More Thing...

Take a moment to consider whether there may be a building purchase after the lease term expires. If so, you'll want to secure those commission funds, as well.



# Broker's Fee - Form 2102

## Who's Signing?

- In a word, **EVERYBODY!**
- And what happens if your commission is illegally withheld?
- You can start with Chapter 62 of the Texas Property Code, which entitles a broker "to claim a lien against the Property to secure payment of an earned commission."
- Chapter 62 only applies to commercial transactions, per the Code.



Addendum for Broker's Fee concerning \_\_\_\_\_

**NOTICE:** Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

**Landlord:** \_\_\_\_\_ **Tenant:** \_\_\_\_\_

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

By (signature): \_\_\_\_\_ By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_


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

By (signature): \_\_\_\_\_ By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_

**Principal Broker:** \_\_\_\_\_ **Cooperating Broker:** \_\_\_\_\_  
 Broker / Company Name: \_\_\_\_\_ Broker / Company Name: \_\_\_\_\_

License No. \_\_\_\_\_ License No. \_\_\_\_\_

By (signature): \_\_\_\_\_ By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ License No. \_\_\_\_\_ Title: \_\_\_\_\_ License No. \_\_\_\_\_



(TXR-2102) 07-08-22 Page 3 of 3

The Guillary Group Real Estate Firm, 1122 Lexington Grove Dr., Missouri City, TX 77459 | (832) 768-1711 | (832) 768-1711  
 Michica N. Guillary

**COMMERCIAL LEASE CONSTRUCTION ADDENDUM  
(Landlord to Complete Construction)**

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**ADDENDUM TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING  
THE LEASED PREMISES AT \_\_\_\_\_**

The following provisions apply and will control in the event of a conflict with other provisions stated in the lease:

A. On or before \_\_\_\_\_, Landlord will substantially complete the improvements to the leased premises as described below.

(1) Landlord will complete the following improvements:

**List the work the  
Landlord is to complete  
in this section.**

(2) On or before \_\_\_\_\_, Tenant will specify in a separate written notice to Landlord the improvements that Tenant desires Landlord to complete. If Landlord objects to any desired improvement, Tenant will promptly amend Tenant's notice to comply with Landlord's objections. Landlord will not unreasonably object to Tenant's desired improvements.

B. On or before \_\_\_\_\_, Landlord will notify Tenant of the total cost to complete the improvements described in Paragraph A, including but not limited to costs of construction, permits, and plans. The total cost to complete the improvements may not exceed \_\_\_\_\_ (maximum cost). Landlord will pay \_\_\_\_\_ of the cost to complete the improvements and Tenant will pay the remainder. If the total cost to complete the improvements exceeds the maximum cost, the lease will terminate and have no further effect unless a party notifies the other party within \_\_\_\_\_ days after Landlord notifies Tenant of the cost to complete the improvements that it will pay the excess.

C. Unless otherwise agreed by the parties in writing, any amount required to be paid by Tenant under this addendum must be paid by Tenant to Landlord before construction of the improvements commences.

D. All construction required by this addendum will be performed by trained and qualified persons in a good workman-like manner and will comply with applicable building codes, local ordinances, governmental

(TAR-2111) 4-1-18 Initialed for Identification by Landlord: \_\_\_\_\_, \_\_\_\_\_, and Tenant: \_\_\_\_\_, \_\_\_\_\_ Page 1 of 2

# Construction by Landlord Form 2111

## Things to Know

- This clause is sometimes referred to as the “**Work Letter**” by colleagues in the commercial sector.
- Paragraph B includes language for what happens if the build-out or Tenant Improvements (TI's) exceed the agreed upon budget.”
- The clause states: “If the total cost to complete the improvements exceeds the maximum cost, the lease will terminate and have no further effect unless a party notifies the other party within \_\_\_\_\_ days after Landlord notifies Tenant of the cost to complete the improvements that it will pay the excess.”

*Mish Gullory*



Leasehold Construction Addendum concerning \_\_\_\_\_  
regulations, and statutes (e.g. ADA, Architectural Barriers). Landlord will obtain any required certificate of occupancy.

E. Tenant may, at reasonable times during construction, inspect the construction of the improvements. Tenant may object to any deficiencies in the completion of the improvements by providing specific written notice to Landlord and Landlord will promptly cure the deficiencies. Upon completion of the improvements, Tenant will acknowledge in writing that the improvements have been completed and that Tenant accepts the leased premises for the purposes of the lease (*the Commercial Lease Acceptance Form (TAR-2113) may be used*).

F. Paragraph 3B of the lease governs any delay in the commencement of the lease or occupancy by Tenant caused by the construction of the improvements.

G. Special Provisions:



Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

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

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

By (signature): \_\_\_\_\_

By (signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

By (signature): \_\_\_\_\_

By (signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# Construction by Landlord Form 2111

## This Clause States...

In Paragraph E, in part, it says: “Tenant may, at reasonable times during construction, inspect the construction of the improvements. Tenant may object to any deficiencies in the completion of the improvements by providing specific written notice to Landlord and Landlord will promptly cure the deficiencies.”

**What is the key element of this clause?**

**Go check out the work!!!**

**COMMERCIAL LEASE CONSTRUCTION ADDENDUM  
(Tenant to Complete Construction)**

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**ADDENDUM TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING  
THE LEASED PREMISES AT \_\_\_\_\_**

The following provisions apply and will control in the event of a conflict with other provisions stated in the lease:

**A. Execution and License to Enter:** This addendum is executed as a part of the above-referenced lease. Landlord authorizes Tenant to construct the improvements described in this addendum provided that Tenant complies with all of the terms of this addendum. In the event the term of the lease has not yet commenced, Landlord grants Tenant a license to enter into the Property and the leased premises effective \_\_\_\_\_ for the purposes of constructing the improvements described under this addendum. This license is made under all the terms and provisions in the lease, except as to the covenant to pay rent.

**B. Construction Costs:** Tenant will pay the full cost to construct the improvements that Tenant is to construct under this addendum, including but not limited to the cost of material, engineering studies, environmental studies, contractors, permits, plans, architects, inspectors, subcontractors, and materialmen. Not later than 10 days after the construction is complete and Tenant has satisfied all of Tenant's obligations under this addendum, Landlord will reimburse Tenant the cost to construct the improvements in an amount that does not exceed \_\_\_\_\_.

**C. Approval of Plans:**

(1) Not later than \_\_\_\_\_, Tenant will submit to Landlord plans and specifications detailing the improvements Tenant desires to complete to the leased premises. The plans must detail all architectural, mechanical, electrical, and plumbing requirements for the improvements and must describe the proposed improvements along with the materials to be used and the interior floor plan of the leased premises. The plans must be drawn by a licensed professional architect in accordance with generally accepted architectural standards or by another person approved by Landlord and must be sufficient for a contractor to use to construct the desired improvements.

(2) Within \_\_\_\_\_ days after Landlord receives the plans in accordance with Paragraph (1), Landlord will notify Tenant whether the plans are "approved" or "disapproved" by mail. Landlord will deliver the plans back to Tenant. Landlord will not unreasonably withhold approval. If Landlord does not notify Tenant of a disapproval within the time specified, the plans shall be deemed approved.

(3) If the plans are disapproved, Landlord will detail the reasons for the disapproval in a separate notice to Tenant. If the plans are disapproved, Tenant will, within \_\_\_\_\_ days of the disapproval notice from Landlord, submit amended plans to Landlord necessary to satisfy Landlord's reasons for the disapproval. Landlord will approve any amended plans. If Tenant is unable or unwilling to satisfy Landlord's disapproval by \_\_\_\_\_, and:

(TAR-2112) 4-1-18 Initialed for Identification by Landlord: \_\_\_\_\_, \_\_\_\_\_, and Tenant: \_\_\_\_\_

# Construction by Tenant Form 2112

## This Contract States...

In Paragraph A, in part, it says: "Landlord grants Tenant a license to enter into the Property and the leased premises effective \_\_\_\_\_ for the purposes of constructing the improvements...."

**While the Tenant IS granted access to the demised premises prior to lease commencement, many Landlords require proof of liability insurance prior to entering.**

**Get insurance coverage!**



- (a) if this addendum is executed after the lease commenced, then Tenant will not construct the improvements and this Addendum will have no further effect; or
- (b) if this addendum is executed before the lease commences the lease will terminate and Landlord will refund any security deposit and advanced rent paid by Tenant.


(4) "Final plans" means the plans that Landlord approves under this Paragraph C.

D. **Change Orders:** Tenant must obtain Landlord's advanced written approval of any proposed changes to the final plans. Landlord will approve or disapprove any proposed change within \_\_\_\_\_ days after Landlord receives a copy of the proposed change order from Tenant. Landlord will not unreasonably withhold approval of any proposed change order. If Landlord does not notify Tenant of a disapproval of a proposed change order within the time specified, the proposed change order is deemed approved.

E. **Contractor:** Before construction begins Tenant will enter into a written construction contract with a contractor(s) acceptable to Landlord to construct the improvements in accordance with the final plans. Any subcontractors employed by Tenant or Tenant's contractors must be acceptable to Landlord. Landlord will not unreasonably withhold approval of contractors and subcontractors.

F. **Construction:**

- (1) Tenant will diligently complete the improvements in accordance with the final plans and will satisfy any requirements of any governmental authorities having jurisdiction over the improvements. The construction of the improvements must be performed in a good workmanlike manner and must comply with all applicable laws, ordinances, rules, and governmental orders and regulations. Construction of the improvements may not:
  - (a) damage the Property except as specifically permitted by the final plans, including but not limited to damage to or interference with any structural component, system, or part of the Property;
  - (b) interfere with the rights or operations of any other tenant in the Property or with Landlord's management of the Property; and
  - (c) not obstruct any common area, walk, or drive except as Landlord permits.
- (2) Landlord and Landlord's designees may inspect the construction of the improvements from time to time. If Landlord notifies Tenant of any construction defect or non-compliance with the final plans, Tenant must promptly correct the defect or non-compliance.
- (3) All construction staging areas and dumpster locations are subject to Landlord's approval. Construction debris will not be allowed to accumulate on the Property. All construction debris will be completely removed from the Property upon completion of construction.

 G. **Completion:**

(1) Tenant must substantially complete the construction of the improvements to the leased premises in accordance with this addendum on or before \_\_\_\_\_. Except as provided in this paragraph, the failure to complete construction of the improvements by the date specified does not relieve Tenant of Tenant's obligations to pay rent or satisfy other terms and conditions of the lease. The time by which Tenant must complete construction may be extended only if: (a) Landlord causes the delay; (b) governmental authorities delay issuing permits or performing inspections through no fault of Tenant; or (c) a construction delay is caused by strike, lock-out, shortage of material, governmental restriction, riot, flood, or a cause outside Tenant's control. Any extension under this paragraph may be exercised by Tenant only if Tenant promptly notifies Landlord in writing of the extension after Tenant knows or has reason to know of any applicable delay which is cause for an extension. Any extension under this paragraph may not exceed the lesser of: the number of days of the delay caused by the specified cause for the delay or \_\_\_\_\_ days. If a delay authorized by this Paragraph applies, the Commencement Date and Expiration Date of the lease shall likewise be extended along with an appropriate adjustment in the rent due dates. If a delay is caused

# Construction by Tenant Form 2112

*Mish Gullory*

## This Clause Begins... Paragraph G ("Completion"): "Tenant must substantially complete the construction of the improvements to the lease premises in accordance with this addendum on or before \_\_\_\_\_."

**If the contractor says the job will take 4 weeks to complete, then you double that time span for completion!**



by Landlord and the delay exceeds the time for which an extension is permitted under this paragraph, Tenant may exercise its remedies under the default provision of the lease.

(2) Construction is complete when all the improvements are constructed in accordance with the final plans and Tenant provides Landlord with: (a) a final certificate executed by the supervising person; and (b) if required by a governmental body, a certificate of occupancy permitting Tenant to occupy the leased premises for the purposes set forth in the lease.

(3) The supervising person is \_\_\_\_\_. The certificate of the supervising person is conclusive in any dispute involving the construction performed or required to be performed under this addendum.



**H. No Liens:**

(1) Tenant guarantees that Tenant will pay all costs of any liability related to the construction of the improvements described in this addendum and further guarantees the lien-free completion of the improvements against the leased premises and Property. Tenant may not create or place any lien or encumbrance, of any kind, upon the leased premises or Property that encumbers Landlord's interest in the leased premises or Property.

(2) Before Landlord reimburses Tenant for the cost of the improvements, Tenant must:  
(a) deliver to Landlord a waiver of liens in recordable form acceptable to Landlord from each contractor, subcontractor, and materialman. The waivers must specify that: (a) the contractor, subcontractor, or materialman waive any and all claims against Landlord and waive any and all lien rights against Landlord's interest in the leased premises and Property; and (b) the contractor or subcontractor agree to hold Landlord harmless from any and all claims arising from or in connection with its work or materials;  
(b) obtain any required certificate of occupancy; and  
(c) commence business in the leased premises.

(3) If any lien is filed or asserted against any portion of the leased premises or Property as a result of the acts of Tenant or Tenant's contractors, subcontractors, or materialmen, Tenant must remove any such lien or lien claim within 20 days after receipt of notice from Landlord.

(4) Tenant will indemnify and keep Landlord harmless from all damages, costs, expenses, and attorney's fees that may arise from any lien or claim that may be filed or threatened as a result of the improvements to be constructed under this addendum.

I. **Bonds:** Before commencement of any construction, Tenant and Tenant's contractors, at no cost to Landlord, must post the following bonds in favor of the Landlord in the amounts specified: \_\_\_\_\_

**J. Insurance:**

(1) Before any construction commences, Tenant must deliver to Landlord evidence that the insurance required by Paragraph 8A of the lease will be in effect not later than the day construction begins.

(2) Before any construction commences, Tenant must deliver to Landlord certificates of insurance from insurers acceptable to Landlord, evidencing that any contractor maintains the following insurance with Landlord, Tenant, and the contractor from:

(a) workman compensation claims and other employee benefits in the amount of \$ \_\_\_\_\_

*Do you see a pattern?*



# Construction by Tenant Form 2112

## Here We Go Again...Liens

The clauses in Paragraph H ("Liens") begin this way:

- "Tenant guarantees that Tenant will pay all costs of any liability related to the construction...."
- "Before Landlord reimburses Tenant for the cost of improvements, Tenant must: (a) deliver a waiver of liens...."
- "If any lien is filed or asserted against any portion of the leased premises or Property as a result of the acts of Tenant or Tenant's contractors...Tenant must remove any such lien...."
- "Tenant will indemnify and keep Landlord harmless...."



**It's Time  
for a break!**



**COMMERCIAL TENANT ESTOPPEL CERTIFICATE**

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**A. This estoppel certificate concerns the lease described below:**

Landlord: \_\_\_\_\_  
 Tenant: \_\_\_\_\_  
 Leased Premises: \_\_\_\_\_  
 Commencement Date of Lease: \_\_\_\_\_

**B. Tenant certifies that:**

- (1) as of the date Tenant signs this certificate, neither Landlord nor Tenant is in default of the lease;
- (2) the base monthly rent to be paid through the end of the lease is as follows: \_\_\_\_\_;
- (3) the current additional charges payable by Tenant are: \_\_\_\_\_;
- (4) the next rent payment is due \_\_\_\_\_;
- (5) Tenant has not paid Landlord any rent more than 30 days in advance except: \_\_\_\_\_;
- (6) Tenant deposited \$ \_\_\_\_\_ with Landlord as a security deposit under the lease;
- (7) as of the date Tenant signs this certificate, Tenant has no claim of offset against rent except for: \_\_\_\_\_;
- (8) the current term of the lease expires on \_\_\_\_\_;
- (9) Tenant has the option to renew the lease or expand the leased premises as follows: \_\_\_\_\_;
- (10) Tenant has a right of first refusal or option to purchase as follows: \_\_\_\_\_;
- (11) Tenant has accepted the leased premises, is in possession of the leased premises, and all improvements to the leased premises have been made;
- (12) Tenant has no ownership interest in the property in which the leased premises are located; and
- (13) \_\_\_\_\_

Tenant understands that this certificate will be delivered to \_\_\_\_\_  
 and that this party(ies) is relying on the representations in this certificate.

Tenant: \_\_\_\_\_ Date: \_\_\_\_\_  
 By: (signature) \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

# An Estoppel Form 1938

## This Document Seeks...

- **A simple re-statement of the Lease, but from the Tenant and not the Landlord.**
- **Many leases require this form be completed and returned within 10 days.**
- **Some leases state that these documents cannot be withheld for the purpose of renewal negotiations.**
- **It's a simple way to accidentally land in default status.**

*Michica N. Guillary*

# LOI for Lease Form 2122



## COMMERCIAL LETTER OF INTENT TO LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 2014

This letter of intent summarizes the general terms of a proposed lease between Landlord and Tenant. The terms of this letter of intent are **not binding** upon either Landlord or Tenant.

**NON-BINDING:** THIS LETTER OF INTENT IS NOT INTENDED TO BE A LEGALLY-BINDING LEASE AGREEMENT. NEITHER PARTY SHALL BE BOUND OR HAVE THE OBLIGATION TO PURSUE NEGOTIATIONS OR ANY OTHER OBLIGATIONS OF ANY KIND, UNLESS AND UNTIL A DEFINITIVE LEASE IS HEREAFTER SIGNED AND DELIVERED BY THE PARTIES. NO DEFINITIVE LEASE SHALL BE ENTERED INTO UNLESS IT IS SATISFACTORY TO BOTH LANDLORD AND TENANT, IN THEIR SOLE DISCRETION.

(TAR-2122) 4-1-14

The Guillory Group Real Estate Firm, 1760 Barker Cypress #321, Houston, TX 77084 | (832) 768-1711 | (832) 768-1711

Page 2 of 3

Letter of Intent concerning: \_\_\_\_\_

If this proposal is acceptable, please indicate by signing below and returning a fully executed copy of this letter to my attention with the Texas Association of REALTORS® Commercial Lease Application (TAR-2120) or other application form. Upon receipt of an executed copy of this letter of intent and approval of an application form, Landlord will immediately begin preparing a draft of the lease agreement utilizing the current Texas Association of REALTORS® form 2101 or such other form as the parties agree.

**EXPIRATION:** If the party receiving this letter of intent desires to pursue negotiations along the terms detailed in this letter of intent, the party delivering this letter of intent requests that the receiving party sign a copy of this letter of intent, and deliver the signed copy to the delivering party by 5:00 p.m. on \_\_\_\_\_, \_\_\_\_\_.

# LOI for Lease Form 2122



## COMMERCIAL LETTER OF INTENT TO LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 2022



This letter of intent summarizes the general terms of a proposed lease between Landlord and Tenant. The terms of this letter of intent are not binding upon either Landlord or Tenant.

**LANDLORD:** \_\_\_\_\_

Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_  
 Mobile: \_\_\_\_\_ Fax or Other: \_\_\_\_\_

**TENANT:** \_\_\_\_\_

Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_  
 Mobile: \_\_\_\_\_ Fax or Other: \_\_\_\_\_

**LEASED PREMISES:** \_\_\_\_\_



**LEASED PREMISES SIZE:** \_\_\_\_\_

**TERM:** \_\_\_\_\_  days  months  years, commencing on: \_\_\_\_\_

**BASE MONTHLY RENT:**

Dates		Rate per rentable square foot (optional)		Base Monthly Rent \$
From	To	\$ Monthly Rate	\$ Annual Rate	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	
		/ rsf / month	/ rsf / year	



**ADDITIONAL RENT:**



- (1) Expense Reimbursement of:  taxes;  insurance;  CAM;  structural; and  \_\_\_\_\_  
 Payable as:  full pro rata share  
 pro rata share in excess of base year of \_\_\_\_\_  
 pro rata share in excess of expense stop of \$ \_\_\_\_\_ per year
- (2) Percentage Rent: \_\_\_\_\_% of Tenant's gross sales in excess of:  
 Base Rent (natural break)  
 \_\_\_\_\_
- (3) Parking \$ \_\_\_\_\_ for the following parking spaces:  
 \_\_\_\_\_ Common parking area spaces  
 \_\_\_\_\_ Restricted parking area spaces  
 \_\_\_\_\_ Reserved parking spaces

The Gullory Group School of Real Estate





# LOI for Lease Form 2122

Letter of Intent to Lease concerning: \_\_\_\_\_

**EXPENSE REIMBURSEMENTS:**

Landlord's total projected expenses for the operation of the Property at the time the lease commences (not considering any base year or expense stop) are shown in the table below:

Projected Expenses	
\$ Monthly Rate	\$ Annual Rate
/ rsf / month	/ rsf / year

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECURITY DEPOSIT:** \$ \_\_\_\_\_

**TENANT'S USE:** \_\_\_\_\_  
\_\_\_\_\_

**TENANT IMPROVEMENTS:** \_\_\_\_\_  
\_\_\_\_\_

- To be completed by Landlord on or before \_\_\_\_\_  
Landlord's cost for completion of the Tenant improvements is limited to: \$ \_\_\_\_\_
- To be completed by Tenant. Landlord will reimburse Tenant the cost of the improvements in an amount that does not exceed \_\_\_\_\_



**BROKERS:**  
Representing Landlord: \_\_\_\_\_

Representing Tenant: \_\_\_\_\_

Landlord will pay fees:  as specified by separate written commission agreement, or  as follows

- |  |  |
|--|--|
| Landlord's Broker a total cash fee of:   | Tenant's Broker a total cash fee of:   |
| <input type="checkbox"/> _____ % of all base monthly rents<br>and expense reimbursements | <input type="checkbox"/> _____ % of all base monthly rents<br>and expense reimbursements |
| <input type="checkbox"/> _____   | <input type="checkbox"/> _____   |

The fees are payable:  one-half at lease execution and the remainder on the date the lease commences  
 \_\_\_\_\_

*NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.*

**SPECIAL PROVISIONS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



The Guillory Group School of Real Estate

# LOI for Lease Form 2122

Letter of Intent to Lease concerning: \_\_\_\_\_

**NON-BINDING:** THIS LETTER OF INTENT IS NOT INTENDED TO BE A LEGALLY-BINDING LEASE AGREEMENT. NEITHER PARTY SHALL BE BOUND OR HAVE THE OBLIGATION TO PURSUE NEGOTIATIONS OR ANY OTHER OBLIGATIONS OF ANY KIND, UNLESS AND UNTIL A DEFINITIVE LEASE IS HEREAFTER SIGNED AND DELIVERED BY THE PARTIES. NO DEFINITIVE LEASE SHALL BE ENTERED INTO UNLESS IT IS SATISFACTORY TO BOTH LANDLORD AND TENANT, IN THEIR SOLE DISCRETION.

If this proposal is acceptable, please indicate by signing below and returning a fully executed copy of this letter to my attention with the Texas REALTORS® Commercial Lease Application (TXR-2120) or other application form. Upon receipt of an executed copy of this letter of intent and approval of an application form, Landlord will immediately begin preparing a draft of the lease agreement utilizing the current Texas REALTORS® Commercial Lease (TXR-2101) or such other form as the parties agree.

**EXPIRATION:** If the party receiving this letter of intent desires to pursue negotiations along the terms detailed in this letter of intent, the party delivering this letter of intent requests that the receiving party sign a copy of this letter of intent, and deliver the signed copy to the delivering party by 5:00 p.m. on \_\_\_\_\_, \_\_\_\_\_.

Landlord: \_\_\_\_\_ Tenant: \_\_\_\_\_  
\_\_\_\_\_

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

By (signature): \_\_\_\_\_ By (signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

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

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

By (signature): \_\_\_\_\_ By (signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

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

# No More Training Wheels

*Mish  
Guilborg*

October 8, 2013

Sue Smith  
SueSmith@yahoo.com

VIA EMAIL

**Re: Proposed Lease Terms and Conditions for [REDACTED] and [REDACTED] better known as [REDACTED]**

The following proposed Terms and Conditions are submitted to [REDACTED] for the purposes of lease negotiations:

**Landlord:** [REDACTED]

**Tenant:** [REDACTED]

**Trade Name:** Generic Insurance Co.

**Premises:** Approximately 1,440 SF

**Location:** 1234 Hwy 6 N, Suite 123

**Term:** Three (3) years

**Rent Commencement:** The commencement of the Rent ("Rent Commencement Date") shall be thirty (30) days after possession of the demised Premises is delivered to Tenant.

**Rental Rate:**

Year 1	\$16.00 per square foot annually net of expenses.
Year 2	\$17.00 per square foot annually net of expenses.
Year 3	\$18.00 per square foot annually net of expenses.

**Prepaid Rent:** First month's rent plus NNN's and is due upon lease execution.

**Security Deposit:** Last month's rent plus NNN's and is due upon lease execution.

**NNN Expenses:** NNN expenses at this center are estimated to be \$6.65 PSF annually.

**Use Clause:** Tenant shall have the right to use the premises as an insurance office.

**Improvements:** Tenant takes the space in AS IS condition.

**Pylon Sign:** Tenant will be allowed a panel on the Pylon Sign.

**Construction:** Landlord will require approval of Tenant's plans, specifications and contractor choice, which shall not be unreasonably withheld.

**Compliance:** Landlord warrants that the building will comply with all applicable laws

**Premises:** Approximately 1,440 SF

**Location:** 1234 Hwy 6 N, Suite 123

**Term:** Three (3) years

**Rent Commencement:** The commencement of the Rent ("Rent Commencement Date") shall be thirty (30) days after possession of the demised Premises is delivered to Tenant.

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Year 1	\$16.00 per square foot annually net of expenses.
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**Improvements:** Tenant takes the space in AS IS condition.

**Pylon Sign:** Tenant will be allowed a panel on the Pylon Sign.

**Construction:** Landlord will require approval of Tenant's plans, specifications and contractor choice, which shall not be unreasonably withheld.

**Compliance:** Landlord warrants that the building will comply with all applicable laws

Calculators out...It's Time for a POP QUIZ!

and regulations at the time of delivery.

This proposal is valid for a period of 30 days, is subject to prior lease offers, and can be withdrawn at any time. This is a proposal only and is not a binding agreement to either party until such time as a mutually acceptable lease document is executed by and between the parties. This lease proposal is expressly conditioned upon and subject to Tenant and Landlord entering into a mutually satisfactory Lease and is not binding upon Tenant or Landlord in any way except to the extent that it reflects our intent in good faith to proceed with negotiation of a definitive written Lease agreement with respect to leasing the Premises upon the economic terms and conditions as set forth in this letter. Unless such Lease is entered into, neither Tenant nor Landlord shall be under any obligation to the other, irrespective of this letter and irrespective of any negotiation, agreement or understanding heretofore or hereafter existing between Tenant and Landlord, it being understood that in reference to the Lease Premises, no contractual relationship shall exist between Tenant and Landlord unless and until the Lease shall have been fully executed. Texas Law requires [redacted] to disclose that it is representing the Landlord in the marketing of this property.

Sincerely,

Leasing Agent

Accepted and Agreed to  
This \_\_\_\_\_ day of \_\_\_\_\_, 2013

**Tenant:**

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

Title:

Accepted and Agreed to  
This \_\_\_\_\_ day of \_\_\_\_\_, 2013

**Landlord:**

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

Title:



This proposal is valid for a period of 30 days, is subject to prior lease offers, and can be withdrawn at any time. This is a proposal only and is not a binding agreement to either party until such time as a mutually acceptable lease document is executed by and between the parties. This lease proposal is expressly conditioned upon and subject to Tenant and Landlord entering into a mutually satisfactory Lease and is not binding upon Tenant or Landlord in any way except to the extent that it reflects our intent in good faith to proceed with negotiation of a definitive written Lease agreement with respect to leasing the Premises upon the economic terms and conditions as set forth in this letter. Unless such Lease is entered into, neither Tenant nor Landlord shall be under any obligation to the other, irrespective of this letter and irrespective of any negotiation, agreement or understanding heretofore or hereafter existing between Tenant and Landlord, it being understood that in reference to the Lease Premises, no contractual relationship shall exist between Tenant and Landlord unless and until the Lease shall have been fully executed. Texas Law requires [redacted] to disclose that it is representing the Landlord in the marketing of this property.

# Landlord Leases

Let's look at some non-TR documents

- We will be looking at key pages only
- We'll learn about commonly used Exhibits
- We'll see some serious mistakes in real leases
- We'll learn about "other" taxes your client is responsible for paying.

STANDARD BUSINESS LEASE AGREEMENT

THIS LEASE AGREEMENT, ("Lease") dated \_\_\_\_\_, 2013, is made and entered into by and between Investors, LLC, a Delaware limited liability company, hereinafter referred to as "Landlord", and Ministries, a Texas nonprofit corporation, hereinafter referred to as "Tenant".

WITNESSETH:

SECTION 1. BASIC PROVISIONS AND TERMS USED HEREIN

- 1. A. "Landlord": Delaware limited liability company
- B. Notice Address of Landlord:
- C. "Tenant":  
D/B/A:  
State of Incorporation: Texas
- D. Notice Address of Tenant: Leased Premises  
Secondary: None
- E. "Business Park" the total property as shown on the attached Exhibit "A". The term Business Park includes other improvements constructed on the Business Park.
- F. "Leased Premises": Approximately 5,795 square feet constituting part of the Business Park. The Leased address as: \_\_\_\_\_ (south end of building 1), Houston, Texas 77099
- G. "Lease Term":

*Mish Guillory*

"Base Rent":	Month 1-3:	\$0.00 per month
	Months 4-24	\$3,800.00 per month
	Months 25-36	\$3,900.00 per month
	Months 37-48	\$4,000.00 per month
	Months 49-60	\$4,100.00 per month

"Commencement Date": December 1, 2013. Promptly after the determination of the Commencement Date, Landlord and Tenant shall enter into a commencement date letter agreement in the form attached hereto as Exhibit D. If Tenant fails to execute the commencement date letter agreement within fifteen (15) days of Landlord's delivery of the commencement date letter agreement, the information set forth in such letter provided by Landlord shall be deemed to be agreed and correct.

"Termination Date": the last day of November 30, 2018.

"Base Rent":	Month 1-3:	\$0.00 per month
	Months 4-24	\$3,800.00 per month
	Months 25-36	\$3,900.00 per month
	Months 37-48	\$4,000.00 per month
	Months 49-60	\$4,100.00 per month

- I. "Additional Rent":  
In addition to the Base Rent, Tenant shall pay the Actual Operating Expense (as defined below) escrow payments in the amount of \$1,450.00 per month, subject to reconciliation as provided in this Lease. Notwithstanding any term or provision to the contrary herein, Tenant shall not be required to pay its proportionate share of Actual Operating Expenses for the months of December, 2013, January 2014 or February 2014.
- J. Prepaid Rent and Security Deposit: Upon Lease execution Tenant shall pay Landlord \$5,250.00 for the Base Rent and Additional Rent for March, 2014 (month 4 of the Lease Term), along with a Security Deposit in the amount of \$5,550.00, for a total of \$10,800.00 due upon Lease execution.
- K. Permitted Use: Church services and related general office use, but for no other use or purpose.
- L. Guarantor: \_\_\_\_\_ individuals, jointly and severally
- M. The following provisions attached hereto as Exhibits are hereby made a part of this Lease.

- Exhibit "A" - Legal Description
- Exhibit "B" - Floor Plan of Leased Premises
- Exhibit "C" - Rules and Regulations
- Exhibit "D" - Commencement Letter
- Exhibit "E" - Continuing Personal Lease Guaranty

# Standard Business Lease

## Let's Look at The Rent Schedule

- It's a 60-month lease. **How long is that in years?**
- The Tenant gets \_\_\_\_\_ months of free rent?
- How much actual rent does that net the Landlord?
- It's **common** to see free rent periods **added** to the term – the Tenant gets what they want and the Landlord gets what she wants.
- Free rent may NOT include NNN!!!

# Typical Business Lease

<u>Months</u>	<u>Per Sq. Ft.</u>	<u>Monthly</u>
Beginning month 1 through month 4	\$6.00	\$ 5,025.00*
Beginning month 5 through month 6	\$6.00	\$ 5,025.00
Beginning month 7 through month 8	\$6.00	\$ 5,025.00*
Beginning month 9 through month 9	\$6.00	\$ 5,025.00
Beginning month 10 through month 10	\$6.00	\$ 5,025.00*
Beginning month 11 through month 32	\$6.00	\$ 5,025.00
Beginning month 33 through month 56	\$7.80	\$ 6,532.50
Beginning month 57 through month 67	\$8.25	\$ 6,909.37

**What's WRONG Here?**



(ii) sixty (60) days after the final execution of this Lease by both Landlord and Tenant.

"Lease Term": Commencing on the Commencement Date and continuing for **sixty seven (67) months** after the Commencement Date, plus any renewal options exercised by Tenant in accordance with this Lease; provided that if the Commencement Date is a date other than the first (1<sup>st</sup>) day of a calendar month, the Lease Term shall be extended for said number of years and months in addition to the remainder of the calendar month in which the Commencement Date occurs.

"Minimum Guaranteed Rental": shall be as follows during the respective months of the Lease Term:

<u>Months</u>	<u>Per Sq. Ft.</u>	<u>Monthly</u>
Beginning month 1 through month 4	\$6.00	\$ 5,025.00*
Beginning month 5 through month 6	\$6.00	\$ 5,025.00
Beginning month 7 through month 8	\$6.00	\$ 5,025.00*
Beginning month 9 through month 9	\$6.00	\$ 5,025.00
Beginning month 10 through month 10	\$6.00	\$ 5,025.00*
Beginning month 11 through month 32	\$6.00	\$ 5,025.00
Beginning month 33 through month 56	\$7.80	\$ 6,532.50
Beginning month 57 through month 67	\$8.25	\$ 6,909.37

If the Commencement Date does not occur on the first day of a calendar month, then "month 1" in the above table shall commence on the Commencement Date and shall end at the conclusion of the last calendar day of the next succeeding calendar month (for example, if the Commencement Date is February 10th, then "month 1" in the above chart would begin on February 10th and would end upon the conclusion of business on March 31st). And in such event the Minimum Guaranteed Rental for "month 1" shall be increased proportionately with the additional number of days attributable to such period.

\*Tenant's obligation to pay Minimum Guaranteed Rental shall be conditionally abated during the periods noted above of the Lease Term; provided, however, the abatement herein provided is conditioned upon Tenant's full and timely performance of all of its obligations under the Lease. If at any time during the Lease Term an event of default by Tenant occurs past any applicable cure period(s), then such abatement shall immediately become void, and Tenant shall promptly pay to Landlord, in addition to all other amounts due to Landlord under this Lease, the full amount of all payments herein abated. Notwithstanding the foregoing sentence, any other sums due to Landlord under this Lease shall be due and owing during the Lease Term.

- (n) Percentage Rental rate: N/A
- (o) Common Area Maintenance Charge: Estimated for 2012 to be \$ \_\_\_\_\_ .00
- (p) Prepaid Rental: N/A
- (q) Security Deposit: \$3,000 being due and payable upon the commencement of Month 6 of the Lease Term, and being subject to applicable provisions of Section 23.9 and Article XXVII of this Lease.
- (r) Permitted Use: The Demised Premises are to be used and occupied only and for no purpose other than religious services, together with social and recreational purposes in connection with Tenant's religious services. Tenant will not, and will not allow others, to occupy or use the Demised Premises or any part thereof for any purposes other than as specified in this subsection, nor for any purpose deemed unlawful, disreputable, or extra hazardous, on account of fire or other casualty. Landlord shall exercise no control over, and is not responsible for, the operations of Tenant's facility, including staffing, curriculum decisions, and the like.

## Seriously, What's the Point?

- Take a glance at this section of the lease. Something is amiss here. **What do you see?**
- Plus, can anyone decipher the language in the lavender area?
- There's a lesson in this!

Tenant acknowledges that the above specification of a "permitted use" means only that Landlord has no objection to the specified use and does not include any representation or warranty by Landlord as to whether or not such specified use complies with applicable laws and/or requires special governmental permits. In this regard, Tenant acknowledges that this Section 1.1(r) is subject to Sections 3.1 and 10.9 of this Lease.

(s) "Base Year": 2010

(t) Parking Spaces: 10 parking spaces (see Section 7.2 below).

1.2 Intentionally omitted.

## ARTICLE II

### GRANTING CLAUSE

2.1 Landlord leases the Demised Premises to Tenant upon the terms and conditions set forth in this Lease.

2.2 Tenant currently occupies and leases certain other premises located in the Business Center, known as 15403 Vantage Parkway, Suite 315, Houston, Texas. Concurrently with the Commencement Date of this Lease, but no later than sixty (60) days after the final execution of this Lease by both Landlord and Tenant, Tenant shall vacate said premises in such a manner as provided under the current lease agreement for said premises. Until such time, the lease agreement pursuant to which Tenant leases said premises shall continue in full force and effect without any change in terms or other conditions.

## ARTICLE III

### DELIVERY OF PREMISES; RELOCATION OF PREMISES

3.1 Except to the extent modified by Landlord's express assumption of construction obligations, if any, in Exhibit "B" attached to this Lease, the Demised Premises is being leased "AS IS," with Tenant accepting all defects, if any; and Landlord makes no warranty of any kind, express or implied, with respect to the Demised Premises (without limitation, Landlord makes no warranty as to the habitability, fitness or suitability of the Demised Premises for a particular purpose nor as to the absence of any toxic or otherwise hazardous substances). This Section 3.1 is subject to any contrary requirements under applicable law; however, in this regard, Tenant acknowledges that it has been given the opportunity to inspect the Demised Premises and to have qualified experts inspect the Demised Premises prior to the execution of this Lease.

3.2 If this Lease is executed before the Demised Premises becomes vacant, or if any present tenant or occupant of the Demised Premises holds over and Landlord cannot acquire possession of the Demised Premises prior to the Commencement Date of this Lease, as above defined, Landlord shall not be deemed to be in default under this Lease; and in such event, Tenant agrees to accept possession of the Demised Premises at such time as Landlord is able to turn over possession of the same to Tenant. If Landlord utilizes the provisions of this Section 3.2, the Commencement Date (and Lease Term) shall be extended day-for-day for each day during which Landlord is unable to turn over possession of the Demised Premises to Tenant.

3.3 In the event Landlord determines it necessary to utilize the Demised Premises for other purposes during the Lease Term, Tenant agrees to relocate to other space owned by Landlord and located within the Business Center, provided such other space is of equal or larger size than the Demised Premises. Landlord shall give Tenant at least thirty (30) days' written notice of any such opportunity to relocate, and Tenant shall have an additional 30 days to agree to such relocation. If Tenant fails to respond within 30 days after notice by Landlord, then that silence shall be deemed a rejection of the offer to relocate. If Tenant elects to relocate, Landlord shall pay all reasonable out-of-pocket expenses of any such relocation, including the expenses of moving and reconstruction of all Tenant-furnished and Landlord-furnished

# Typical Business Lease

## Let's Look Around the Page

- There are LOTS of things on this page that we've discussed throughout class.
- The Base Year is listed as \_\_\_\_\_
- There is a properly omitted paragraph.
- The "parking situation" is a saga to-be-continued! (In Paragraph 7.2)
- What is the point of Paragraph 3.1? (Hint: It's two little words!)
- What's the point of Paragraph 3.3?



improvements, together with the costs of reprinting a reasonable supply of stationery and announcements depicting Tenant's new address. In the event of such relocation, this Lease shall continue in full force and effect without any change in the terms or other conditions, but with the new location substituted for the old location set forth in Section 1.1(j) of this Lease.

#### ARTICLE IV

##### MINIMUM GUARANTEED RENTAL

4.1 Tenant shall pay to Landlord Minimum Guaranteed Rental in monthly installments in the amount(s) specified in Section 1.1(m) of this Lease. The first (1<sup>st</sup>) such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first (1<sup>st</sup>) day of each calendar month during the Lease Term. The only exception to the payment procedure stated in the previous two (2) sentences is as follows: If the Commencement Date is a date other than the first (1<sup>st</sup>) calendar day of a calendar month, then (i) on the date of execution of this Lease, Tenant shall pay the amount specified in Section 1.1(p) of this Lease, and (ii) on the first (1<sup>st</sup>) day of the calendar month which immediately follows the month in which the Commencement Date of this Lease occurs, a prorated portion of the monthly Minimum Guaranteed Rental, based upon the number of days remaining in the calendar month during which the Commencement Date occurs (i.e. the number of days in such calendar month on and after the Commencement Date), shall be due and payable in arrears as Minimum Guaranteed Rental for the balance of the calendar month during which the Commencement Date occurs.

#### ARTICLE V

##### SALES REPORTS, RECORDS AND FINANCIAL STATEMENTS

5.1 Intentionally omitted.

5.2 Tenant shall keep in the Demised Premises or at its corporate offices a permanent, accurate set of books and records of all sales of merchandise and revenue derived from business conducted in the Demised Premises, and all supporting records such as tax reports and banking records. Tenant must retain and preserve all such books and records for at least twenty-four (24) months after the end of the calendar year to which they relate, and such books and records shall be subject to inspection and audit by Landlord and its agents at all reasonable times upon at least 5 business days' prior notice to Tenant.

5.3 Landlord may have its manager(s), auditor(s) or other agent(s) make a special audit of all books and records, wherever located, pertaining to sales and revenue made in or from the Demised Premises upon at least 5 business days' prior notice to Tenant. If Tenant's statements are found to be incorrect to an extent of more than two percent (2%) over the figures submitted by Tenant, or if Tenant has failed to deliver statements, Tenant shall pay for such audit. In addition, Tenant shall promptly pay to Landlord any deficiency which is established by such audit.

5.4 In addition to the statements and reports prescribed above, Tenant shall, within ten (10) business days after a request from Landlord, deliver to Landlord such financial statements as are reasonably required by Landlord to verify the net worth of Tenant and any guarantor of Tenant's obligations under this Lease. Moreover, Tenant further agrees to cooperate with any request by Landlord for Tenant's written permission or other cooperation in connection with Landlord's obtaining a credit report or similar information regarding Tenant and/or Tenant's principals from third-party sources. Landlord's request for the additional information prescribed in this Section 5.4 will be limited either to a potential sale or financing of all or a portion of the Business Center or to Landlord's concern as to the continuing financial ability of Tenant to perform its obligations under this Lease.

5.5 Landlord shall use its best efforts to keep confidential all sales reports, records and financial statements supplied by Tenant; however, Landlord shall have the right to reveal such information to mortgagees, prospective

## Typical Business Lease

### Beware the Details Let's look at Article V...

- **5.1 – Again, if you delete a paragraph, this is a good way to do it. This way, all other clauses aren't inconveniently and confusingly renumbered.**
- **5.2 – Tenant is giving the Landlord the right to audit their “books” for 24 months. WHY?**
- **5.3 – If there is a discrepancy, the Tenant will pay for the audit as well as any deficiency.**
- **5.4 – Tenant is granting the Landlord permission to obtain a credit report. WHY? Plus, the Landlord can verify a Tenant's or Guarantor's net worth and must deliver financial docs. Is this a good idea?**
- **5.5 – The Landlord can share the documents!**

purchasers and prospective mortgagees (and their respective agents) and to Landlord's managers, development and administrative officers and personnel, and consultants; provided, that Landlord obtains commercially reasonable assurances of confidentiality and non-disclosure from any such third parties.

## ARTICLE VI

### TENANT'S RESPONSIBILITY FOR TAXES, OTHER REAL ESTATE CHARGES AND INSURANCE EXPENSES

★ 6.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the Demised Premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Demised Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is liable hereunder.

6.2 Tenant shall also be liable for "Tenant's proportionate share" (as defined below) of all "real estate charges" (as defined below) and "insurance expenses" (as defined below) related to the Business Center or Landlord's ownership of the Business Center, excluding, however, any real estate charges or insurance expenses that are paid by a party or parties other than Landlord, Landlord's agent(s) or Landlord's property manager, with all payments for which Tenant is liable pursuant to this Article VI to be considered for all purposes to be additional Rentals under this Lease. Tenant's obligations under this Section 6.2 shall be prorated during any partial year (i.e., the first year and the last year of the Lease Term). "Tenant's proportionate share" shall be a fraction, the numerator of which is the total floor area (all of which is deemed "leasable") in the Demised Premises and the denominator of which is the total leasable floor area of all buildings in the Business Center at the time when the respective charge was incurred, excluding, however, areas for which any such real estate charges or insurance expenses, or both, are paid by a party or parties other than Landlord. "Real estate charges" shall include ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents, any franchise or gross margins tax, any tax or charge for governmental services (such as street maintenance or fire protection), any tax or charge which is implemented after the date of this Lease and is reasonably determined by Landlord to have been assessed in lieu of the whole or part of any of such above-described "real estate charges," and any reasonable and necessary fees paid by Landlord to consultants, attorneys and other professionals who monitor, negotiate and/or contest any or all above-described real estate charges; provided, however, that "real estate charges" shall not be deemed to include any estate, inheritance or general income tax. "Insurance expenses" shall include all premiums and other expenses incurred by Landlord for liability insurance and property insurance (including, to the extent deemed appropriate by Landlord, environmental coverage, pollution coverage, mold coverage, terrorism coverage and whatever other special coverages and/or endorsements that Landlord, in Landlord's sole but commercially reasonable discretion, may from time to time consider appropriate).

6.3 Landlord may, if Landlord deems it appropriate to do so, attempt to obtain separate assessments for Tenant's obligations pursuant to Section 6.1 and, with respect to Section 6.2, for such of the "real estate charges" as are readily susceptible of separate assessment; and if Landlord does attempt to so obtain separate assessments, Tenant shall take reasonable steps to cooperate with Landlord's efforts. To the extent of a separate assessment, Tenant agrees to pay such assessment before it becomes delinquent and to keep the Demised Premises free from any lien or attachment; moreover, as to all periods of time during the Lease Term, this covenant of Tenant shall survive the termination of this Lease. With regard to the calendar year during which the Lease Term expires, Landlord may bill Tenant when the charges become payable.

★ 6.4 Tenant agrees that, as between Tenant and Landlord, Landlord has the sole and absolute right to contest taxes levied against the Demised Premises and the Business Center (other than taxes levied directly against Tenant's personal property within the Demised Premises). Accordingly, Tenant, to the maximum extent permitted by law, irrevocably waives any and all rights that Tenant may have to receive from Landlord a copy of notices received by Landlord regarding the appraisal or reappraisal, for tax purposes, of all or any portion of the Demised Premises or the Business Center (including, without limitation, any rights set forth in §41.413 of the Texas Property Tax Code, as such section may be amended and/or supplemented from time to time). Additionally, Tenant, to the maximum extent permitted

## Back to the Taxes

In Paragraph 6.1 it discusses a Tenant's responsibility for paying PERSONAL PROPERTY TAXES. This has NOTHING to do with taxes paid to the Landlord in NNN.

### Directly from the Harris County Appraisal District:

"For taxation purposes, your property is classified as either **real property** (land, buildings, and other items attached to land) or **personal property** (items that can be owned but are not attached to land). Tangible personal property that you use to **produce income** is subject to taxation in the state of Texas. Tangible personal property includes such things as furniture, fixtures, inventories, equipment, motor vehicles, vessels, and aircraft. These items are typically referred to as business personal property.

"SB 340, passed in the 2003 regular legislative session, took effect January 1, 2004. If you own a business, or have tangible personal property used for the production of income, you are required by this law to report personal property that is used in business.

<http://hcad.org/hcad-resources/hcad-industrial-personal-property/hcad-business-personal-property/>

by law, hereby assigns to Landlord any and all rights of Tenant to protest or appeal any governmental appraisal or reappraisal of the value of all or any portion of the Demised Premises or the Business Center (including, without limitation, any rights set forth in §41.413 and §42.015 of the Texas Property Tax Code, as such sections may be amended and/or supplemented from time to time). To the maximum extent permitted by law, Tenant agrees that it will not protest or appeal any such appraisal or reappraisal before a governmental taxing authority without the express written authorization of Landlord.



**ARTICLE VII**  
**COMMON AREA**

7.1 The term "Common Area" is defined for all purposes of this Lease as that part of the Business Center intended for the common use of all tenants and their employees, customers and other invitees, including among other facilities (as such may be applicable to the Business Center), parking area, private streets and alleys, landscaping, curbs, loading area, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, public toilets, and the like but excluding (i) space in buildings (now or hereafter existing) designated for rental for commercial purposes, as the same may exist from time to time, (ii) streets and alleys maintained by a public authority, (iii) areas within the Business Center which may from time to time not be owned by Landlord (unless subject to a cross-access agreement benefiting the area which includes the Demised Premises), and (iv) areas leased to a single-purpose user (such as a bank or a fast-food restaurant) where access is restricted. In addition, although the roof(s) of the building(s) in the Business Center are not literally part of the Common Area, they will be deemed to be so included for purposes of (A) Landlord's ability to prescribe rules and regulations regarding same and (B) common area maintenance reimbursements. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identities, locations and types of any buildings, signs or other improvements in the Business Center; provided however, such changes do not materially and adversely affect the flow of traffic to the Demised Premises and do not materially and adversely affect the visibility of Tenant's signage. For example, and without limiting the generality of the immediately preceding sentence, Landlord may from time to time allow vending carts, kiosks and/or other sales or entertainment displays and/or special promotional events in the Common Area; moreover, Landlord may substitute for any parking area other areas reasonably accessible to the tenants of the Business Center, which areas may be elevated, surface or underground.

7.2 Tenant and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its subtenants, licensees and concessionaires, shall have the nonexclusive right to use the Common Area (excluding roofs of buildings in the Business Center) as constituted from time to time, such use to be in common with Landlord, other tenants in the Business Center and other persons permitted by the Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe. For example, and without limiting the generality of Landlord's ability to establish rules and regulations governing all aspects of the Common Area, Tenant agrees as follows:



(a) Landlord shall designate ten (10) parking spaces, and may further designate specific parking areas, for Tenant and Tenant's employees. Tenant shall comply with Landlord's designations and shall institute procedures to ensure that its employees also comply. In this regard, Tenant also agrees that if requested by Landlord, Tenant shall promptly furnish Landlord with state automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees; moreover, in such event Tenant shall thereafter notify Landlord of any changes within five (5) days after such changes occur. Tenant authorizes Landlord to cause any car which is not parked in the designated parking areas to be towed from the Business Center; moreover, Tenant shall on demand from Landlord reimburse Landlord for the cost thereof, and Tenant shall in all respects indemnify and hold Landlord harmless with respect to such towing by Landlord.

(b) Tenant shall not solicit business within the Common Area, and Tenant shall not take any action which would interfere with the rights of other persons to use the Common Area.

## Typical Business Lease

### Giant Clauses, Lots of Words

Paragraph 7.1 is simply a definition of "Common Area." Whoo!

Let's revisit Paragraph 7.2 – we're back to Parking again. The first line say: "Landlord shall designate ten (10) parking spaces, and may further designate specific parking areas, for Tenant and Tenant's employees."

So, what's the catch???



(c) Landlord may temporarily close any part of the Common Area for such periods of time as may be reasonably necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights.

(d) With regard to the roof(s) of the building(s) in the Business Center, use of the roof(s) is reserved to Landlord or, with regard to any tenant demonstrating to Landlord's satisfaction both a need to use same (such as in connection with HVAC repair or replacement, as contemplated in Section 11.3 of this Lease) and procedures to assure that no damage is done to the roof(s) (such as proper reattachment and sealing in connection with HVAC repair or replacement), to such tenant after it has received Landlord's consent.

7.3 Landlord shall be responsible for the operation, management and maintenance of the Common Area, the manner of maintenance and the expenditures therefor to be in the sole commercially reasonable discretion of Landlord, generally in keeping with the best practices of similar business centers within the same geographical area as the Business Center. Without limiting the generality of the immediately preceding sentence, Tenant acknowledges that **LANDLORD MAKES NO REPRESENTATION OR WARRANTY REGARDING WHETHER OR NOT LANDLORD WILL PROVIDE SECURITY SERVICES, OR IF SO, WHAT FORM OF SECURITY SERVICES WILL BE PROVIDED.**

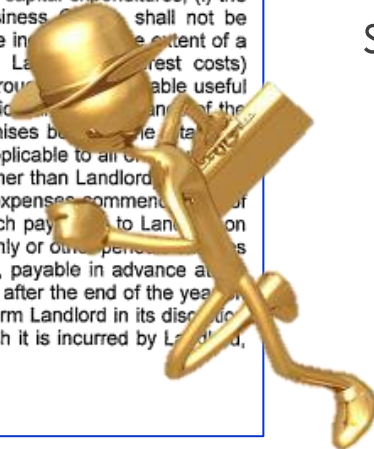
7.4 In addition to the Rentals and other charges prescribed in this Lease, Tenant shall pay to Landlord, as additional Rentals required pursuant to this Lease, Tenant's proportionate share of the cost of Landlord's management, operation and maintenance of the Common Area, as well as other reasonable and necessary commonly shared costs, which may be incurred by Landlord in the exercise of its reasonable commercial discretion, including, among other costs, reasonable and necessary costs of the following: lighting, painting, cleaning, policing, inspecting, repairing, replacing Common Area elements; heating and cooling of any enclosed area or promenade (i.e., if such exist in the Business Center); trash removal (i.e., except as paid by Tenant or otherwise administered pursuant to Section 10.6 of this Lease); insect and pest treatments and eradication (whether in the Common Area or for the building(s) of the Business Center); security (if and to the extent Landlord provides security); advertising and other marketing to promote the Business Center; environmental protection improvements or devices and health and safety improvements and devices which may be required by applicable laws (including the maintenance, repair and replacement of same); seasonal decorations, seasonal lighting and/or other promotional activities (if any); charges and assessments paid by Landlord pursuant to any reciprocal easement or comparable document affecting the Business Center; a reasonable portion of the management fees which Landlord pays for the management of the Business Center; an allowance for Landlord's overhead costs, in the amount of ten percent (10%) of the total of all other Common Area costs; and the reasonable and necessary cost of any insurance for which Landlord is not reimbursed pursuant to Section 6.2 and such insurance is in connection with Landlord's operation of the Business Center. In addition, although the roof(s), sewer and water lines servicing the Business Center, fire-protection systems and devices, if any (such as sprinkler systems, if any), and exterior surfaces of the building(s) in the Business Center are not literally part of the Common Area, Landlord and Tenant agree that all reasonable and necessary costs incurred by Landlord for all sewer and water lines and other equipment (including maintenance, repair and replacement of same), for fire-protection equipment and devices (including maintenance, repair and replacement of same), for exterior painting and for roof maintenance, repair and replacement shall be included as Common Area maintenance expenses pursuant to this Section 7.4, to the extent not specifically allocated to Tenant under this Lease nor to another tenant pursuant to its lease. The charges contemplated in this Section 7.4, however, shall not include any expenses paid or reimbursed by Tenant pursuant to Article VI of this Lease. With regard to capital expenditures, (i) the original investment in capital improvements, i.e., upon the initial construction of the Business Center, shall not be included, and (ii) capital improvements made either before or during the Lease Term shall be included to the extent of a reasonable depreciation or amortization (including interest accruals commensurate with Landlord's interest costs) beginning with the date on which payment for the improvement was made and continuing through the useful life of the improvement. The proportionate share to be paid by Tenant of the cost of operation and maintenance of the Common Area shall be computed on the ratio that the total floor area of the Demised Premises bears to the total floor area of all leasable buildings within the Business Center (excluding however, to the extent applicable to all buildings of the Common Area maintenance costs, areas owned or maintained by a party or parties other than Landlord). Landlord's reimbursement obligations under this Section 7.4 shall be prorated based upon Landlord's expenses commencing with the Base Year and each subsequent entire calendar year thereafter. Tenant shall make such payments to Landlord on demand at intervals not more frequently than monthly. Landlord may at its option make monthly or other periodic payments based upon the estimated annual cost of operation and maintenance of the Common Area, payable in advance at the same time each month as Minimum Guaranteed Rental is payable, but subject to adjustment after the end of the year on the basis of the actual cost for such year. In addition, if either before or during the Lease Term Landlord in its discretion elects to amortize a non-capital expense instead of charging it in full during the year in which it is incurred by Landlord,

# Typical Business Lease

## Your Safety, Your Responsibility

Paragraph 7.3 states: "Tenant acknowledges that Landlord makes no representation or warranty regarding whether or not Landlord will provide security services, or if so, what form of security services will be provided."

Paragraph 7.4 is quite simply an explanation and calculation of pro rata share. Again, whooooo!!!



then such expense shall be amortized (with interest accruals commensurate with Landlord's interest costs) beginning with the date on which payment for the expense was made and continuing through the amortization period. With regard to the charges contemplated in this Section 7.4, Tenant further agrees that it may contest such charges within thirty (30) days after Landlord's delivery to Tenant of an assessment and/or statement related to any such charges. Tenant may also request further detail regarding a specific charge.



**ARTICLE VIII  
MERCHANTS' ASSOCIATION**

8.1 In the event that Landlord shall organize or sponsor a merchants' association composed of tenants in the Business Center, Tenant agrees that it will join and maintain membership in such association and will comply with such other reasonable bylaws, rules and regulations as may be adopted from time to time by the association. In addition, if the association charges its member dues or assessments, or both, and designates Landlord to collect same, then Tenant shall, as additional Rentals pursuant to this Lease, pay such dues and/or assessments as may be reasonably determined from time to time by the association; provided, however, that the method of charging dues and/or assessments must reasonably account for the relative benefit which the association's activities will bring to the respective tenants obligated to pay such dues and/or assessments.



**ARTICLE IX  
PROVISIONS APPLICABLE TO ALL RENTALS**

Under the terms of this Lease, the term "Rental" or "Rentals" shall be deemed to include Minimum Guaranteed Rentals (Sections 1.1(m) and 4.1 of this Lease), Tenant's required payments for real estate charges and insurance (Article VI of this Lease), Tenant's Common Area charges (Section 7.4 of this Lease) and if applicable, Tenant's required payments for merchants' association dues and/or a promotional fund (Article VIII of this Lease). Landlord and Tenant agree that each provision of this Lease for determining Rentals adequately and sufficiently describes to Tenant the method by which such Rental is to be computed.

9.2 Rentals shall be payable to Landlord at Landlord's address specified in Section 1.1(b) of this Lease, or at any other address which Landlord may subsequently designate in a written notice to Tenant.

9.3 The parties agree that each monthly installment of Minimum Guaranteed Rental and Tenant's monthly payments for real estate charges and insurance expenses, Common Area charges and, if applicable, merchants' association dues and/or a promotional fund, are payable on or before the first (1<sup>st</sup>) day of each calendar month. Any such payment of Rental that is not received on or before the first (1<sup>st</sup>) day of a particular calendar month shall be deemed past-due. The parties further agree that each annual adjustment payment from Tenant (such as the payments prescribed in Section 7.4) is payable within thirty (30) days after Landlord's written statement requesting such payment from Tenant; and any such prescribed payment that is not so received shall be deemed past-due. All Rentals shall be due and payable without offset or deduction of any nature. In the event any Rental that is payable pursuant to this Lease is not actually received by Landlord within ten (10) days after its due date for any reason whatsoever, or if any Rental payment is by check that is returned for insufficient funds, then in addition to the past due amount, Tenant shall pay to Landlord one of the following (the choice to be at the sole option of Landlord unless one of the choices is improper under applicable law, in which event the other alternative will automatically be deemed to have been selected): (a) a late charge in an amount equal to five percent (5%) of the Rental then due, in order to compensate Landlord for its administrative and other overhead expenses; or (b) interest on the Rental then due at the rate of ten percent (10%), such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the Rental due date and terminating with the date on which Tenant makes full payment of all amounts owing to Landlord at the time of said payment. Any such late charge or interest payment shall be payable as additional Rental under this Lease and shall be payable immediately on demand. If any Rental is paid by check that is returned for insufficient funds, Tenant shall

# Typical Business Lease

## It's Time to Celebrate!

Paragraph 8.1 is may be more commonly seen in a mall or open-air retail shopping center.

Merchant's Associations will sometimes decide what kinds of marketing events they will coordinate and participate in:

- Trick or Treating
- Scavenger Hunts for Prizes
- Extended Holiday Hours



XVIII and Article XIX of this Lease. In the event that the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give prompt written notice thereof to Landlord, and Landlord shall have a reasonable time after receipt by Landlord of such written notice in which to make such repairs.

11.2 Tenant shall keep the Demised Premises in good, clean, and habitable condition and shall at its sole cost and expense make all needed repairs and replacements, including replacement of cracked or broken glass, except for repairs and replacements required to be made by Landlord under the provisions of Section 11.1, Article XVIII and Article XIX. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include all items which are expressly excluded from Landlord's responsibility in Section 11.1 above, as well as the maintenance, repair, and replacement of all of the following facilities and equipment, to the extent located within the Demised Premises or on the exterior of the building and servicing the Demised Premises: lighting, heating, air-conditioning, fire-protection sprinkler systems, plumbing, kitchen exhaust systems, grease traps and roof grease protection systems (e.g., for restaurant operations), and other electrical, mechanical, and electromotive installation, equipment, and fixtures. In addition, Tenant's responsibilities shall also include all repairs in ducts, conduits, pipes, and wiring, and any sewer stoppage located in, under, and above the Demised Premises, regardless of when or how the defect or other cause for repair or replacement occurred or became apparent. Tenant shall give Landlord prompt written notice of any need for repair or replacement as contemplated in this Section 11.2, especially if such repair or replacement is necessary for maintaining health and safety (such as the fire-protection sprinkler system). If any repairs required to be made by Tenant hereunder are not made within ten (10) days after written notice delivered to Tenant by Landlord (or less than ten [10] days, in the case of a situation that by its nature requires an immediate response or a response within less than ten [10] days), Landlord may at its option make such repairs without liability to Tenant for any loss or damage that may result to its stock or business by reason of such repairs, so long as performed non-negligently; and Tenant shall pay to Landlord upon demand, as additional Rental hereunder, the cost of such repairs plus one of the following (the choice to be at the sole option of Landlord unless one of the choices is improper under applicable law, in which event the other alternative will automatically be deemed to have been selected): (a) a one-time charge in an amount equal to ten percent (10%) of the cost of repairs, in order to compensate Landlord for its administrative and other overhead expenses; or (b) interest at the rate of ten percent (10%), such interest to accrue continuously from the date of payment by Landlord until repayment by Tenant. At the expiration of this Lease, Tenant shall surrender the Demised Premises broom-clean and in good condition, excepting reasonable wear and tear and losses required to be restored by Landlord in Section 11.1, Article XVIII, and Article XIX of this Lease; and without limiting the generality of the foregoing, Tenant agrees that it shall repair all damages that may be caused to the Demised Premises by the removal of Tenant's property; moreover, Tenant shall remove all of Tenant's signage (including, to the extent applicable to Tenant, all fascia, store front, pylon, and directory signage) and repair all damage caused by the installation, operation, or removal of same.

11.3 Tenant shall be responsible for performing adequate maintenance on the heating, ventilation, and air-conditioning equipment ("HVAC") for the Demised Premises; moreover, for any restaurant operation, Tenant's responsibility pursuant to this Section 11.3 shall also include kitchen exhaust systems ("Restaurant Exhaust System"). Without limiting the generality of the immediately preceding sentence: (a) Tenant shall replace all filters in the HVAC system as recommended by the manufacturer or as otherwise reasonably necessary; (b) Tenant shall have the entire heating, ventilation, and air-conditioning equipment inspected by a qualified or licensed HVAC contractor at least once a year; and (c) for any restaurant operation, Tenant shall have the Restaurant Exhaust System cleaned and inspected by a qualified specialist at least quarter-annually, with the invoice or report of same (the "RES Report") to be made available to Landlord. The inspection specified in item (b) immediately above shall be completed between [blank] and [blank] of each year, and Tenant shall provide Landlord a copy of the invoice or report (the "HVAC Inspection Report") showing evidence that the system has been inspected. If by June 15th of [blank] Tenant has not provided a copy of the HVAC Inspection Report from Tenant, Landlord may, at its option, have the HVAC equipment inspected by a company to be determined by Landlord, which shall be at Tenant's expense. Tenant's responsibilities pursuant to this Section 11.3 shall be limited to Section 7.2(d) of this Lease.

## Typical Business Lease

### Who Repairs What???

Paragraph 11.2 is merely a portion of the items the Tenant is responsible for maintaining or repairing.

Among other items, the Tenant must maintain: lighting, heating, air conditioning, cracked or broken glass, grease traps and more.

Paragraph 11.3 goes on to specify the Tenant's obligations when it comes to the HVAC.

(a) property insurance causing Tenant's leasehold improvements and business personal property (sometimes also referred to as "fixtures and contents") in the Demised Premises to be insured under a special form of property coverage, sometimes referred to as "all-risk" coverage (such as the form identified as CP 10 30, and any successor form, published by Insurance Services Office, Inc.), such insurance coverage (i) to be in the full amount of the replacement cost of all insured property, (ii) to include coverage for the loss of business income, in an amount not less than 75% of Tenant's estimated gross annual income at the Demised Premises, and (iii) to contain no deductible or self-insured retention in excess of \$50,000.00; and

(b) commercial general liability insurance insuring both Landlord and Tenant against all claims, demands, or actions for bodily injury, property damage, personal and advertising injury, and medical payments arising out of or in connection with Tenant's use or occupancy of the Demised Premises, or by the condition of the Demised Premises, including environmental coverage and/or dramshop (i.e., alcohol sales) coverage if appropriate, with a limit of not less than \$2,000,000.00 per occurrence (and no offset for occurrences on property other than the Demised Premises); and

(c) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the State of Texas, together with employer's liability insurance in an amount not less than \$1,000,000.00.

All insurance procured and maintained by Tenant shall be written by insurance companies satisfactory to Landlord that are licensed to do business in the state in which the Business Center is located with a general policyholder's rating of not less than A- and a financial rating of not less than Class VIII, as rated in the most current edition of Best's Key Rating Guide. With the exception of the insurance prescribed in subsection (c) above, Landlord and Landlord's agent or manager shall be named as additional insureds under all insurance maintained by Tenant; moreover, Tenant shall have a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days prior to cancellation of such insurance. The required insurance policies, or in the alternative duly executed certificates of insurance on ACORD Form 28, or any successor to such form, shall be promptly delivered to Landlord, and renewals thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms. Tenant shall comply with the foregoing requirements relating to insurance, after providing 10 days' notice to Tenant, Landlord may obtain such insurance and Tenant shall pay to Landlord on demand as additional Rental hereunder the premium cost thereof.

16.3 For any violation of this Article XVI which continues after Landlord has given Tenant ten (10) days' notice to cure same, Landlord shall have the right to assess Tenant with a \$500.00 charge. Tenant shall compensate Landlord for its administrative and other overhead expenses in connection with this charge. Tenant hereby acknowledges and agrees that any such charge shall be payable as additional Rental. This charge shall be payable immediately on demand. In addition, Tenant further acknowledges and agrees that this Section 16.3 is cumulative with, and does not supersede or reduce in any way, Landlord's rights under Section XXIII of this Lease.



★ **ARTICLE XVII**

**WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION**

17.1 Unless caused by Landlord or Landlord's agents or employees, Landlord and Landlord's agents and employees shall not be liable to Tenant or to Tenant's employees, agents, or visitors, or to any other person whomsoever, for any injury to person or damage to property caused by the Demised Premises or other portions of the Business Center becoming out of repair, or by defect or failure of any structural element of the Demised Premises, or of any equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity, or oil leaking, escaping, or flowing into the Demised Premises (except where due to Landlord's grossly negligent failure to make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Landlord of the need for such repairs), nor shall Landlord be liable to Tenant, or to Tenant's employees, agents, or visitors, or to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the

# Typical Business Lease

## Mutual Waiver of Subrogation

First and foremost, hire an attorney if you're not confident about this paragraph and what it says in the lease you're negotiating.

These clauses are designed by the Landlord to protect them from liability claims potentially made by the Tenant, its employees and even its visitors as a result of injury that occurs on the property due to some defect or structural failure.

The burden of proof of alleged **GROSS NEGLIGENCE** or **WILLFUL WRONGDOING** by the Landlord lies with the Tenant, in this lease.



Business Center or of any other persons whomsoever, excepting only employees and agents of Landlord. Unless injury or damage is caused by a grossly negligent act or omission of Landlord or its agents or employees, Landlord shall not be held responsible in any way on account of any construction, repair, or reconstruction (including widening) of any private or public roadways, walkways or utility lines. **THE WAIVER CONTAINED IN THIS SECTION 17.1 APPLIES EVEN TO A LOSS OR INJURY WHICH IS ATTRIBUTABLE TO THE NEGLIGENCE OF LANDLORD, ITS PROPERTY MANAGER(S) OR ANYONE ELSE FOR WHOM LANDLORD MAY BE RESPONSIBLE; HOWEVER, THIS WAIVER SHALL NOT APPLY TO LANDLORD'S WILLFUL WRONGDOING OR GROSS NEGLIGENCE.**

17.2 Landlord shall not be liable to Tenant or to Tenant's employees, agents, or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Demised Premises or the Common Area caused by the negligence or misconduct of Tenant, its employees, subtenants, licensees, or concessionaires, or of any other person entering the Business Center under express or implied invitation of Tenant (with the exception of customers in the Common Area), or arising out of the use of the Demised Premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations under this Lease; and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any loss, expense, or claim arising out of such damage or injury.

17.3 Landlord and Tenant each hereby waives and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property caused by a casualty that is insurable under the special form of property coverage (sometimes referred to as "all-risk" coverage); **provided, however**, that this mutual waiver and release shall be applicable only with respect to a loss or damage occurring during the time when property insurance policies, which are readily available in the marketplace, contain a clause or permit an endorsement to the effect that any such release and waiver shall not adversely affect or impair the policy or the right of the insured party to receive proceeds under the policy; **provided, further**, that this release and waiver shall not be applicable to the portion of any damage that is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. **THE RELEASE AND WAIVER CONTAINED IN THIS SECTION 17.3 APPLIES EVEN TO A LOSS WHICH IS ATTRIBUTABLE TO THE NEGLIGENCE OF THE PARTY HEREBY RELEASED (AND WITH RESPECT TO LANDLORD, ITS PROPERTY MANAGER(S), OR ANYONE ELSE FOR WHOM LANDLORD OR TENANT MAY BE RESPONSIBLE); HOWEVER, THIS RELEASE AND WAIVER SHALL NOT APPLY TO A PARTY'S WILLFUL WRONGDOING OR GROSS NEGLIGENCE.** The release and waiver specified in this Section 17.3 is cumulative with any releases or exculpations which may be contained in other provisions of this Lease.

ARTICLE XVIII

**DAMAGES BY CASUALTY**

18.1 Tenant shall give prompt written notice to Landlord of any damage caused to the Demised Premises by fire or other casualty.

★ 18.2 In the event that the Demised Premises shall be damaged or destroyed by fire or any other casualty insurable under special form (sometimes referred to as "all-risk") property insurance, and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Demised Premises. In the event (a) the building in which the Demised Premises is located is destroyed or substantially damaged by a casualty not covered by Landlord's insurance, (b) such building is destroyed or rendered untenable to an extent in excess of fifty percent (50%) of the first floor area by a casualty covered by Landlord's insurance, or (c) the holder of a mortgage, deed of trust, or other lien on such building at the time of the casualty elects, pursuant to such mortgage, deed of trust, or other lien, to require the use of all or part of Landlord's insurance proceeds in satisfaction of all or part of the indebtedness secured by the mortgage, deed of trust, or other lien, then Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Demised Premises. Landlord shall give written notice to Tenant of such election within sixty (60) days after the occurrence of such casualty and if it elects to rebuild and repair, shall proceed to do so with reasonable diligence and at its sole cost and expense.

## Typical Business Lease

### When Buildings Are Destroyed

Paragraphs 18.1 and 18.2 discuss what will occur if the building is destroyed by some casualty event like a fire, Hurricane Harvey or some other Act of God.

Be cautious of phrases like:

- reasonable diligence
- time is of the essence
- utmost urgency

It's best to get specific!





## The Exhibits Behind The Signature Page

**Exhibit A** – Be sure a Site Plan is always included and it indicates your client's exact location(s).

**Exhibit B** – This is typically the page that states the suite will be taken “As Is” or will list any make-ready work by the Landlord such as installing a hot water heater or carpet replacement and painting.

★ **Exhibit C** – This Landlord can use this clause to notify the Tenant of what NOT to do on his or her property.

**Exhibit D** – This landlord uses this exhibit to define the rules of renewal. It might also be used for Exclusivity or Right of First Refusal, for example.

**Exhibit E** – Sign Criteria is spelled out here for this landlord's tenants.

**Exhibit F** – Rules & Regulations are often on this page. Be on the look out for a sentence that says the rules can change at any time without notice.



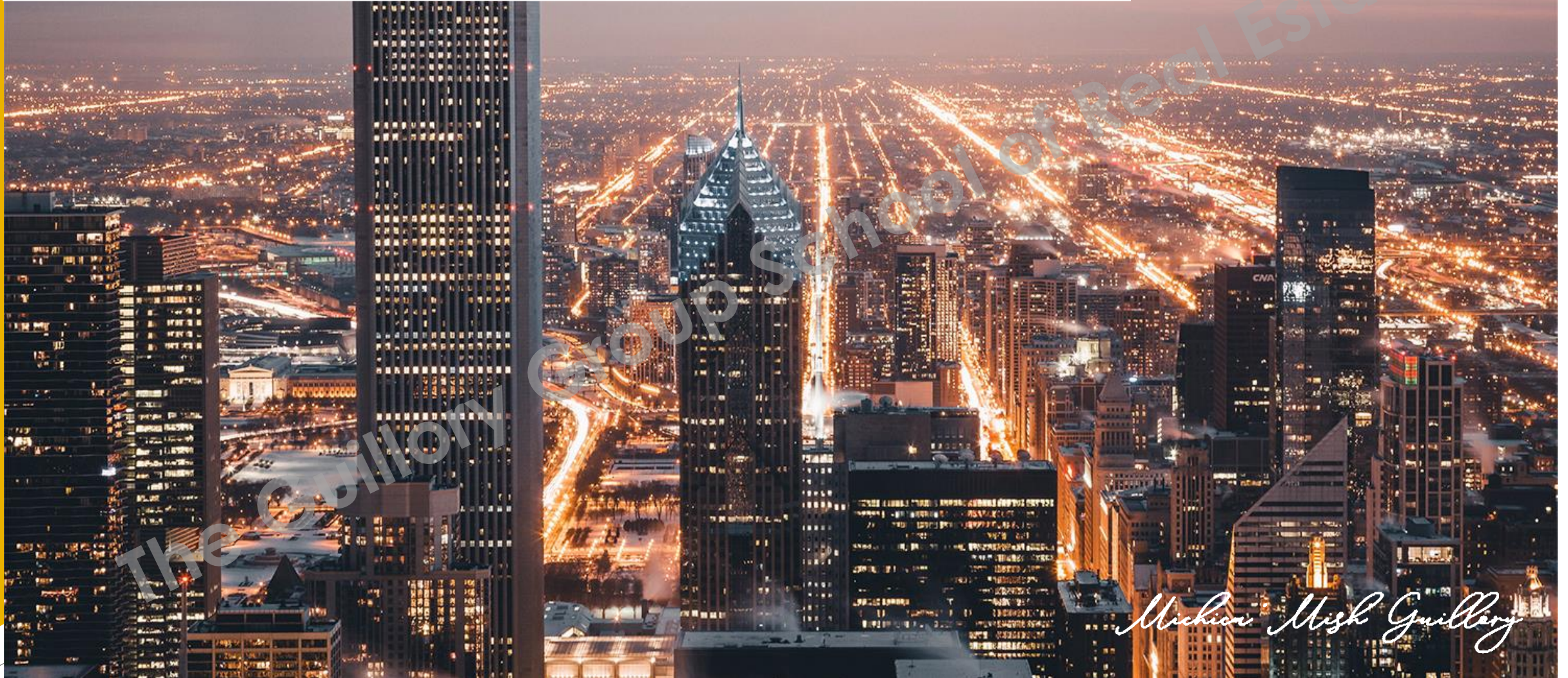
Mish  
Guillory

# Hey! Where Do I Find Clients?

Guess what? You may already have them!

- Your nail technician
- Your barber or beautician
- Your dry cleaner
- Your day spa operator
- Your dentist
- Your non-franchise restaurant owner
- Or anyone still running a business in their home that needs more space

# Final Thoughts and Questions?



*Michèle Misk Gullory*



*Mish  
Guillory*

## Thank You!



Michica "Mish" Guillory - GRI, ITI, TRLP



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[www.TheGuilloryGroup.com](http://www.TheGuilloryGroup.com)  
[www.CommercialLeasing101.com](http://www.CommercialLeasing101.com)

# The Rules of the Room

We all must agree before we can move ahead

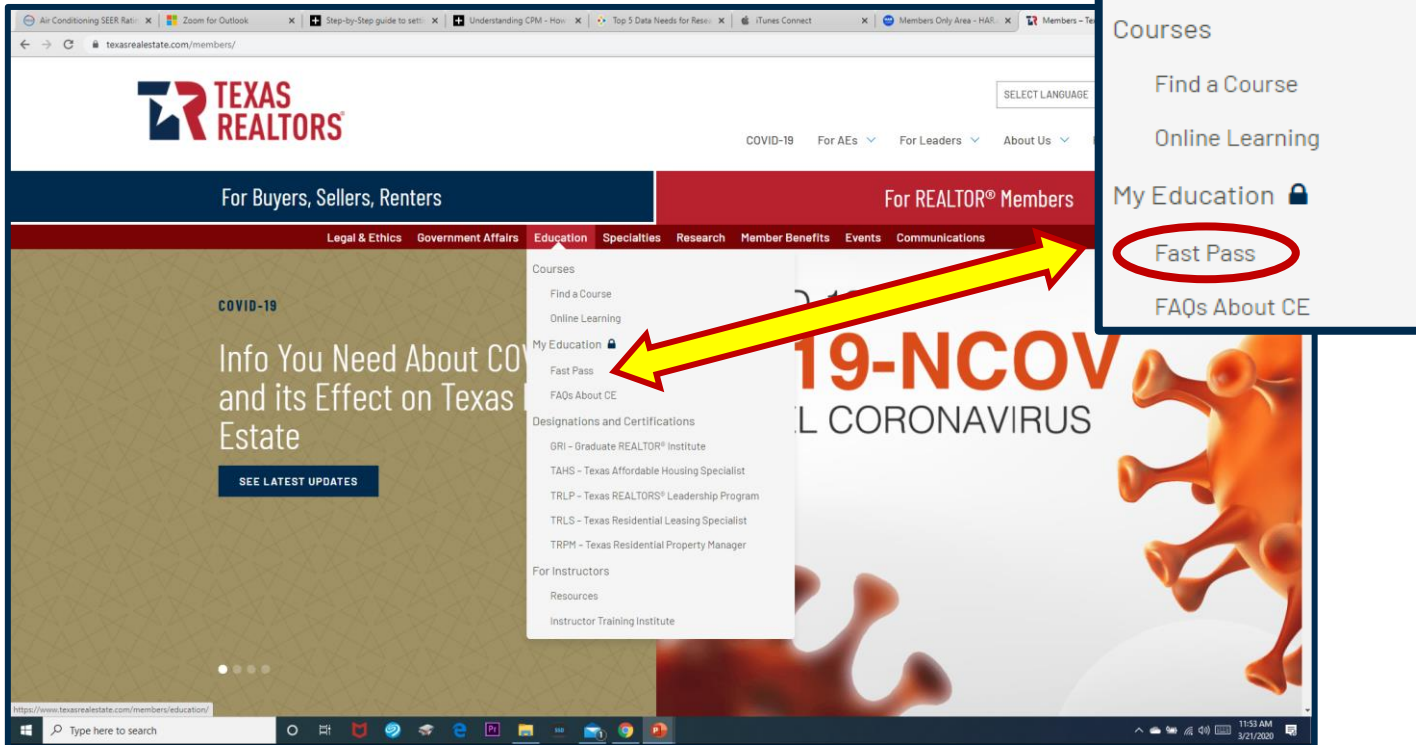
- Cell phones on SILENT, not vibrate. **NO stepping out for calls.**
- You are allowed to text, but NOT excessively
- You are allowed to use your devices for class
- No “Story-telling,” please. For example,  
“**I had a client whoooo....**”
- We will break once every hour
- You must have **FUN**...we’re doing the wave later!

# How to Get Your FastPass

## In Just 2 Simple Steps!

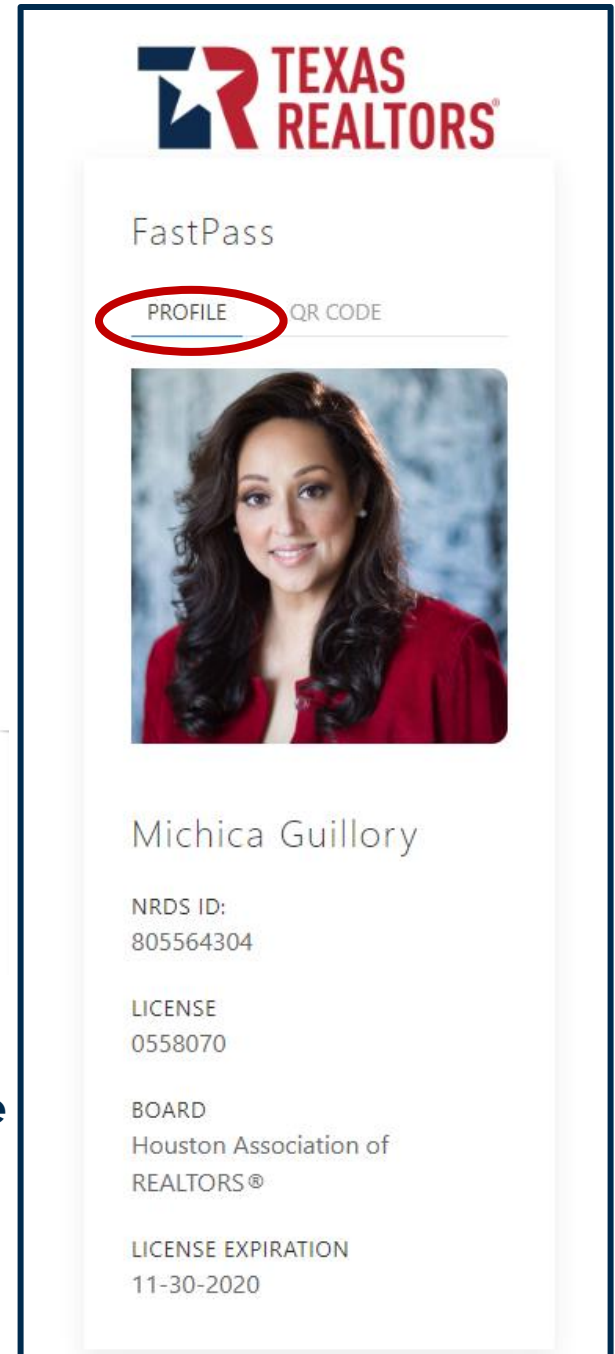
1  
STEP

Login to your Texas REALTORS® account at [www.TexasRealEstate.com](http://www.TexasRealEstate.com). Using the **For REALTOR® Members** section of the website, click the **Education** tab and select 'FastPass' from the dropdown menu.



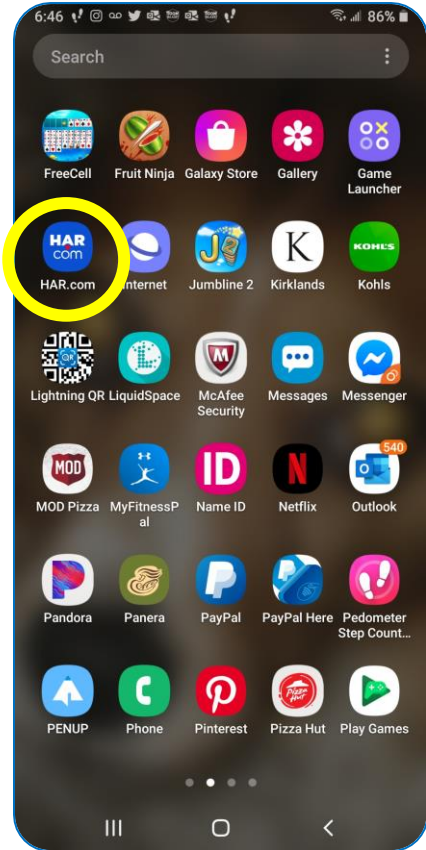
2  
STEP

Be sure to select **'Profile'** so that your actual image will be visible. Then print it out or use your cell phone to show your FastPass for class.

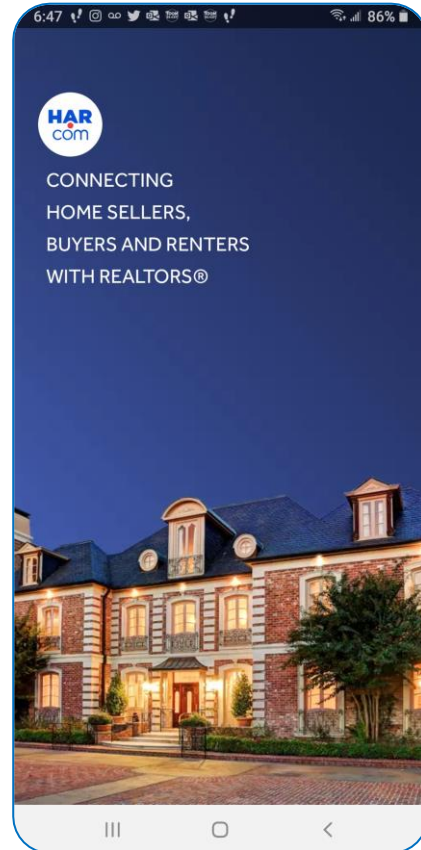


# Use the HAR App to Scan In & Out of Class

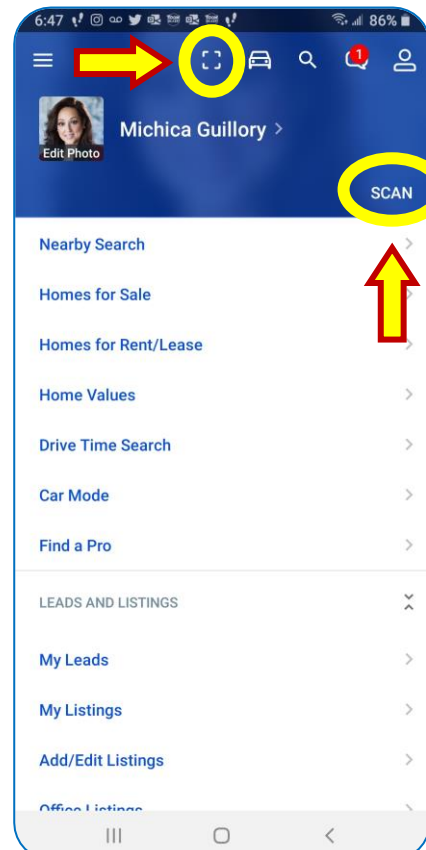
1. Get the HAR App on Your Cell Phone



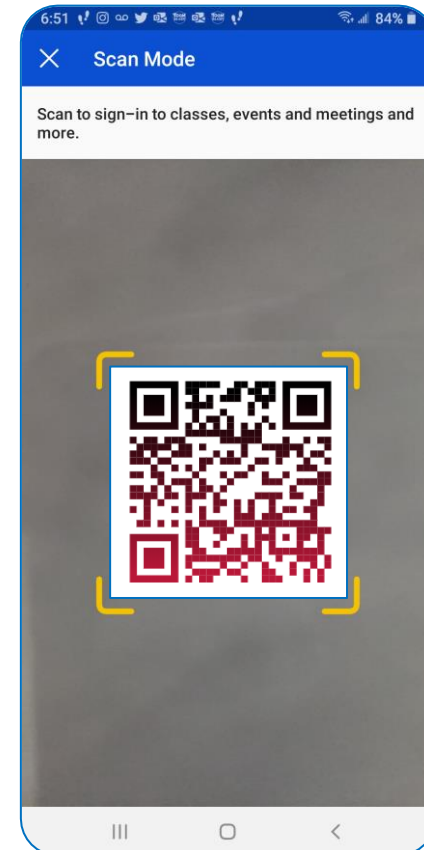
2. Touch the Icon & Open the App



3. Touch the Word 'Scan' or the Viewer



4. Hold Your Phone Over the Picture of the QR Code



*Michica Guillory*



**DON'T  
FORGET!**

**THIS IS YOUR NEW  
CLASSROOM!**

**TREAT IT JUST AS YOU  
WOULD A LIVE CLASSROOM!**







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# About Us

- **Michica Guillory, GRI, ITI & TRLP**
  - Owner of The Guillory Group School of Real Estate
- **The Guillory Group School of Real Estate**
  - Today's Education Provider, #9998

**“Now, please introduce yourselves to us!”**



*Michica Mish Guillory*