

Lease User Guide

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The purpose of this User Guide is to explain the importance and meaning of certain terms and provisions of the accompanying form Lease. It is intended to help tenants understand the form Lease. As per the Disclaimer above, tenants should not rely on this User Guide and should always consult with an attorney before signing any lease.

Key Terms Defined

Abandon	When a tenant leaves its leased premises, with the intention of never again reclaiming its rights or interests in the leased premises.
Act of God	A severe and unpreventable event for which no human is responsible, such as an earthquake, flood, or tornado.
Additional Rent	Any amounts a tenant pays to the landlord under the lease other than Base Rent, such as Tenant’s Share of utilities and Operating Costs.
Allowance	A sum of money provided by a landlord to pay for a portion of the construction costs for a tenant’s initial “build out” to ready the premises at the beginning of a lease for a tenant’s use (sometimes referred to as a “tenant improvement allowance”).
Appurtenant Right	A right given to a tenant to be used in connection with its lease, but outside of the leased premises (e.g., parking or outdoor seating areas). Appurtenant rights may be exclusive to a tenant (e.g., storage areas), or shared with other tenants (e.g., lobbies, sidewalks, and other building common areas).
“As Is” Condition	The current condition of the premises as of the date the lease is signed (unless another date is specified), without any warranties or repair obligations by a landlord.
Assignment	When a tenant transfers all interests (i.e., rights and obligations) it has in a lease to another person or entity, who essentially steps into the shoes of the original tenant. As a result, the original tenant vacates the premises, and the “assignee” takes over the premises, as well as all payments and other responsibilities under the lease.
Base Rent; Minimum Base Rent; Percentage Rent	<p>“Base Rent” means the minimum amount a tenant pays for its use of the leased premises. Sometimes a lease has a set amount as its Base Rent, but retail/restaurant leases often require a tenant to pay whichever of the following is greater: (i) a set amount, known as “Minimum Base Rent,” or (ii) a percentage of the tenant’s gross sales from the leased premises, known as “Percentage Rent.” The tipping point when the tenant’s business is so profitable that the percentage of gross sales is greater than the Minimum Base Rent is sometimes called the “natural breakpoint”.</p> <p>Example: The lease calls for the tenant to pay the greater of: (i) Minimum Base Rent of \$50,000 annually, or (ii) Percentage Rent of 5% of tenant’s gross sales. If the tenant has \$1,000,000 in annual gross sales in a particular year, then 5% of those sales is \$50,000, equal to the Minimum Base Rent. Therefore, the natural breakpoint is \$1,000,000, and the tenant will only be required to pay Percentage Rent if its gross sales exceed \$1,000,000. In this example, if the tenant has \$1,200,000 in gross sales, then it pays 5% of \$1,200,000, or \$60,000 (the equivalent of the Minimum Base Rent + 5% of all sales over the natural breakpoint), as Base Rent for that year – but if it only has \$800,000 in gross sales, then the natural breakpoint is not reached, and tenant’s Base Rent will be the Minimum Base Rent of \$50,000.</p>

Commencement Date	<p>The date the term of a lease begins, and all respective rules, rights, and responsibilities commence.</p> <p>Sometimes, the “Commencement Date” and “Rent Commencement Date” are the same, but the Rent Commencement Date can also be a date that is after the Commencement Date based on the business agreement between a landlord and tenant.</p>
Common Area	A space or amenity outside of the leased premises that is shared with other tenants of a building and usually maintained by the landlord, such as common stairwells, elevators, loading docks, lobbies, and parking areas.
Damages	<p>If a party breaches a contract, the “damages” are the amounts claimed by the other party as compensation for the breach. There are many types of damages, including:</p> <p><u>Actual Damages</u>: The value of what was wrongfully done by the breaching party, such as unpaid rent. These are also known as compensatory damages.</p> <p><u>Indirect Damages</u>: Losses resulting from non-immediate or indirect consequences of breach, such as loss of expected profits. These are also known as special, consequential, or incidental damages.</p> <p><u>Liquidated Damages</u>: An amount set out in the contract in advance, which the parties agree is a reasonable estimate of what the damages would be as a result of a party’s breach of the lease.</p>
Eminent Domain	The government’s power to seize private property for a public purpose, in exchange for just compensation. This is sometimes referred to as a “taking” (see below).
Encumbrance	A claim against an asset or right to an asset by an entity that is not the asset’s owner. Common encumbrances against real estate include leases, mortgages, liens (i.e., a monetary claim levied against property to secure its payment), easements (i.e., a right to use the property for a particular purpose), and restrictions. If an encumbrance is recorded with the Registry of Deeds, it becomes an “encumbrance of record”.
Estoppel	A legal document confirming the status of a lease, such as its term, current rent, and past or current defaults. The party signing an estoppel is certifying that the information in the estoppel is true and accurate and is prevented from disputing that information in the future.
Extension Term	Some leases include a right (a/k/a an “option”) to extend the initial term of the lease. If an Extension Term is included, then the lease will describe the conditions that must be met for tenant to exercise its Extension Right, and any provisions of the lease that will differ from the initial term (e.g., the duration of and Rent payable during the Extension Term).
Fixture	A piece of property that is physically attached to land or a building (e.g., built-in shelving, sinks, and sconces). Once installed, fixtures become part of the Premises and are deemed the landlord’s property, unless the lease states otherwise.
Force Majeure	A force beyond a party’s control, such as accidents, pandemics, war, earthquakes and other so called “Acts of God”. A lease may state that certain delays, such as a landlord’s late completion of the initial build out of the Premises, are excused if the delay is due to Force Majeure.
Good and Workmanlike Manner	The quality of work that should be performed by someone with the necessary skill, competency, knowledge, and experience to practice a particular trade or occupation.

Gross Sales	The amount of the actual sales made by the tenant in operating its business. The lease will more thoroughly describe what Gross Sales includes (e.g., delivery and take-out orders) and excludes (e.g., meals to employees during work hours).
Hard Costs	Costs directly related to physical construction, such as materials and labor, utility systems and finishes, and other installations. Hard costs do not include costs of planning, permitting, and financing, such as fees for permits or for architects, engineers, or other professionals (see “soft costs” below). Sometimes hard costs exclude a tenant’s furniture, fixtures, and equipment.
Indemnify	To reimburse a party for damages or losses they have incurred (or will incur) due to a particular occurrence. For example, tenants will indemnify landlords for injuries caused by tenant’s negligence.
Jurisdiction	The power of a court or other governmental body to exercise authority over a specific geographic area or subject matter. For example, a city’s building department has jurisdiction over the issuance of all building permits for real estate in that city.
Letter of Intent (LOI)	A short, written document that describes the basic terms of a lease, such as rent, length of term, permitted uses, and condition of the space (a/k/a “lease proposal” or “term sheet”). LOIs are often signed by the landlord and tenant before proceeding to a lease and are typically not binding agreements.
License	A right to do something that would otherwise be unlawful without express permission. For example, a license from a governmental authority is required to sell alcohol at a restaurant, and a license from a landlord is required to use the landlord’s private parking facilities.
Material	Of sufficient significance so as to impact a party’s expectations or decision-making.
Mechanics’ Lien	A legal document that secures the right of a contractor or material supplier to be paid for their work or materials for a construction project.
Negligence; Gross Negligence	<p>“Negligence” means failing to act as a reasonably prudent person would or to take reasonable care under the circumstances.</p> <p>“Gross negligence” means failing to use even slight care to avoid unreasonable risk of harm.</p>
Operating Costs	Sometimes referred to as “CAM” (i.e., common area maintenance), these are a landlord’s costs of operating a commercial building, which are reimbursed by its tenants. This may include costs specific to the Common Areas, such as maintenance, repairs, utilities, and snow removal, and may also include more general costs, such as landlord’s management fees and insurance premiums. Tenants of a commercial building should expect to pay a portion (i.e., “Tenant’s Share”) of the building’s Operating Costs, most often calculated based on the proportionate share of tenant’s premises relative to the overall square footage of the building.
Pari Passu Basis	<p>When an initial build out costs more than the Allowance provided by a landlord, a tenant may be required to pay the difference on a “pari passu basis.” This means landlord and tenant each pay a percentage of every bill, proportionate to its share of the total cost.</p> <p>Example: If a build out is expected to cost \$500,000 and the Allowance paid by the landlord is only \$400,000 (i.e., 80% of the total), then the tenant is responsible for the \$100,000 difference (i.e., 20% of the total). In this example, when each bill comes due, the landlord pays 80% and the tenant pays 20%. Furthermore, if there are additional expenses that shall be calculated and paid on a <i>pari passu basis</i>, these percentage would carry over and landlord would pay 80% and tenant 20% of all said expenses.</p>

Premises	The space a tenant is leasing from the landlord, for exclusive use by the tenant (as opposed to the Common Areas, which are shared with other tenants of the building).
Property	The entire property owned by the landlord, including the Premises, the rest of the building, the land the building is on, and any other improvements on that land like parking facilities.
Recapture	A recapture clause is a lease provision where, if a tenant asks the landlord for its permission to assign the lease or sublease the leased premises, then the landlord instead may take the premises (or the relevant portion of the premises) back from the tenant. Some leases allow the tenant to withdraw its request for the landlord's permission if the landlord chooses to recapture. The recapture clause in the lease will describe the specific conditions that trigger the landlord's recapture right, and whether the tenant has the right to withdraw its request.
Rent	The amounts to be paid by the tenant to the landlord, consisting of "Base Rent" and "Additional Rent" (see above).
Rent Abatement Period	A period of time during which no rent, or only a portion of rent, is due. For example, if there is a fire in the building that shuts down the tenant's business, then the lease may provide that no rent is due from the date of the fire until the tenant can reopen.
Rent Commencement Date	The Rent Commencement Date is the date when the tenant is required to start paying Base Rent and often times Additional Rent. Sometimes this is the same as the Commencement Date (see above). A tenant should take note of whether it will be responsible for utilities and Operating Costs beginning on the Commencement Date or the Rent Commencement Date.
Rentable Square Feet	The usable area of the leased premises (i.e., excluding non-usable space like mechanical rooms), plus Tenant's Share of the building's usable Common Areas. Commercial leases typically calculate "Tenant's Share" based on its rentable square footage, and not the square footage of the leased premises only (the latter of which would be the "useable" square footage (vs. the "rentable")).
Revoke	To terminate or cancel something.
Self-executing	Immediately effective without additional actions or steps.
Setoff	A remedy that allows a tenant to reduce its rent by the amount a tenant claims it is owed by the landlord. This is also known as an offset, or rent withholding. Tenants should not expect to have setoff rights, as they are prohibited in most commercial leases. Tenants should review leases carefully to determine if a setoff is permitted before paying any less than what is billed by landlord.
Soft Costs	Costs associated with the planning, permitting, and financing of a construction project and its other intangibles, such as fees for architects, engineers, lawyers, and other professionals, permit fees, construction insurance, and marketing, advertising, and other pre-opening costs. Soft costs do not include costs directly related to physical construction, such as materials and labor (see "hard costs" above).
Subordinate	To make a right a lower priority than, or subject to, another right – regardless of which right was created first. A "Subordination, Non-Disturbance, and Attornment Agreement" (a/k/a "SNDA") is a legal document that makes the lease subordinate to the landlord's loan documents. An SNDA should be reviewed carefully by an attorney before signing.
Subrogation	The legal right to "step into the shoes" of another person or entity after assuming its debts or other obligations. This is relevant in the context of a lease for insurance purposes. Often, both landlords and tenants waive their rights of subrogation against one another, meaning

	<p>the landlord’s insurer may not pursue the tenant for a loss the tenant caused, and neither can the tenant’s insurer pursue the landlord for a loss the landlord was responsible for. Waiver of subrogation typically is understood as beneficial to both landlords and tenants.</p> <p>Example: A tenant causes a fire in its kitchen, resulting in damage to the structure of the building. The building exterior is covered by the landlord’s property insurance policy, and the insurer pays out the claim to the landlord. If subrogation has <u>not</u> been waived, the insurer can sue the tenant for the amount of the claim, because the tenant caused the loss. If subrogation is waived, then the insurer has no rights of recovery against the tenant.</p>
Sublease	When a tenant leases all or part of its leased premises to another person or entity, meaning the tenant is acting as a “sublandlord” or “sublessor”, and the new occupant is its “subtenant” or “sublessee”. A sublease can be for any length of time, up to the expiration date of tenant’s lease. A sublease does not cancel or affect the lease or the tenant’s lease obligations, including payment of rent.
Taking	The government’s power to seize private property for a public purpose, in exchange for just compensation. This is also known as “eminent domain” (see above).
Tenant-at-Sufferance	A tenant that remains in the premises without permission after the lease term ends (a/k/a a “holdover tenant”). The tenant has no right to remain, and the landlord can evict the tenant at any time. The lease may state that a tenant-at-sufferance is subject to the terms of the lease, and often requires the tenant to pay a higher monthly rent payment.
Tenant’s Share	A percentage, calculated by dividing the rentable square footage of the tenant’s leased premises by the total rentable square footage of the entire building. Tenant’s Share is used to calculate how much Tenant owes for its “share” of the building’s general overhead, such as real estate taxes and other Operating Costs.
Term	The duration of a lease, which begins on the Commencement Date and ends on the Expiration Date.
Time is of the essence	This statement emphasizes that the parties must act quickly to complete their obligations on time.
Triple Net	In a “triple net lease” (sometimes written as “NNN”), the tenant pays to the landlord not only its Base Rent, but also any other expenses for the operation of the leased premises, such as real estate taxes, insurance premiums, and maintenance costs. Commercial leases are often triple net (as opposed to “gross”, where the Base Rent is set high enough to cover all of those costs, and the tenant will not receive monthly bills from the landlord for expenses other than its Base Rent).
Waste	Damage to property which reduces its value. For example, if a tenant leaves its windows open during a storm, the resulting water damage would be considered waste. Leases typically state that a tenant shall not permit any waste.

Sections of the Lease Explained

Section 1: Definitions	<p>This introductory section provides a snapshot of the Lease’s key business terms. If you have a factual question about the basic terms of the Lease, this section is a good starting point.</p> <p>If you and the Landlord signed an LOI, then many of the deal terms agreed to in the LOI will be stated in this section.</p>
Section 2: Lease of Premises	<p>This section describes exactly what you are leasing from the Landlord, and any other rights you will have to use space at the Property (such as an outdoor seating area or parking rights, if any).</p> <p>You should confirm this section describes every part of the Property you expect to be leasing and review the floor plan of the Premises that the Landlord will insert as Exhibit A-1.</p>
Section 3: Term	<p>This section describes the length of time you will have the right to use and occupy the Premises, known as the Term.</p> <p>In some leases, the Landlord may allow the tenant to extend the term for an additional period after the expiration of the initial term. If the Landlord has agreed to an Extension Term in your Lease, then it will be described in this section and discussed in detail in Exhibit B (see below). You should review Exhibit B, and in particular, take note of your deadline to exercise the Extension Right, as that deadline may be much earlier than you would otherwise anticipate.</p>
Section 4: Rent	<p>This section describes your Rent obligations, including when payments are due, and how to make those payments.</p> <p>“Rent” means anything you are required to pay the Landlord under the Lease, including Base Rent and Additional Rent (see key definitions above). In short, “Base Rent” means the minimum amount due each month for your use of the Premises, and “Additional Rent” means any other amounts you are required to pay, such as Tenant’s Share of Operating Costs (e.g., real estate taxes, insurance premiums, and Landlord’s building maintenance costs).</p> <p>Retail/restaurant leases often require a tenant to pay “Percentage Rent” as part of its Base Rent, i.e., a specified percentage of its gross sales from the Premises. A detailed explanation of this concept, including an example, is included in the key definitions above. Exhibit C to the Lease more specifically describes what is included and excluded from “Gross Sales” when calculating Percentage Rent. If you and the Landlord have negotiated a Percentage Rent deal, then it is important to verify the percentage stated in Section 4(a).</p>
Section 5: Use of Premises	<p>This section describes how you may (and may not) use the Premises. You should review this section carefully to confirm that all the ways you are planning to use the Premises now and in the future are allowed and are not prohibited. For example, if you are planning to have a restaurant with occasional live music performances, this must be addressed now. It is best not to make this section too specific, so that your business has some freedom to grow and evolve in ways you may not anticipate.</p>

	<p>This section also clarifies that you are responsible for getting any licenses, permits, and approvals you may need to operate your business at the Premises.</p>
Section 6: Condition	<p>This section describes the condition the Premises must be in at the beginning of the Term, which is the Landlord’s responsibility.</p> <p>If there will be an initial “build out” to transform the Premises into the space you need before you can open for business, then that process will be described in Exhibit D (see below). This work can be done by either a landlord or a tenant, and in either case a landlord may contribute an “Allowance” to help pay for a portion of the cost, with the balance paid by the tenant. If the Landlord is doing this work, then it is called “Landlord’s Work” and the Premises will be delivered to you with Landlord’s Work already done. If you are doing this work, then it is called “Tenant’s Work” and the Premises will be delivered to you as is.</p> <p>Early in the negotiation process, you should carefully inspect the condition of the entire Premises, including its utilities and systems, and identify what repairs or other work is needed or may be needed in the future. It is important that you understand who will be responsible for that work (see Section 7 below).</p>
Section 7: Maintenance	<p>This section describes who is responsible for specific types of maintenance and repairs and whether you must sign a service contract with a professional to perform any of your required maintenance. This information is also shown in a quick reference table in Exhibit E, which you should review closely.</p> <p>Before signing any service contracts, you must get the Landlord’s approval of that particular professional. If the Landlord has not inserted their list of pre-approved professionals as Exhibit E-1, you can ask them to informally give you some recommendations.</p> <p>Typically, a tenant is responsible for keeping its premises clean and sanitary and for repairs and replacements to items within the Premises (e.g., sinks, toilets, lighting, and other fixtures). When a system is <i>partially</i> within the Premises but <i>extends outside</i> the Premises, such as a building-wide HVAC system or electrical wiring, typically a tenant is responsible only for the portion that exclusively serves the tenant’s Premises. The details of your arrangement will be described in this section.</p> <p>Many items that are the Landlord’s responsibility will be partially charged back to you as part of Operating Costs (you will be responsible for Tenant’s Share of those costs).</p>
Section 8: Utilities and Services	<p>This section describes how utilities within the Premises, such as electricity, water, and HVAC, are measured and charged. You will be responsible for the cost of the utilities used within the Premises.</p> <p>Some of your utility bills may come from the utility company, and some may come from the Landlord. This will depend on whether the utility is “directly metered”, meaning that the Premises has its own utility meter and the exact amount that is used within the Premises can be measured. In those cases, you will be responsible for setting up an account with the utility company and paying them directly. However, if a utility meter covers multiple spaces (i.e., measuring utility usage in more than just the Premises), you are responsible</p>

	<p>only for your fair share of what that meter measures, which the Landlord will determine and bill to you.</p> <p>Subsection 8(c) will describe the hours during which the Landlord will heat/cool the Premises using the building’s HVAC system. If you need heating or cooling outside of these times, you must make a request (this section will state how many days in advance of when that extra service is needed).</p> <p>This section also describes the services that the Landlord is responsible for, such as cleaning/trash removal from the Common Areas. This information is also shown in a quick reference table in Exhibit E.</p> <p>Lastly, many commercial leases contain an “interruption” provision. These typically protect the landlord by stating it is not responsible for the consequences of an interruption in the utilities or services it is responsible for providing, even if the tenant is not able to operate its business. For example, if the city stops the water supply to the building for a full day to repair the water main, then you will not get a credit for that day’s Rent or get reimbursed for that day’s lost profits.</p>
<p>Section 9: Taxes and Operating Costs</p>	<p>This section describes what real estate taxes and other costs of operating the Property you will be responsible for. “Taxes” and “Operating Costs” are described in the key definitions above, and defined in detail in Exhibit H to the Lease.</p> <p>You will pay Tenant’s Share of the Taxes and Operating Expenses for each calendar year. Because the Landlord won’t know what this amount is until the year is over, your monthly payments will be based on the Landlord’s estimate. After the end of the year, the Landlord will compare its actual costs to its estimate of the costs. If the estimate was too high and you overpaid your share of the actual expenses, then you will get a refund (your overpayment will be credited against your next Rent payment). If the estimate was too low, then the Landlord will bill you for the difference.</p> <p>You will also be responsible for 100% of any taxes attributable to your personal property.</p> <p>This section also contains a “gross up” provision, which keeps your monthly Operating Costs more predictable and enables a landlord to recover all of its “variable” costs (i.e., costs that are only incurred because of the tenants’ use), even if there are vacancies in the building. For example, say the landlord pays for a janitorial service to clean all of its tenants’ bathrooms. When the building is 100% occupied, it costs \$20,000 per month, and the tenants collectively pay \$10,000. When the building is 50% vacant, the cost goes down to \$10,000, but since the tenants collectively lease only 50% of the building, they collectively pay only 50% of that cost – meaning the landlord unfairly pays \$5,000 to clean its tenants’ bathrooms. By “grossing up” this cost back to \$20,000 during the 50% vacancy period, the tenants pay 50% of that cost for a total of \$10,000 (i.e., the same amount they pay when there is 0% vacancy). Now, all of the landlord’s janitorial costs are covered, and the tenants’ monthly payments do not change based on the building’s occupancy rate. This concept only applies to variable costs, and not costs that are due regardless of vacancy, like salaries of the landlord’s building management personnel.</p>

<p>Section 10: Compliance with Laws</p>	<p>Under this section, you are responsible for your business' violation of any Applicable Laws, including the Americans with Disabilities Act. This means you need to obtain and pay for any required permits and approvals and must ensure your business does not violate any building codes, health codes, the ADA, and other laws. If you are notified of such a violation, you are responsible for making the required corrections.</p> <p>This is particularly important if you will be doing any alterations to the Premises, which should only be done in compliance with these laws (and with the Landlord's approval, if required under Section 12).</p>
<p>Section 11: Hazardous Materials</p>	<p>You may not dispose of or keep any hazardous materials at the Premises without the Landlord's approval. You should discuss with the Landlord whether any materials you use in your business operations are considered "hazardous materials".</p>
<p>Section 12: Alterations</p>	<p>Generally, tenants may not make alterations to the premises without a landlord's permission. This section describes the kinds of alterations you can make, whether the Landlord's permission is required, and the process for completing the alterations.</p> <p>Alterations become the Landlord's property once they are complete and must stay at the end of the Term, unless at the time the Landlord gave its permission to make the alteration they stated you must remove it at the end of the Term. If any of your alterations include installations you would like to keep after the end of the Term, you should discuss this with the Landlord in advance.</p>
<p>Section 13: Signage</p>	<p>You must get the Landlord's approval before installing any signs that are visible from outside the Premises. It will be your responsibility to remove those signs at the end of the Term.</p>
<p>Section 14: Assignment and Subletting</p>	<p>Assignment and Subletting provisions are extremely important in every commercial lease, as they give a tenant the ability, under certain circumstances, to have a third party step in if the tenant is experiencing financial difficulties or needs to change locations. If you would like to assign your lease or sublet your Premises, this section outlines the process.</p> <p>The Landlord's consent is likely required for an assignment or a sublease, and this section describes when that consent can be withheld. Some leases allow for "Permitted Transfers" without Landlord consent, typically to a tenant's affiliates and successors, and you should confirm if your lease includes this concept.</p> <p>You will be responsible for the Landlord's costs in reviewing a request to assign or sublet (which will include any attorneys' fees).</p> <p>If you make a profit on subletting the Premises, then you must pay half of that profit to the Landlord. For example, if you pay \$1,000 per month in rent under the Lease and your subtenant pays you \$1,100 per month in sublease rent, then you must pay the Landlord an extra \$50 each month. If you incurred costs in connection with the sublease, such as attorneys' and brokers' fees or made improvements to the Premises for the subtenant, then those costs are reimbursed from your sublease profits first before you must share the profits with the Landlord.</p>

	<p>Your lease may include Landlord’s right to “recapture” the Premises, i.e. if you request to assign or sublet, then the Landlord can terminate your lease (or sometimes just the portion of your Premises you asked to sublease). The general idea behind this right is that if you no longer need that space, the Landlord might prefer to take it back. If this concept is included in your lease, you should have a conversation with your Landlord about when and how it may be used.</p>
<p>Section 15: Subordination; Estoppel Certificate</p>	<p>The Subordination section provides that if the Landlord defaults on a loan and as a result, the bank forecloses on the Property, the Lease may be terminated if the bank chooses. In other words, the Lease is “subordinate” (inferior) to the loan. This is a typical requirement in commercial leases, but rarely becomes relevant because it is uncommon for a commercial landlord to default on its loans.</p> <p>You can ask the Landlord for an “SNDA” (subordination, non-disturbance, and attornment agreement), which will ensure the bank does not terminate your lease if they foreclose, but the Landlord or its lender may be unwilling to provide an SNDA, especially for smaller leases.</p> <p>An “estoppel certificate” is a certification of facts relating to the current state of the lease. It prevents the signing party from later disputing something stated in the certificate.</p> <p>It is extremely important that you confirm that all of the facts listed in an estoppel certificate are accurate. For example, if you are asked to sign an estoppel certificate that states “no security deposit was paid under this lease” but you did pay a security deposit, then you should revise the certificate to accurately identify the security deposit amount before signing.</p>
<p>Section 16: Landlord’s Reserved Rights</p>	<p>The Landlord retains certain rights within your Premises during the Term, including certain access, inspection, maintenance, repair, and alteration rights. You should review this section and discuss with your Landlord any concerns you may have about the rights they are retaining and whether those rights might impact your business.</p>
<p>Section 17: Casualty and Taking</p>	<p>This section describes your and the Landlord’s rights if the Premises or Property is damaged or destroyed (e.g., by fire, storm, flood, etc.) or is taken by the government by eminent domain. If you are not able to operate your business, then your rent may be “abated” (or waived) until the Landlord restores the damage. In certain circumstances, you may also have the right to terminate the lease.</p>
<p>Section 18: Insurance and Indemnity</p>	<p>This section and Exhibit J describe the insurance policies you are required to carry. You should give them to your insurance agent to confirm your coverage meets these requirements. The provider will give you a “Certificate of Insurance”, which you must give to the Landlord.</p> <p>This section also provides for your “indemnification” of the Landlord, meaning that you are responsible for claims and damages sustained at the Premises or relating to your breach of the lease or actions on the Property. This is typical in any commercial lease.</p> <p>Your lease also likely includes a waiver of subrogation clause. This means that after paying out an insurance claim, your and the Landlord’s insurance</p>

	<p>companies cannot sue the responsible party to recover the amount paid out. This is beneficial to both you and the Landlord.</p> <p>This section also notes that you are using the Premises at your own risk. This means, for example, if the pipes freeze and burst during a snowstorm, then the Landlord is not responsible for the resulting water damage unless otherwise specified in the lease.</p>
Section 19: Events of Default	<p>This section is crucial as it describes what qualifies as an “Event of Default” under the Lease, including if:</p> <ul style="list-style-type: none"> - You do not pay rent within 5 days after its due date; - You are in violation of any other provision of the Lease and do not correct this violation within 30 days (or up to 90 days if you started correcting the violation within 30 days and are working diligently); - You declare bankruptcy or a receiver is appointed to take charge of your assets; or - You abandon the Premises. <p>Each Event of Default has serious consequences which are described in Sections 20 and 21. You should do everything reasonably possible to avoid an Event of Default. If you are having trouble meeting your obligations under the lease, you should seek out help early including by reaching out to Lawyers for Civil Rights.</p>
Section 20: Remedies and Section 21: Damages	<p>If there is an Event of Default, the Landlord can do all of the things provided in Section 20, including:</p> <ul style="list-style-type: none"> - Correct the default for you, at your cost; - Terminate the Lease and evict you; and - Retake possession of the Premises, including remodeling it and leasing it to another tenant at your cost, in which case you would be responsible for any gap between the rent under your lease and the rent from the new tenant. <p>Section 21 describes the amounts you would be responsible for after an Event of Default. These amounts could be significant and should be carefully reviewed.</p>
Section 22: Security Deposit	<p>If a security deposit is required, it will be due when the lease is signed, and so long as you comply with the terms of the lease, it will be refunded at the end of the Term.</p> <p>Unlike residential landlords, commercial landlords are not required to put security deposits in interest-bearing accounts.</p> <p>If there is a default, the Landlord can use the security deposit to partially cover its damages.</p>
Section 23: Self-Help; Fees and Expenses	<p>This provision gives the Landlord the right to perform your lease obligations if you fail to do so, at your cost.</p>
Section 24: Surrender	<p>This section describes your obligations at the end of the Term. You must remove all personal property and equipment (or Landlord may remove and sell or destroy it), and return the Premises substantially in the same condition you received them in. Per Section 12, any alterations you installed should stay,</p>

	unless when the Landlord gave its permission to install them it required they be removed at the end of the Term.
Section 25: Holdover	If you do not leave the Premises at the end of the Term, you become a “tenant-at-sufferance” (see definitions above), and the Minimum Base Rent will increase to 200% of the Base Rent previously in place. If you think you may not be out of the Premises in time, you should discuss the possibility of an extension with the Landlord.
Section 26: Notice of Lease	<p>If the Landlord sells the Property, then its buyer is not legally required to honor a lease with a term longer than 7 years, unless it had notice of the lease. Recording a “Notice of Lease” with the Registry of Deeds is one way to ensure a buyer would have that notice.</p> <p>If the Term of your lease is 7 years or longer (including option terms), then you should ask that a Notice of Lease be recorded, which will identify the basic terms such as the Premises, parties, and Term. The full lease between private parties is never recorded (this would make the confidential deal terms publicly accessible).</p>
Section 27: Covenant of Quiet Enjoyment	This section describes your right to enjoy the Premises without intrusion by the Landlord or anyone claiming under them, so long as you are not in violation of the terms of the lease.
Section 28: Notices and Approvals	Occasionally, notices and other communications need to be delivered under the lease (e.g., a request to make alterations or notice of a violation). This section provides that each of these communications should be in writing and describes how they should be sent (i.e., by registered or certified mail via USPS, by overnight carrier such as FedEx, or by email if followed by one of the other methods). The addresses for each party are provided in Section 1 and copies must be sent to the party’s attorney identified in this section.
Section 29: Rules and Regulations	You must abide by the Landlord’s rules and regulations for the Property and the Premises, which may change from time to time. You should review the rules and regulations carefully and discuss with the Landlord any concerns you may have about how they may impact your business.
Section 30: Limitations on Liability	<p>This provision states that the Landlord will only be responsible under the lease for as long as it is the owner of the Property. If the Property is sold, the new owner will step into the Landlord’s shoes.</p> <p>Additionally, the Landlord is only liable to the extent of its equity interest in the Property, meaning it will not be liable for damages greater than the value of the Property, less its mortgages. Also, no individual owner or employee of the Landlord will be personally liable for the Landlord, but rather the Landlord entity (e.g., a corporation or LLC) is liable under the Lease.</p> <p>Finally, this section provides that the Landlord will not be liable for consequential damages. You should ask that this provision be made “mutual”, meaning that you should not be liable to Landlord for consequential damages.</p>
Section 31: Brokerage	This section certifies that the only brokers involved in the transaction are those listed in Section 1. You should confirm this is accurate, because if you worked with any broker not listed then you could be liable for their commission.

Section 32: Waiver of Trial by Jury	Under this section, both parties waive the right to have a lease dispute heard by a jury. If a dispute goes to trial, it will be heard by a judge.
Section 33: Relocation	A relocation right allows the Landlord to relocate you to a comparable space in the Building with 30 days' notice. Although this section seems drastic, it is rarely invoked by landlords. If your lease includes a relocation provision, you should discuss with the Landlord when and how this may be used.
Section 34: Miscellaneous	<p>This section includes standard legal provisions, including:</p> <ul style="list-style-type: none"> - Waiver: If the Landlord waives any of its rights, that does not mean future rights are waived. Waivers must be in writing. - Independent Obligations: Your obligation to pay Rent is “independent” of Landlord’s obligations. This means, for example, even if the Landlord fails to perform an obligation under the Lease (e.g., snow removal), you still must pay Rent and cannot deduct any amount from Rent due to the Landlord’s failure. - Entire Agreement: All agreements relating to the Premises are contained in this Lease. If there is a term that was discussed but it is not in the Lease, that term is not enforceable. - Counterparts; Electronic Signatures: You and the Landlord do not have to sign the same physical copy of the Lease. The Lease can be signed physically or electronically.

Exhibits to Lease Explained

A-1: Floor Plan of Premises [and Outdoor Seating Area]	<p>The Landlord will insert a floor plan of the Premises (and outdoor seating area, if any) here.</p> <p>This Exhibit shows the space that you are leasing from the Landlord. You should confirm that this Exhibit shows every part of the Property that you are leasing.</p>
[A-2: Outdoor Seating]	<p>If your lease includes outdoor space for customer seating, this Exhibit describes the applicable rules, including: the seasons, days, and times outdoor seating is permitted; whether the Landlord needs to approve a seating plan; who is responsible for any required permits; and who is responsible for maintenance and cleaning.</p>
[A-3: Parking]	<p>If your lease includes any parking rights, this Exhibit describes how many parking spaces you can use and how Parking Charges are paid. You should note that the Landlord is not responsible for any theft from or damage to vehicles parked in your spaces.</p>
[B: Extension Right]	<p>If your lease includes the right to extend the Term, this Exhibit outlines how you exercise that right. You must adhere to these strict requirements and the deadlines.</p> <p>This Exhibit also describes how Minimum Base Rent will increase for an Extension Term. The Landlord will increase your Minimum Base Rent by a specified percentage or to its “fair market rental value”, whichever amount is greater. The Landlord will initially state what it believes is the “fair market rental value,” but if you believe this number is too high, you can reject it and start the fair market rental value determination process:</p> <ul style="list-style-type: none"> - Both you and the Landlord hire an appraiser and a neutral third appraiser (if you need assistance finding an appraiser, please contact Graffito SP or Lawyers for Civil Rights for their current list of references). - Your and the Landlord’s appraisers submit their determinations to the third appraiser, who will choose one of them as the fairest. <p>Extension Terms can be customized to fit the needs of any tenant. For example, a 6-year extension right might be negotiated to be broken into two 3-year extensions, or even three 2-year extensions. Review this Exhibit and ensure that terms here match the terms that you negotiated.</p>
C: Gross Sales	<p>This Exhibit explains what is included in, and excluded from, “Gross Sales.” It is essential that you review this carefully so you can accurately account for and report your Gross Sales to the Landlord.</p> <p>You must submit a “Statement of Gross Sales” to Landlord for every quarter (or other period), which will confirm whether your business was profitable enough that you owe Percentage Rent.</p> <p>This Exhibit also requires you to use an accounting system that will accurately record all Gross Sales, and which may be inspected by the Landlord. You must keep your records of Gross Sales for 3 years in case the Landlord chooses to audit them.</p>

<p>D: Work Letter</p>	<p>This Exhibit describes the process for the initial “build out” to transform the Premises into the space you need before you can open for business. This work will be called either “Landlord’s Work” or “Tenant’s Work” depending on who will be performing it.</p> <p>If the Landlord is paying for a portion of the work, it will be described here as the “Allowance”. Allowances may be negotiable. You are responsible for the cost of the build out that exceeds the Allowance.</p> <p>If the Landlord is performing the work:</p> <ul style="list-style-type: none"> - You should review their Budget carefully and work with the Landlord in the described “value engineering” process to refine the scope of work and Budget. - You may need to pre-pay the amount by which the Budget exceeds the Allowance. - You should review their plan submissions carefully and take note of the deadlines in this section to respond. - The Landlord should deliver the Premises with the Landlord’s Work substantially complete. You will have the opportunity to do a walk through and make a punch list of outstanding work. You should inspect the Premises closely during this process to ensure the punch list includes everything that’s needed. <p>If you are performing the work:</p> <ul style="list-style-type: none"> - Your architect and general contractor must be approved by the Landlord. - If the Budget exceeds the Allowance, then you and the Landlord may decide to pay invoices on a “pari passu basis” (see definitions above). - You may submit Fund Requests for disbursements of the Allowance by the procedure described in this section. The Landlord is not required to pay its portion of the Allowance until you have provided all of the required documents. You should take note of the deadlines and requirements. - The Landlord will have the opportunity to review and comment on your plans, and you may not change the final plans without the Landlord’s approval. - Your work will not be complete until you submit all of the items required in this section. - You and your contractors must carry the insurance required in Exhibit J. <p>If you need to access the Premises before the Commencement Date to install furniture, fixtures, and equipment, you should discuss this with the Landlord and get their approval. If your access delays the Landlord’s Work, the Landlord is not liable for the delay.</p>
<p>D-1: Form of Memorialization of Dates Agreement</p>	<p>This letter is to be signed after the build out work is complete and the Commencement Date, Rent Commencement Date, and Expiration Date are finalized. This letter also confirms you accept the Landlord’s Work (if applicable) and the Premises in the current condition.</p> <p>If the dates in this letter are incorrect, or if the condition of the Premises is not acceptable (for example, if portions of Landlord’s Work are not complete), you</p>

	<p>should not sign this letter. Instead, you should write a letter back to the Landlord stating the inaccuracies and work with them to revise the letter.</p>
E: Responsibility Matrix	<p>This Exhibit outlines who is responsible for the various maintenance, repairs, and services at the Premises and Building. These responsibilities can vary greatly from one lease to another, so it is important to review your obligations carefully.</p> <p>Generally, the Landlord will be responsible for larger items related to the Building as a whole (i.e. structural components, including the roof, Common Areas, plumbing, and HVAC for the Building generally, etc.). You will likely be responsible for repairing and maintaining everything within the Premises itself, which can include HVAC, electrical systems, windows and doors, etc.</p> <p>If something breaks, this Exhibit is a good starting point to determine who is responsible for making the repair and who is responsible for paying for it.</p>
[E-1: Approved Third-Party Service Providers]	<p>If you are required to use specific third-party service providers that are pre-approved by the Landlord for any maintenance and repairs, those providers will be listed in this Exhibit.</p>
F: Restaurant Provisions	<p>This Exhibit describes all of the rules for operating a restaurant or food service business at the Premises, including odor and noise control, pest control, installation of gas lines, maintenance of equipment, service of alcoholic drinks, trash removal, etc. You should review these rules carefully and make sure you are ready to comply.</p>
G: Landlord’s Services	<p>This Exhibit lists all of the services that the Landlord will provide for the Premises and the Building. If the Landlord has agreed to provide a service for you, such as snow and ice removal from the sidewalks in front of your Premises, make sure that it is included here.</p>
H: Taxes and Operating Costs	<p>This Exhibit defines in detail the Taxes and Operating Costs you are responsible for. The Landlord will account and bill you for these amounts.</p>
I: Hazardous Materials	<p>You may not dispose of or keep any hazardous materials at the Premises without the Landlord’s approval. However, you can operate your business in a customary way as long as your use of any hazardous materials complies with applicable laws. You should discuss with the Landlord whether any materials you use in your business operations are considered “hazardous materials”.</p>
J: Insurance	<p>This Exhibit and Section 18 describe the insurance policies you are required to carry. You should give them to your insurance agent to confirm your coverage meets these requirements. The provider will give you a “Certificate of Insurance”, which you must give to the Landlord. A sample a Certificate of Insurance can be found at the end of this Guide.</p>
K: Rules and Regulations	<p>This Exhibit states the Landlord’s current Rules and Regulations for the Property and the Premises. You should review these carefully to ensure you do not break any rules while operating your business. If you have any concerns about how these may interfere with your business, you should discuss them with the Landlord.</p>

L: Certain Legal Definitions of Capitalized Terms Used in this Lease	Throughout any legal document, capitalized terms have specific, defined meanings. This Exhibit states the definitions for the capitalized terms used in the Lease.
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