

**POST LEASE CHECKLIST:
WHAT DO YOU DO AFTER YOUR LEASE HAS BEEN SIGNED?**

Presented by

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CHAPTER 4

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ACTIVITIES

Past Chair, Real Estate Forms Committee, State Bar of Texas.

Past Chair (1993-1996), Dallas Bar Association, Real Property Section.

Member, Various Planning Committees for the State Bar of Texas, University of Texas, and University of Houston.

Director, Advanced Real Estate Law Course (1994) (State Bar of Texas).

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She has been a real estate broker in Dallas, Texas since 2005 and earned her Texas Real Estate license in 1999.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. POST LEASE DOCUMENTS..... 1

 A. Application..... 1

 B. Terrorism Verification Form..... 1

 C. Lease Approval. 1

 D. Welcome Package..... 2

 E. Abstract/Summary of Lease..... 2

 F. Turn-Over of Possession..... 2

 G. Memo of Landlord required work/ verification of completion. 2

 H. Contractor Acknowledgement Release. 2

 I. Release of TI Money, Receipt..... 2

 J. Completion of TI Affidavit/ Lien Release 2

 K. Acceptance of Premises. 2

 L. Receipt of Broker Payment/ Release Of Claim..... 3

 M. Confirmation of Terms. 3

 N. Annual Review/Audit of File..... 3

 O. "Concession" Letters. 3

 P. Amendments. 3

 Q. Late/Default Notice Letters..... 3

 R. Dispute Settlement Agreements..... 3

 S. Notice Letter For The Sale Of The Center and New Landlord..... 3

 T. Tenant Estoppel Certificate for New Purchaser..... 3

 U. Bank Financing: Lien Waiver V. Subordination..... 4

 V. Assignment of Lease..... 4

 W. Consent to Assignment. 4

 X. Lease Termination Agreement..... 4

 Y. Confirmation of Renewal..... 4

 Z. HVAC Maintenance Agreement..... 4

 AA. Tenant Move-Out/ Release of Deposit..... 5

 BB. Listing Agreement. 5

 CC. Release of Equipment to Lessor [Abandoned Property]. 5

 DD. Master Exhibit for All Permitted and Exclusive Uses. 5

 EE. Lock-out Notice. 5

 FF. Asbestos Disclosure..... 5

III. MISCELLANEOUS 5

 A. There are forms that a landlord should not have..... 5

 B. These forms come from many unknown sources..... 5

 C. Always have a guarantor sign agreements if possible 5

 D. Federal and state environmental statutes..... 5

APPENDIX A 7

POST LEASE CHECKLIST: WHAT DO YOU DO AFTER YOUR LEASE HAS BEEN SIGNED?

I. INTRODUCTION

Landlord Tenant transactions are governed by Title 8 of the Texas Property Code. Sections 91-94 deal with leases. Section 91 covers general provisions applicable to all landlords and tenants. Section 92 deals exclusively with residential properties. Section 93 covers commercial properties, which are by definition everything not included in the residential property definition. Chapter 94 covers Manufactured Home Tenancies. Chapters 92 and 94 are more restrictive on landlords than is Chapter 93 for commercial landlords. Chapter 62 of the Texas Property Code, the Broker's and Appraiser's Lien on Commercial Real Estate Act, gives brokers a lien by reason of lease or sale of real property.

This article concerns the situations where an owner of retail property is leasing space or a buyer is purchasing a retail space with existing tenants. Using this checklist, suggestions, and forms after a commercial lease is executed or the purchase transaction has closed will help make the post leasing process flow more smoothly and help avoid some future but common pitfalls.

The post leasing process works better if the landlord acquires some basic information from the potential lessee at the time of application for a lease.

This article does not cover the commercial lease and the many considerations involved in drafting and negotiating its terms. This article also does not cover default, eviction, and a landlord's remedies.

II. POST LEASE DOCUMENTS

A. Application.

Purpose: Gather all of the relevant information from a prospective tenant and guarantor to complete a lease agreement.

Practice tips:

1. The form should be tailored to the client's lease form [i.e. all of the blanks] and include any information it needs to complete the approval process.
2. For any entities, make sure someone verifies that the entity exists and that you get the correct name. It is very hard to sue an entity that doesn't exist.

3. This is a time saver for the person completing the lease to have all of the information at the beginning rather than filling in blanks later.
4. If your client did not use a similar form as part of the leasing process, this can be adapted as a post-closing item.
5. Having the driver's license and social security numbers will assist in the collection process, if necessary.

B. Terrorism Verification Form.

Purpose: Provide a document for verification that the landlord used its best efforts to verify that the parties are not on the blocked lists.

Practice tips:

1. Have one person in the client's office fill this out and sign it, rather than just having anyone do it.
2. There are services that will, for a fee, perform the searches.
3. How often should a landlord update the report? This is a dangerous question. Some articles suggest monthly, but that would be a huge expense. We have added a note on the Annual Lease Review Form. The Office of Foreign Asset Control [OFAC] website FAQ includes information on who must comply with OFAC regulations and the penalties for failure to comply. See www.ustreas.gov/offices/enforcement/ofac/.

C. Lease Approval.

Purpose: Create an internal control procedure for the owner to review lease execution.

Practice Tips:

1. Larger landlords will have such a process, but smaller ones typically will not. Have you ever had a situation where a change was made to the lease, but later nobody would admit to seeing it or authorizing it? This puts a burden on the leasing agent to bring everything out.
2. Landlords should never modify the standard lease by deleting/inserting. Instead, always use the ~~SRIKE THROUGH~~ or INSERT underline inserts. For a large deletion, such as an entire section, instead of using the strike-through, leave the section reference indicate the section has been omitted. This way a casual reading of the lease will disclose the variations and allow the management team to understand the lease later.

D. Welcome Package.

Purpose: Just a friendly greeting and verification of important information.

E. Abstract/Summary of Lease.

Purpose: Create a one time comprehensive review of the lease at the time of execution or purchase of the Center.

Practice Tips:

1. This form must be custom drafted for each lease. The person preparing the summary should be trained to read the entire lease and look for all clauses that create specific rights for the tenant or any obligations on the landlord.
2. If sections were deleted from the standard lease it should be noted here. For example, if the “right to relocate” clause was deleted or if the landlord agreed to drop the security agreement.
3. Look for odd inserts, such as a covenant that the name of the Center cannot be changed without the tenant’s approval.
4. Lenders will usually prepare a lease review summary as part of the loan approval. Make sure your client gets a copy of the review [after all it paid for it] and uses it as part of its lease summary.
5. Be sure to review the Estoppel/ Subordination, Non-Disturbance And Attornment Agreements [SNDA] forms from the purchase as those will usually disclose tenant specific issues.
6. This form should capture the necessary information for the management company’s accounting or property management software [e.g. YARDI] as well as information for a future SNDA/ Estoppel form.

F. Turn-Over of Possession.

Purpose: Create a procedure to complete the landlord’s approvals and deliver the keys.

Practice Tip: Before a tenant gets the keys, the landlord should give the tenant a guide to complete the process. Remember, the tenant is generally clueless on what needs to be done.

G. Memo of Landlord required work/ verification of completion.

Purpose: Help the Landlord ensure that all of its tenant improvement obligations are timely met.

Practice Tips:

1. Landlord should prepare a memorandum of all work that it is obligated to perform, even in simple situations. It should assign responsibilities to specific personnel and provide for a check system to ensure completion.
2. It is critical to add all deadlines as hard dates.
3. If any work is contingent upon the tenant submission, that should be noted and communicated to the tenant.
4. Often times, after a Lease is signed the parties learn that delays are necessary due to unforeseen issues. The landlord must get written extensions to avoid a delay claim later.

H. Contractor Acknowledgement Release.

Purpose: Have the contractor agree that its work is through a tenant, not the landlord.

Practice Tips:

1. Texas law is clear that any lien rights can only attach to the property rights of the person hiring the contractor.
2. Nothing keeps a contractor from claiming that it was actually working for the landlord.
3. Nothing keeps a creative lawyer from finding some language in the lease that implicates the landlord in some arguable manner, “authorized” the work, and therefore hired the contractor.

I. Release of TI Money, Receipt.

Purpose: Document the completion of the Tenant Improvement [TI] work and the delivery of the funds.

Practice Tips:

1. Lenders and buyers will often want verification that the TI money has been paid.
2. This provides additional representations regarding the completion of the work, in case anything arises later.

J. Completion of TI Affidavit/ Lien Release

Purpose: Document the contractor’s payment and release.

Practice Tip: This will create a direct indemnity from the contractor if any claims are filed later.

K. Acceptance of Premises.

Purpose: Document the final step of turn over to the tenant.

Practice Tips:

1. This will document that the landlord has completed all TI work obligations.
2. If the lease has any contingencies [i.e. terminations], add a recital that the contingency was waived.

L. Receipt of Broker Payment/ Release Of Claim.

Purpose: Document the broker payment and confirm whether any future commissions are due on renewals.

Practice Tip: The Landlord needs to make sure to disclose any commission obligations as part of any sale and obtain the Buyer's assumption of the obligation.

M. Confirmation of Terms.

Purpose: Verify the essential terms and convert any unknown dates to hard dates.

Practice Tip: How many times have you been asked to review a lease and found that the rent start date was the "earlier of a and b, but not later than the occurrence of x, subject to the stars aligning in Cassiopeia"?

N. Annual Review/Audit of File.

Purpose: Create a procedure to ensure that the property manager regularly updates the lease file.

Practice Tips:

1. This will help in completing estoppel certificates for a sale or loan.
2. Be sure to include any additional items that could help in a sale/refinance. For example, making sure that the Certificate of Occupancy is in the file.
3. Be sure that the insurance certificate is current.

O. "Concession" Letters.

Purpose: Document simple, temporary agreements that don't justify a Lease Amendment.

P. Amendments.

Purpose: Obviously, to amend the Lease.

Practice Tips:

1. Try to label the Amendments first, second, third, etc. It helps in the filing.
2. We have included several examples of amendments.

3. *Be careful on extensions. If the tenant is exercising a renewal option, be sure to clarify that the option has been completed.*
4. Be sure to have the guarantor sign any amendment to prevent a claim of discharge.

Q. Late/Default Notice Letters.

Purpose: Provide notice of default.

Practice Tips:

1. This form was prepared for a specific lease to help a property manager send default notices. There are several disclaimers and advisory notes to help the manager.
2. Be sure to verify from the lease what specific fees apply.
3. Be sure to review the lease for the proper notice requirements and send a copy to all guarantors.

R. Dispute Settlement Agreements.

Purpose: Document simple dispute resolution agreements.

Practice Tips:

1. Often times, when a real problem arises, the tenant will remember all kinds of prior grievances and forget that any resolution had been made of the issue.
2. This is a simple agreement to allow a landlord to buy peace in a dispute and put the issue to rest.

S. Notice Letter For The Sale Of The Center and New Landlord.

Purpose: Provide joint notice and instructions to the tenant about a sale and the new owner.

T. Tenant Estoppel Certificate for New Purchaser.

Purpose: Verify lease information for a buyer.

Practice Tips:

1. Even if the lender does not require an Estoppel Certificate [for example, an assumption], a buyer should prepare and receive an Estoppel Certificate. Some buyers think the Certificates are just for the lender's protection.
2. Make sure the Certificate is prepared after the buyer has reviewed the leases and add in any other clarifications that might be necessary.

U. Bank Financing: Lien Waiver V.

Subordination.

Purpose: Allow a lender to secure its loan with a first lien on the tenant's property without completely waiving the landlord's remedy for enforcing removal of a tenant's abandoned property.

Practice Tips:

1. Banks will request a waiver of the statutory landlord's lien found in Chapter 54 of the Texas Property Code and the Lease when it is taking a security interest in the tenant's personal property. However, once the landlord waives its lien, what happens if the lender either fails to do anything or simply drags its feet? How does the landlord get the stuff out [which nobody wants]?
2. This subordination form attempts to strike a fair balance: allow the bank to have its priority, but with an obligation to act or pay rent.
3. Be sure to carefully review the list of property the bank is asking for an interest in. If the landlord provided the TI money or if the item is a fixture [sinks, vent-a-hood] then those should be removed from the bank's list.

V. Assignment of Lease.

Purpose: Assign the lease to a new tenant.

Practice Tips:

1. This Assignment of Lease form is provided as an example only. We feel that a landlord should not prepare a legal document in circumstances where it is not a party, i.e. the sale of a business and the transfer of the lease. There are many issues relating to the sale of the business that need to be addressed in the assignment.
2. We suggest that the landlord prepare a consent to assignment, not the assignment form.

W. Consent to Assignment.

Purpose: Document the landlord's consent to the assignment.

Practice Tips:

1. This form is an example and should be drafted for the specific agreement of the parties.
2. To further separate the landlord from the underlying transaction, we added a specific disclaimer of any representations with respect to the underlying transaction [4.b.]

X. Lease Termination Agreement.

Purpose: Document an agreement to terminate a lease.

Practice Tips:

1. With all contracts, it is good to have a written termination of any lease.
2. Be careful to leave open the surviving obligations, such as environmental damages.
3. This form brings closure to any potential tenant claims against the landlord.

Y. Confirmation of Renewal.

Purpose: Document the tenant's exercise of a renewal right.

Practice Tip: Be careful that a tenant does not "amend" a lease term then later claim it still has a renewal option.

Z. HVAC Maintenance Agreement.

Purpose: Allow the landlord to have a maintenance contract on the HVAC equipment at tenant's expense.

Practice Tips:

1. This is a growing area of concern for landlords, especially with smaller tenants.
2. Some leases require a tenant to maintain the HVAC with an acceptable contractor and the landlord should require annual verification that the work has been performed. We have added that note to the Annual Review Form.
3. If a commercial landlord assesses charges against a tenant on a regular basis for things such as extra keys, overtime HVAC, proportionate utilities and taxes, proportionate common-area expenses, and estimated operating expenses the Code requires that those charges be computed as stated in the lease, an exhibit or attachment that is part of the lease, or an amendment to the lease.

AA. Tenant Move-Out/ Release of Deposit.

Purpose: Document the move-out and release of deposit.

Practice Tips:

1. A landlord is liable for failure to return a tenant's security deposit within sixty days after the date the tenant surrenders possession of the premises and provides a forwarding address to the landlord or landlord's agent.
2. If all or part of the security deposit is retained, the landlord must provide the tenant an itemized list of deductions.
3. There is a presumption of bad faith on the part of the landlord if the security deposit is not returned to the tenant or if the landlord fails to provide the tenant with an itemized list of deductions on or before sixty days after the date the tenant surrenders possession.

BB. Listing Agreement.

Purpose: Provide an example of a landlord favorable commission agreement.

Practice Tip: This form was prepared because the client had a habit of simply signing any listing agreement a broker sent.

**CC. Release of Equipment to Lessor
[Abandoned Property].**

Purpose: Allow equipment leasing company to remove equipment, post lock-out.

Practice Tips:

1. This form was created to allow a landlord to release personal property to a party claiming to own the equipment under a lease.
2. This form can be modified to allow a bank to remove equipment under a security agreement/ possession.
3. If there is any doubt about ownership or rights, the landlord can require the tenant to join in the agreement.

DD. Master Exhibit for All Permitted and Exclusive Uses.

See the form for a discussion of the Exhibit.

EE. Lock-out Notice.

Purpose: Allows the landlord to change the locks after default by posting the notice at the premises.

Practice Tips:

1. Covering the law of exercising default remedies is beyond the scope of this paper, but we wanted to provide some assistance.
2. Always review the lease to make sure of the rights/ obligations under the lease.
3. Be very careful about locking out an operating business. This is a drastic step and can cause damage to the business.
4. If applicable, there is a clause regarding abandonment of personal property in this form. Section 93.002(d) and (e) require a landlord to give 60 days' notice before you dispose of the property.

FF. Asbestos Disclosure.

Purpose: Disclose any knowledge of the presence or absence, location, and quantity of asbestos-containing materials in tenant-occupied property as required by federal OSHA rules 29 C.F.R. §§ 1910.1001 *et seq.*, 1926.1101 *et seq.*

Practice Tip:

1. This notice must be in writing before any demolition, construction, alteration, repair, maintenance, or renovation of structures, substrates or portions of them.
2. Any buildings constructed before 1981 are presumed to contain asbestos materials.

III. MISCELLANEOUS

A. There are forms that a landlord should not have.

Kevin was asked to help a client "sort out" its forms and help organize them. In reviewing the client's files, there was an "Agreement for Bar Sublease Area." When asked why, the client said some tenants didn't know how to get liquor licenses so they helped them by providing the sublease.

Aside from the practicing law issue, the client was told to never advise a tenant on how to run the business and especially don't get involved with a regulatory group like the TABC.

B. These forms come from many unknown sources.

Primarily, we acknowledge the Texas Real Estate Forms Manual. Hopefully, we have not otherwise plagiarized any copyrighted work.

C. Always have a guarantor sign agreements if possible, to avoid disputes/ defense claims later.

D. Federal and state environmental statutes dealing with hazardous materials and waste may need consideration if a property falls under their enforcement.

A lawyer should always consider whether these statutes are applicable to a property being leased. They impose liability and potential cleanup costs at the termination of a lease term on the “owner” or “operator” (landlord or tenant) of the “facility” (leased premises). Discussion of the many issues involved in CERCLA, SARA, RCRA, LDPRFA, TSCA are beyond the scope of this article.

APPENDIX A

A. Application

LEASE APPLICATION

Property Name:

City & State:

Applicant Information

Name:

Date of Birth: ____ / ____ / ____

Current Mailing Address:

Telephone Number:

H: (____) ____ - ____

W: (____) ____ - ____

C: (____) ____ - ____

Fax Number: (____) ____ - ____

Email Address:

Social Security Number: ____ - ____ - ____

Driver's License Number: _____ State: _____

Desired Size of Premises : _____ SF

Type of Business:

Is this a: New Business? Existing Business? Franchise? Other:

If you are applying for an existing business, are you: Relocating? Expanding? Other: _____

If your business is expanding, how many other locations do you have?

Present or Previous Landlord (if this is an existing business)

Property Name:

Landlord's Name:

Telephone Number: (____) ____ - ____

Size of Premises: _____ SF

If you are relocating your business, why have you decided to leave your current location?

Financial Information

Please attach a Financial Statement for the tenant and each guarantor.

Personal References	
Name: Relationship: Telephone Number: (____) ____ - ____ Address: Email:	Name: Relationship: Telephone Number: (____) ____ - ____ Address: Email:
Professional References	
Accountant:	Banker:

Post Lease Checklist:

What Do You Do After Your Lease Has Been Signed?

Name: Telephone Number: (____) ____ - ____ Address: Email:	Name: Telephone Number: (____) ____ - ____ Address: Email:
Attorney: Name: Telephone Number: (____) ____ - ____ Address: Email:	

Applicant declares that all statements made in this application are true and complete. Applicant hereby authorizes the Landlord to verify all of the information in this application (which includes the attached Personal Financial Statement) and obtain credit report(s) on the applicant.

Landlord will use reasonable efforts to keep all information provided herein confidential.

Applicant agrees that this application is not a contract or commitment to lease any space to applicant. There are no oral agreements or representations regarding the lease of any space and unless the Landlord offers a written lease proposal, Landlord will not be bound in any manner.

Please return the completed Application, Personal Financial Statement, and OFAC Disclosure to:

_____ [Name] at [Address], or by facsimile [_____], or by email to [_____].

Signature of Applicant

Date:

Note: If there are multiple applicants (ex: business partners, co-owners, etc.), each person applying should complete a separate application form.

B. Terrorism Verification Form.

OFAC DISCLOSURE

Applicant:

Landlord:

Applicant understands that Landlord must verify that Applicant is currently in compliance with the regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

In order to verify that no person is on the Blocked Person List, the person signing below represents to Landlord that the following people are the only persons with a direct or indirect ownership interest in the business to be conducted at the Center:

Name	Driver’s License Number	SSN/ EIN

Name:

FOR LANDLORD’S USE ONLY	
I searched the foregoing names at http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml on this date and no matches were found.	
Date:	_____
_____	Name:

C. Lease Approval.

LEASE APPROVAL FORM

Date:

This is a:	New Lease	Renewal	Amendment
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TENANT INFORMATION

Legal Name: DBA:
Contact Name: State of Incorporation:
Address: Telephone Number:
Guarantor: State of Incorporation:
Full Guarantee: Guarantee Limited to:
Tenant Notice Address:

LEASE PROVISIONS

Space No: Suite No.: Sq. Ft:
Base Rent: Effective Rent: Term: Years Months
Permitted use: Commencement Date: Rent Commencement Date:
Exclusive Use: YesNo If yes, describe
Allowances and Landlords Work Security Deposit: Tenant Allowance Budget:
Broker Commission:
Rent Schedule:

Years	Dollars/Sq. Ft	Dollars/Yr	%Rent	Free Rent?
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Describe all significant changes to the standard form:

Submitted By: Approved By:

D. Welcome Package.

WELCOME LETTER TO NEW TENANT

Date
Contact name
Store address
City, state, ZIP

Re: New merchant
Name of center
City, state, ZIP

Dear,

On behalf of the entire (name) organization, we would like to welcome you to (name of center). We hope your tenure will be profitable and beneficial for both of us.

If you should have a problem or question, please feel free to contact (name), our tenant services coordinator, at (phone #), or your Property Manager, (name), at (phone #). They will be happy to help you in any way they can.

Your rent should be payable to (name of owner) and delivered to [insert mailing address]. Please note that rent is due on the first and a late fee will be added if it is not received by the (late payment date).

We have your insurance certificate on file. Please make sure that your agent renews the certificate each year and provides us with a copy. Please note that our insurance requirements are the minimum amounts and coverage that we require. You should review the coverage issues with your agent to determine if you have an adequate policy for your needs.

Again, welcome to (name of center). We look forward to a long and, successful relationship.

Sincerely,

(Organization's name)
(President's name)
President

E. Abstract/Summary of Lease.

LEASE ABSTRACT

Date:

Prepared By:

Reviewed By:

LEASE INFORMATION

Lease has ___ pages and Exhibits: A B C Note, describe each	
List any amendments, including relevant letters or side agreements	

TENANT INFORMATION

Legal Name (check both the lease and the signature page to match):	Trade name:
Contact Name:	Telephone Number:
Legal Notice Address:	Other Address:
Guarantor:	Full or Limited Guarantee:
Contact Name:	Telephone Number:
Legal Notice Address:	

LEASE PROVISIONS

Suite No.:	Sq. Ft: CAM Percentage:	Security Deposit:
Commencement Date:	Rent Commencement Date:	Termination Date:
Renewal Options:	Renewal Notice Date:	
Permitted use:	Exclusive Use:	
Landlord Work Complete?:	TI Money Paid?:	
Broker Commission:	Broker Commission due at renewal?:	

Rent Schedule:

Post Lease Checklist:

What Do You Do After Your Lease Has Been Signed?

Years	Dollars/Sq. Ft	Dollars/Yr	% Rent
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Other Notes:

Any Lien Waiver Agreements?

F. Turn-Over Possession.

DATE

"Name and Address"

RE: "Tenant Name"

"Name of Shopping Center"

"City, State"

Dear *,

We have reviewed the plans. They are "approved as noted." If you wish to make any revisions to the approved plans during construction, you must notify me in advance for approval.

In order to receive your keys and take possession of your space to begin construction, you must complete the following:

1. We need to review and approve your sign plans.
2. You must deliver the insurance certificate per the provisions of your lease .
3. I need to approve your list of your contractors, subcontractors, with emergency contact numbers.
4. You must deliver the required licensing or bonding certificate to me.
5. You must deliver a copy of the building permit and keep the original posted at the job site.
6. You must deliver an original notarized Contractor Lien Waiver in the form attached.
7. You anticipated budget for this work is \$_____. You must provide me with verification that you have the necessary funds to pay for all of this work. [If applicable] Please note that under the terms of your lease, the Landlord will only reimburse you for your expenses after you have paid the bills and opened for business, as set forth in the Lease.

As always, if you have any questions, do not hesitate to call me.

Sincerely,

G. Memo of Landlord Required Work/ Verification of Completion.

No form will be provided for this topic. However, an example is provided below.

Project	Person Responsible	Notes
Landlord shall construct a demising wall, taped, textured, and paint-ready [Lease Section: ____]		Must be completed by:
Landlord shall separate the electrical wiring for the eight light poles in the Landlord’s parking area in front of the Levin’s store. [Lease Section: ____]		Must be completed by: Need tenant approval of plans before permit can be issued.
Landlord shall provide metered 1,200-ampere (277/480 volts, 3-phase, 4-wire) electrical service to a main disconnect which shall be located at a single location within five (5) feet of the Demised Premises. [Lease Section: ____]		Must be completed by:
Landlord shall provide a metered water line within five (5) feet of the Demised Premises. [Lease Section: ____]		Must be completed by:
Landlord shall install a new roof and deliver the Demised Premises in “water - tight” condition. [Lease Section: ____]		Must be completed by:
Landlord shall replace the missing light poles in the parking lot at its expense. [Lease Section: ____]		Must be completed by:

H. Contractor Acknowledgement Release.

CONTRACTOR LIEN WAIVER

Date:

Tenant:

Owner:

Contractor:

Leasehold Premises:

For valuable consideration, Contractor certifies to Owner as follows:

1. Contractor has agreed to supply goods or services for the Tenant to the Leasehold Premises pursuant to a contract with Tenant. Contractor understands that Tenant does not own the real property where the Leasehold Premises are located.
2. As a condition to allowing Tenant the right to renovate the Leasehold Premises, Owner required this Lien Waiver from Contractor.
3. Contractor waives all rights to maintain or enforce a statutory or contractual lien, security interest, or any other claim against the real property where the Leasehold Premises are located. Contractor acknowledges that its lien rights only extend to the Tenant's interest in the lease for the Leasehold Premises. Contractor further agrees to indemnify and hold Owner harmless from any claim or claimant against Owner or the Premises arising by, through or under Contractor.
4. This agreement binds Contractor and its assigns and inures to the benefit of Owner and its successors and assigns.

By: _____

Name:

Title:

I. Release of TI Money/ Receipt of Funds.

TENANT'S REQUEST FOR TENANT IMPROVEMENT MONEY

Date:

Lease:

Landlord:

Tenant:

Premises:

Tenant represents to Landlord that:

1. Tenant has completed all of Tenant's improvements in substantial conformance with the approved plans, as submitted to Landlord.
2. Tenant has paid \$_____ for all work and materials.
3. Tenant has received all necessary approvals from all applicable governmental authorities for the work.
4. Tenant has ratified the Lease.
5. Tenant agrees to indemnify and hold Landlord harmless from any claim or claimant against Landlord or the Premises arising in connection with the work.
6. Tenant acknowledges receipt of \$_____ from Landlord in full satisfaction of all claims for any tenant improvement reimbursement under the Lease.

[Name of tenant]

NOTE: this form must be conformed to the specific requirements of the Lease for reimbursement.

J. Completion of TI Affidavit/ Lien Release.

CERTIFICATE OF BILLS PAID AND RELEASE OF LIEN

Contractor:

Project:

Landlord:

Premises:

In consideration for the full and final payment to Contractor for all services in connection with the Project, the receipt of which is hereby acknowledged, Contractor releases all liens and claims to lien it has, or may have, on or affecting the Project as a result of its contract(s) for the project or for performing labor and/or furnishing materials in any way connected with any construction of any improvement(s) on or at the Project.

Contractor further certifies and warrants that all subcontractors for the Project have been paid in full for labor and materials supplied to, for, through or at the direct or indirect request of the Contractor.

Contractor further agrees to indemnify and hold Landlord harmless from any claim or claimant against Landlord or the Premises arising by, through or under Contractor.

The undersigned certifies that the foregoing information is true and correct and acknowledges that the owner of the Project has placed a material reliance on such information in directing final payment to the Contractor.

Date:

*

By: _____

Name:

Title:

K. Acceptance of Premises.

TENANT'S ACCEPTANCE LETTER

Date:

Lease

Date:

Landlord:

Tenant:

Premises:

Tenant acknowledges that:

1. Tenant has taken possession of the Premises.
2. Tenant has inspected the Premises.
3. The Premises are satisfactory to Tenant in the present condition and for the purpose for which they were leased. Tenant is open for business and has attached the Certificate of Occupancy [and other licenses] to this Letter.
4. Tenant has ratified the Lease.
5. Landlord has completed all improvements required by the terms of the Lease to the satisfaction of Tenant [**include if applicable:** except as follows: [**list any improvements not completed**]].

[Name of tenant]

L. Receipt of Broker Payment/ Release of Claim.

BROKER'S ACKNOWLEDGMENT OF PAYMENT

Date:

Lease:

Landlord:

Tenant:

Premises:

Broker:

Commission Agreement:

Broker represents to Landlord that:

1. Broker has received \$_____ in full satisfaction of all lease commission obligations for the Lease. Broker represents to Landlord that it will pay any and all cooperating brokers or persons entitled to any commissions in connection with the Lease arising under any agreement of Broker.

2. Landlord is no longer liable for any commissions in connection with the Lease.

OR

2. Landlord remains liable under the Commission agreement for any renewals or extensions, as provided in the Commission Agreement.

[Name of broker]

NOTE: this form must be conformed to the specific requirements of the Commission Agreement.

M. Conformation of Terms.

CONFIRMATION OF LEASE TERMS

Landlord:

Tenant:

Lease:

Premises:

Date:

The undersigned confirms the following:

1. The Rent Commencement Date is:
2. The total square feet in the Premises is:
3. The Base Monthly Rent Amount is: , plus shared expenses
4. The Base Monthly Rent will adjust as follows:

Months	Amount

5. Prepaid Rent in the amount of \$_____ will be applied _____.
6. Tenant deposited \$_____ with Landlord
7. Tenant has the following extension rights:
8. Landlord has paid \$_____ in full satisfaction of the Tenant Finish-Out Allowance obligation.
9. Landlord's Property Manager is:
10. Tenant's Primary Contact Information:

This Agreement does not modify any of the terms of the Lease. The Lease provisions control in the event of any inconsistency.

N Annual Review/Audit of File.

ANNUAL LEASE REVIEW

Note, if the landlord uses the Lease Abstract, then the information from that form can be copied here and updated.

Date:

Prepared By:

Approved By:

CONFIRMATION OF LEASE INFORMATION:

Lease has ___ pages and Exhibits: A B C Note, describe each	
List any amendments, including relevant letters or side agreements	

CONFIRMATION OF TENANT INFORMATION:

Legal Name (check both the lease and the signature page to match):	Actual trade name on the Store:
Contact Name:	Telephone Number:
Legal Notice Address:	Other Address:
Guarantor:	Full or Limited Guarantee:
Contact Name:	Telephone Number:
Legal Notice Address:	

CONFIRMATION OF OTHER MATTERS:

Security Deposit held in the system:	Termination Date:	
Renewal Options:	Renewal Notice Date:	
Permitted use:	Confirmation of use:	
Exclusive Use:	Confirmation that other tenants are not in violation:	
Landlord Work Complete?:	TI Money Paid?:	
Broker Commission:	Broker Commission due at	

Post Lease Checklist:

What Do You Do After Your Lease Has Been Signed?

	renewal?:	
--	-----------	--

1. The undersigned visited the property on _____.
2. The Certificate of Occupancy and other permits are in the lease file.
3. The current insurance certificate is in the lease file.
4. The undersigned met with _____ on _____ and discussed the lease status. A summary follows:
5. An updated OFAC Disclosure is in the file.
6. There IS/ IS NOT a lender's Subordination Agreement/waiver in the file.
7. Tenant has maintained the HVAC system: YES/ NO.
8. Other Notes:

O. “Concession” Letters.

Landlords need to document simple short term agreements with tenants. For example, a client agreed to accept minimal rent for a few months to help a tenant get out of a bind. Later when the landlord asked for the tenant pay back the “deferred rent” the tenant said it had been forgiven. No form is provided as each situation is unique.

As an example:

Dear Tenant:

Landlord has agreed to allow you to pay \$_____ in base rent for the next six months, beginning on June 1, 2009. However, the total deferred base rent of \$_____ will be due on December 1, 2009. If you default in any payment, then this agreement will terminate and all deferred rent will be due. Except for the terms of this letter, there are no other agreements regarding the lease.

Please sign below to acknowledge your agreement

ADD tenant and guarantor.

P. Amendments.

***AMENDMENT TO SHOPPING CENTER LEASE**

Date:

Landlord:

Tenant:

Lease: Shopping Center Lease Agreement dated * between * (“Original Landlord”) or Landlord] and Tenant for the Premises located in the * Shopping Center (the “Center”)

Premises:

For valuable consideration, Landlord and Tenant amend the Lease as follows:

*. [The Term of the Lease is hereby renewed for a period of three (3) years].

[Note: if this is the exercise of a renewal option then clarify that the option is gone.]

*. [Article 1, Section 1.1(j), the Minimum Guaranteed Rental per month is amended as follows:

*. Provided that Tenant is not then in default under the Lease, Landlord will pay Tenant up to \$3.00 per square foot of the Demised Premises as a reimbursement for Tenant’s bona fide (and verified) construction expenses paid to parties not related to Tenant. Such payment will be paid upon Landlord’s receipt of lien releases evidencing that all bills for Tenant’s contractors and subcontractors have been paid in full.

THEN CONTINUE WITH:

*. Except as modified by this Amendment, all other terms and conditions of the Lease will continue in full force and effect and Landlord and Tenant hereby ratify and confirm the terms, provisions and conditions of, and representations, covenants and agreements set forth in the Lease as amended by this Amendment, and Tenant specifically acknowledges the validity, binding effect and enforceability of the Lease as hereby amended. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

*. Tenant further acknowledges that, to the best of its knowledge as of the date of this Amendment, Tenant has no existing claims or defenses (personal or otherwise), whatsoever with respect to any defaults under the Lease and Tenant further acknowledges and represents that to the best of its knowledge no condition currently exists which would constitute a default by Landlord under the Lease, or this Amendment, either with or without notice or lapse of time, or both.

*. The undersigned Guarantor joins herein to evidence his unconditional guaranty of all of Tenant’s obligations under the Lease as amended hereby.

ADD SIGNATURES FOR LL, T, AND ALL GUARANTORS.

Q. Late/Default Notice Letters.

CM RRR No. *

ADDRESSEE¹

ADDRESS²

DATE³

Re: Lease dated *date* (the “Lease”) between *name* (“Landlord”) and *name* (Tenant”) for * Center/ Lease for Suite * at *address* (“the Premises”)

Dear *:

We have not received your rent payment that was due on *. If you believe that you have previously sent this payment, please check your records and call immediately. Otherwise, please deliver your payment to our offices immediately. You must also add an additional ten percent (10%) as a late fee⁴, [if your payment is not in our offices by the tenth day of the month] [since your payment was not in our office by the tenth day of this month].

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

LANDLORD OR MANAGER

Note 1: If the tenant is late two consecutive months, then you can require the tenant to pay quarterly in advance and that all payments must be by cashier’s check see Section 4.4.

Note 2: Always review each lease before sending out any notice to ensure that the “form” was not modified for that tenant.

Note 3: Remember each letter should be short, clear, and professional. Assume that in subsequent litigation, it will be read to the jury.

¹ Make sure to confirm both the name on the Lease and signature line.

² Confirm the actual delivery requirements of the Lease. If there are multiple tenants on the lease, send separate notices to all.

³ Keep a copy of the letter, the envelope with the address and full certified mail affixed in the file as proof of mailing.

⁴ Confirm the late fee.

R. Dispute Settlement Agreements.

SETTLEMENT AGREEMENT

For valuable consideration, the parties agree as follows:

1. * (the "Company") and * ("Tenant") desire to settle all disputes arising out of the [describe in detail] (the "Incident").
2. The Company agrees to pay to the Tenant \$*, as full and complete compensation for all damages and injuries sustained in the Incident.
3. This Agreement is made without admission of any fault by any party and is entered into to avoid the expense and delay of litigation. The Tenant represents to the Company that: (1) it [was represented in this matter by counsel, * of *, Texas][was advised to seek the advice of counsel], (2) it is executing this Agreement on the advice of counsel, (3) it has read and fully understands this Agreement, and (4) it is entering into this Agreement voluntarily.
4. For valuable consideration, each party hereby releases the other from any and all claims or causes of action, whether known or unknown, in connection with the Incident.

ADD PARTIES

19. Notice Letter for the Sale of the Center and New Landlord.

NOTICE OF SALE LETTER

Date:

Re: Your lease (the "Lease") of Suite _____ in the [Name] Center,
located at [Address] (the "Project")

Dear _____:

Seller, Ltd. ("Owner") has sold the Project to Buyer, Ltd. ("Purchaser") as of the date of this letter. In connection with the sale, Owner has assigned its interest in the Lease and the \$_____ security deposit to Purchaser.

Purchaser has assumed and agreed to perform all of the landlord's obligations under the Lease (including any obligations set forth in the Lease to repay or account for the security deposit) from and after such date.

The contact person and address of Purchaser for all purposes under the Lease (except the payment of rentals) and the giving of any notices provided for in the Lease is _____.

The address for the rent check delivery is _____. Checks should be payable to "_____."

Very truly yours,

Owner:

Purchaser:

T. Tenant Estoppel Certificate for New Purchaser.

TENANT ESTOPPEL CERTIFICATE

Date:

Lease:

Date:

Landlord:

Tenant:

Premises:

Buyer:

Tenant certifies to Buyer that:

1. Tenant has accepted and is in possession of the Premises.
2. All required improvements have been completed to Tenant's satisfaction.
3. Neither Landlord nor Tenant is in default in the performance of the Lease.
4. No rent under the Lease has been paid more than thirty days in advance of its due date.
5. Tenant, as of this date, has no claim of offset against the rent.
6. Tenant understands that Buyer is relying on the representations in this certificate.
7. The current monthly base rent is \$[amount]. The next payment is due on [date]. The amount of the security deposit is \$[amount].
8. The Lease is valid, enforceable, and unmodified [**include if applicable:** except as follows: [**list any modifications**]].

[Name of tenant]

U. Bank Financing: Lien Waiver v. Subordination.

LANDLORD'S LIEN SUBORDINATION

Date:

Landlord/ Address:

Tenant/ Address:

Lender/ Address:

Premises: Suite * of the *, located at *, *, Texas.

Lease: Lease dated * between Tenant and *, as Landlord

Collateral: Tenant's inventory, equipment, and other tangible or intangible property, but not including any fixtures incorporated into the Premises, which have become the property of Landlord upon installation.

Tenant occupies the Premises under the Lease and maintains on the Premises personal property that Lender has a security interest in or a lien on.

For valuable consideration, the parties agree as follows:

1. **Loan.** Tenant and Lender have entered into or are about to enter into, an agreement whereby Lender is acquiring a security interest in the Collateral to secure extensions of credit by Lender.
2. **Subordination.** Landlord subordinates all rights to maintain or enforce a statutory or contractual landlord's lien, security interest, or any other claim against the Collateral.

However, in the event of default under the Lease, or any renewals or modifications, Landlord agrees to give Lender notice of said default. Lender must either promptly remove all of the Collateral [and in no event less than 30 days] or cure the default within 15 days. Lender's failure to do so will be deemed a waiver of Lender's rights under this agreement and Landlord may proceed to enforce its rights under the Lease as fully set forth therein without regard to this agreement. Lender may extend the time to remove the Collateral for one additional 30 day period by paying to Landlord an amount equal to one month's rental, plus all charges under the Lease before the end of the 15 day period designated above.

3. **Removal.** Landlord and Tenant grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral. Lender agrees that if it removes any of the Collateral, it will be liable for any damage to Landlord's property.
4. **Indemnity.** In the event Lender removes any property belonging to Tenant, Lender will indemnify and hold Landlord harmless from any losses from any claims by Tenant based on such removal and Tenant hereby waives any such claims against Landlord.
5. **Miscellaneous.** If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs. Venue is in the county in which the Premises are located. This agreement is the entire agreement of the parties, and there are no other agreements pertaining to this matter. This agreement may be amended only by an instrument in writing signed by all parties.

V. Assignment of Lease.

LEASE ASSIGNMENT

Date:

Assignor:

Assignee:

Lease:

Date:

Landlord:

Tenant

Premises:

For valuable consideration, the parties agree as follows:

1. Assignor assigns to Assignee Tenant's interest in the Lease.
2. Assignor agrees that Assignor remains liable on the Lease.
3. Assignee agrees to assume Tenant's obligations under the Lease and to accept the premises in their present "AS IS" condition.

ADD PARTIES

W. Consent to Assignment.

CONSENT TO LEASE ASSIGNMENT

Date:

Landlord:

Assignor:

Assignor's Guarantor: [List current guarantors]

Assignee:

Assignee's Guarantor: [List new guarantors]

Lease: Shopping Center Lease for the * Center dated * for approximately * square feet between * as Landlord, and Tenant

For valuable consideration, Landlord consents to the Assignment of the Lease from Assignor to Assignee, subject to the following:

1. For Landlord's benefit, Assignee expressly assumes all of Tenant's obligations under the Lease. Assignee's Guarantor has executed the Lease Guaranty, attached hereto. Assignee hereby grants the security interest in Assignee's personal property to the full extent set forth in the Lease.
2. Assignees hereby accepts the Demised Premises in the present condition "as is," and represents to Landlord that the Demised Premises are currently suitable for Assignee's intended use.
3. Assignor's and Assignor's Guarantor acknowledge that:
 - a. each party remains liable on the Lease and is not released from any obligations thereunder; and
 - b. Assignee may exercise any rights under the Lease, including the renewal of the lease term as set forth therein, and each party will remain liable for all obligations during the renewal term.
4. Landlord makes no representation or warranty with respect to:
 - a. the Lease, the Demised Premises, or the improvements located thereon; or
 - b. the business operations to be conducted thereon or any other matters with respect to the sale of the business.
5. Tenant represents to both Landlord and Assignee that as of the date hereof, to the best of Tenant's knowledge, Landlord is not presently in default under the Lease and Tenant is not aware of any facts which with the passage of time or the giving of notice would constitute an event of default under the Lease.
6. Landlord is only obligated to give notice of default to the parties at the addresses listed above.
7. The individual signing below for Assignee and Assignee's Guarantor personally represent to Landlord that: (a) if applicable, such party is a duly formed and validly existing entity and has taken all steps necessary to consummate this transaction and (b) all of the financial information provided to Landlord is true, correct and complete as of the dates thereof in all material respects and the information is not misleading as to the financial status of such party.
8. *** has paid the \$500 assignment fee to Landlord.

ADD SIGNATURES FOR LANDLORD, TENANT & ASSIGNEE AND ANY GUARANTORS

X. Lease Termination Agreement.

LEASE TERMINATION AGREEMENT

Date:

Lease

Date:

Landlord:

Tenant:

Premises:

Approximate square feet:

Name of building:

Street address/suite:

City, county, state, zip:

Security Deposit:

Consideration:

This Lease Termination Agreement is made as of the date above. For valuable consideration, the parties agree as follows:

1. Landlord and Tenant have agreed to voluntarily terminate the Lease. Notwithstanding anything to the contrary in the Lease, the Lease Termination Date means _____, 200*.

Tenant agrees to surrender the Premises by that date in accordance with the terms of the Lease.

2. In consideration for the Landlord's agreement to terminate the Lease, Tenant agrees to [insert any agreement: pay an amount/cure a default/surrender the security deposit].

3. Tenant acknowledges that Landlord is not in default under the Lease and has no liability to Tenant in connection with the Lease. Tenant hereby voluntarily surrenders the Premises to Landlord.

4. Landlord accepts the Demised Premises and waives any rights against Tenant for its physical condition. Landlord does not release Tenant or any guarantor, from any unknown environmental damage or causes of action that may arise after the date hereof relating to Tenant's use of the Demised Premises.

5. Tenant represents to Landlord that it has (a) acted hereunder on the advice of legal counsel, (b) executed this Agreement voluntarily, (c) read and fully understands this Agreement, and (d) the full authority to terminate the Lease and settle this claim.

6. Except as modified by this Agreement, all other terms and conditions of the Lease will continue in full force and effect and Landlord and Tenant hereby ratify and confirm the terms, provisions and conditions of, and representations, covenants and agreements set forth in the Lease as amended by this Agreement, and Tenant specifically acknowledges the validity, binding effect and enforceability of the Lease as hereby amended. This Agreement is binding upon the parties hereto and their respective successors and assigns.

7. Tenant further acknowledges that Tenant has no existing claims, defenses (personal or other wise), or rights whatsoever with respect to the Lease and Tenant further acknowledges and represents that to the best of its knowledge no condition exists which would constitute a default by Landlord under the Lease, or this Agreement, either with or without notice or lapse of time or both.

8. Tenant, its principals, employees, agents, representatives and attorneys agree to keep the terms of this Agreement strictly confidential and shall not disclose either directly or indirectly the terms of this Agreement to any person or entity without the prior written permission of Landlord; provided, however, that Landlord's permission shall not be required for disclosure compelled by applicable laws, rules and regulations and disclosures to Tenant's lenders, current or bona fide potential investors, accountants and members of Tenant's Board of Directors.

9. [Tenant's Security Deposit is forfeited to Landlord / Landlord will refund the Security Deposit subject to any charge permitted by the Lease.

LANDLORD:

TENANT:

GUARANTORS

Y. Confirmation of Renewal.

Landlords should be careful about renewing lease terms. One client “renewed” a Lease thinking the tenant had exercised its renewal option, but a badly worded amendment merely modified the original term. Later the tenant exercised the renewal option [at a favorable rate].

LEASE RENEWAL

Date:

Lease:

Landlord:

Tenant:

Premises:

For valuable consideration, the parties agree as follows:

1. Tenant exercises its renewal option as set forth in Section ___ of the Lease. As extended, the Lease Term will end on _____, 200*.
2. Tenant has [no] [___] further renewal options.
3. The undersigned guarantors join this Renewal to acknowledge that each guarantor remains liable on the Lease and is not released from any obligations thereunder.

ADD PARTIES AND GUARANTORS.

Z. HVAC Maintenance Agreement.

HVAC PREVENTATIVE MAINTENANCE AGREEMENT

Date:

RE: Heating Ventilating and Air-Conditioning Preventative Maintenance
* Shopping Center * Texas

Dear:

Per your lease, we have entered into a contract with _____ [Contractor name] for the regularly scheduled preventative maintenance servicing of your HVAC equipment. These regular inspections will be performed in April, July, October and January. Included in these services are described on Exhibit A.

The cost of air filter media and belts is included in the annual cost of this maintenance agreement. Power washing of condenser and evaporator coils will be invoiced additionally.

All preventative maintenance work will be performed during normal working hours Monday through Friday, 8:00 a.m. to 4:30 p.m. The established Preventative Maintenance Service cost with XYZ Mechanical for your Premises is: \$_____ per year and will be invoiced annually as additional rent.

In the event any additional service or repair/replacement work is required on your HVAC equipment XYZ Mechanical will provide a written proposal indicating the problem and respective cost breakdown for both labor and materials. This estimate will be forwarded to you for your approval. If your approval has not been received by XYZ Mechanical within (30) Thirty days we reserve the right to order the completion of the repair work.

Two exceptions to the above-mentioned service work require no formal written approval. These exceptions are: (1) a necessary repair is found during a regularly scheduled preventative maintenance check that does not exceed \$250.00; and (2) a repair is needed under emergency conditions to maintain heat or to prevent the failure of the unit.

Under these circumstances a minor repair costing under \$250.00 is cost effective to complete while on site during an inspection versus making a special service call. Either exception requires a verbal approval from our office.

Any service work completed on your HVAC equipment over and above the preventative maintenance contract will be billed to you directly. This invoice will be itemized listing all parts and labor with a copy forwarded to our office.

If at any time your HVAC system requires a service call please notify us as to the work that needs to be done.

Sincerely,

Schedule "A" Maintenance Services

XYZ Company will inspect the heating/cooling units with gas or electric heat on a semi-annual basis and perform the following:

1. Lubricate fan motor and bearing
2. Check belts once annually during the spring inspection
3. Check burners and heat exchanger
4. Check air adjustment to burners
5. Check fan and limits control
6. Check gas valve operation
7. Visually check pilot operation
8. Check operating and safety controls
9. Check fan motor amperage
10. Check outside air damper
11. Inspect electrical wiring connections
12. Check electric heating coil amperage draw
13. Check coil contractor and sequencing
14. Inspect and blow out condenser coil with CO2 once annually
15. Inspect and clean condensate drain
16. Inspect condenser fan
17. Check compressor and fan motor voltage and amperage
18. Check refrigerant charge and pressure
19. Check temperature drip across coil
20. Check compressor oil charge
21. Change air filter media two (2) times annually

AA. Tenant Move-Out/ Release of Deposit.

Tenant Move-Out Agreement

Date:

Landlord:

Tenant:

Forwarding Address:

Lease: Shopping Center Lease for the * Center dated * for the Premises

Premises:

Deposit:

For valuable consideration, Landlord and Tenant agree as follows:

1. The Lease Term has expired, as of *, 200*.
2. Tenant has vacated the Premises and Landlord accepts the Premises, subject to all terms of the Lease that expressly or impliedly survive the termination.
3. Tenant and Tenant Guarantor acknowledge that:
 - a. each party remains liable on the Lease to the extent of any provisions that survive and
 - b. Landlord is not in default under the Lease.
4. Tenant has received the Deposit[, less the deductions listed on the attached Schedule].

ADD SIGNATURES FOR LANDLORD, TENANT AND ANY GUARANTORS

BB. Listing Agreement.

LISTING AGREEMENT

Broker:

Owner:

Property: _____ Shopping Center located at _____

This Listing Agreement ("Agreement") is entered into between Broker and Owner for the Property.

For valuable consideration, the parties agree as follows:

1. Appointment.

a. Owner appoints Broker as sole and exclusive leasing broker, and not its agent for any purpose, for the Property and grants it the sole right to lease space in the Property (unless otherwise provided herein) from the Effective Date. This appointment will continue for the Term or until sooner terminated by the terms of this Agreement. Broker is responsible for all of its employees, the supervision of all persons performing services in connection with the performance of all of its obligations relating to the leasing of the Property, and determining the manner and time of performance of all acts hereunder. Nothing herein contained will be construed to establish Broker as the agent of Owner. Broker will not represent to any party that it is Owner's agent.

b. Broker accepts the appointment as sole and exclusive leasing broker for Owner and agrees to use its best efforts to lease the available rental space in the Property on the written leasing terms prepared by Owner.

c. Broker will advertise the Property, post site signs, and engage in other forms of marketing, public relations, advertising and promotional activities, at Owner's expense as set forth in the marketing budget prepared by Owner.

d. All leases are subject to the Owner's written approval. Broker has no authority to sign leases for Owner.

e. Broker must cooperate with other licensed brokers (the "Participating Brokers"). Participating Brokers must contract with Broker to (1) to share in the Fee and (2) not to disclose confidential information relating to the Property.

2. Professional Service Fee.

a. Owner agrees to pay Broker a commission (the "Fee") for executed leases of 10,000 square feet or less, equal to four percent (4%) of the aggregate gross rentals that each tenant ("Tenant") contracts to pay (but not including any free rent or improvement concessions) over the term of the lease (a "Lease"). If the Lease is greater than 10,000 square feet, then the Fee will be \$3.00 per square foot.

b. If Participating Broker procures a Lease of less than 10,000 square feet, the Fee payable to Broker under the previous section will be increased to six percent (6%) (the "Additional Fee"). If such Lease is greater than 10,000 square feet, then the Fee will be increased to \$5.00 per square foot.

3. However, Owner is not obligated to pay the Additional Fee if the Participating Broker receives any fee of any kind from Tenant, relating to the Lease.

d. Broker must pay a share of the Fee due to a Participating Broker pursuant to its agreement with the Participating Broker. Such payments are the sole responsibility of Broker, subject to Broker's receipt of the Fee from Owner under this Agreement.

e. This Agreement does not apply to any renewals or expansions of the Lease. This Agreement only applies to leasing efforts, as set forth herein, and does not apply to any sales of the Property.

f. Fifty percent (50%) of the Fee is payable when the Lease is signed [however, if there is any contingency to terminate the Lease, then this amount is payable after the expiration of such contingency] and the remaining fifty percent (50%) of the Fee is payable when the tenant makes the first rent payment.

g. Owner's obligation to pay any Fee hereunder does not apply to any lease with a tenant where Owner has incurred liability to pay any prior broker a commission for services procuring that tenant. Owner agrees to provide any post-termination tenant list from a prior agreement to Broker.

3. Broker's Representations.

a. Broker represents that it is a licensed as a real estate broker and any sales person working hereunder will have an active license under the laws of the State where the Property is located.

b. Broker will act solely as Seller's representative.

c. All activities by Broker and Broker's associates hereunder will be conducted in strict compliance with the laws of the State of where the Property is located.

d. Broker is not authorized to make any representations to any party about this subject matter to this Agreement or the Property on Owner's behalf.

4. Post Termination Leases. Broker must submit to Owner a written list of all the prospective tenants with whom Broker has been in active negotiation during the term of this Agreement (the "Tenant List") no later than fourteen (14) days after expiration or termination of the Agreement ("Termination"). Any lease with a tenant identified on the Tenant List that is fully executed by Owner within one hundred eighty (180) days after Termination shall be subject to the professional service fee payable to the Broker as described in Section 2 above.

IV.

V. 5. OBLIGATIONS OF THE PARTIES.

a. Broker agrees to perform its leasing services with due diligence and to endeavor to procure tenants for the available space in the Property in accordance with the terms and conditions of this Agreement. Broker makes no guarantees or warranties, either expressed or implied as to the tenant's performance of its obligation under such negotiated leases.

2. Owner will prepare the Lease documents.

6. Term and Termination.

a. This Agreement will begin on the Effective Date and continue for one (1) calendar year. Thereafter, this Agreement will only be extended by a written extension agreement executed by the parties.

b. The parties may terminate this Agreement at any time.

c. If Broker defaults in the performance of any of its material obligations under this Agreement, Owner must deliver to Broker a written notice setting forth the nature of the default. Broker will have fifteen (15) days to cure the default. Failing such cure, Owner will have the right to terminate this Agreement at any time.

d. This Agreement will terminate automatically if all or substantially all of the Property is sold.

7. Indemnity.

a. Broker agrees to indemnify, defend and hold Owner harmless from and against all claims, demands, liabilities, losses, costs or expenses, including attorney's fees, court costs and other fees and expenses, incurred in investigating, defending and/or settling any claim caused by or in any way related to any negligent action of, inaction of, or misrepresentation made by Broker to any potential Tenant or other third party.

b. Owner agrees to indemnify, defend and hold Broker harmless from and against all claims, demands, liabilities, losses, costs or expenses, including attorney's fees, court costs and other fees and expenses, incurred in investigating, defending and/or settling any claim caused by or in any way related to any negligent action of, inaction of, or misrepresentation made by Owner to Broker or other third party.

c. The provisions of this Section will survive the expiration or termination of this Agreement.

8. **Compliance with Laws.** In performing its duties hereunder, Broker must comply with all laws applicable, including without limitation, maintenance of all necessary brokerage licenses. In addition, Broker must comply with all laws relating to the employment of its employees.

9. **Physical Condition of the Property.** All leases will be "as-is" and Broker may not make any representations to the prospective tenants for the Property.

10. **General Provisions.**

a. This Agreement embodies the entire agreement and understanding between the parties and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. This Agreement may not be modified, amended, or terminated, nor may any term or provision hereof be waived or discharged, except in writing signed by the party against whom such amendment, modification, termination, waiver, or discharge is sought to be enforced.

2. The address for service of notices is set forth below the signatures of each party. Any notices or other communications given under this Agreement will be deemed to have been properly given when delivered, if personally delivered, or three (3) days after the date mailed, if sent certified or registered mail, return receipt requested postage prepaid, and addressed to the parties at the addresses for service, or if sent by facsimile transmission. Either party may change its address for the giving of notices under this Agreement by delivering to the other party ten (10) days written notice of this change of address.

3. This Agreement may not be assigned without the prior written consent of the other. However, either party may assign this Agreement to a successor corporation or partnership, a parent company, a wholly owned subsidiary corporation, or an entity which controls, is controlled by, or is under common control with such party.

d. This Agreement will be construed and enforced in accordance with, and governed by, the laws of the State where the Property is located.

e. The prevailing party in any legal proceeding brought in relation to this Agreement is entitled to recover from the other party reasonable attorneys' fees, pre-judgment interest as allowed by law, and all other costs of collection.

f. All of the terms of this Agreement, whether so expressed or not, are binding upon the respective successors and permitted assigns of the parties hereto and will inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

g. If any of the provisions of this Agreement are to any extent invalid or unenforceable, the remaining provisions of this Agreement will not be affected thereby and every provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

h. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

i. Any reference in this Agreement to any one gender, masculine, feminine, or neuter, includes the other two, and the singular includes the plural and vice versa unless the context otherwise requires.

Executed as of _____, 200* (the "Effective Date").

*OWNER

*BROKER

By: *, General Partner

Address:

By: _____

Name:

Telephone:

Title:

Fax:

CC. Release of Equipment to Lessor [Abandoned Property].

RELEASE OF EQUIPMENT AGREEMENT

Landlord:

Lessor:

Premises:

Property: the personal property described on Exhibit A

Lessor has requested Landlord to release the Property located at the Premises. Landlord has required this Agreement as a condition to releasing the Property.

Now, therefore, for good and valuable consideration, the parties agree as follows:

1. Lessor represents to Landlord that it has the right to remove the Property, as the owner of the Property and pursuant to a valid lease agreement.
2. Lessor agrees to indemnify and hold Landlord, and its agents and employees harmless of and from any and all claims and expenses that may be asserted by the former tenant or any guarantor which are related to the Landlord's release of the Property. This provision will survive the release of the Property.
3. Lessor must remove the Property no later than 5:00 p.m. on [day], [date]. Lessor will be liable for any damage to the building caused by the removal.
4. Lessor must use licensed plumbers or electricians, if required in Landlord's reasonable judgment to safely remove the Property.
5. Lessor must sign a receipt acknowledging its possession of the Property at the time of removal.

Date:

LESSOR

By:
Name:
Title:

DD. Master Exhibit for Permitted and Exclusive Uses.

No form will be prepared for this topic. Landlords need help in managing the complexities of “permitted uses,” “prohibited uses,” and “exclusive uses.”

A **permitted use** is what the tenant is allowed to do under the lease. Landlords should avoid allowing “any lawful use” if it wants to keep control over the tenant mix. The language should be as narrow as possible, but still broad enough to allow the tenant to do all ancillary activities.

A **prohibited use** means either:

1. Landlord’s laundry list of bad boy uses: adult books, topless bars, bingo, second hand junk, etc.; and
2. Any restrictive covenants from any REA [i.e., the grocery store restrictions], such as no meat or groceries, pharmacy items, or household products.

An **exclusive use** means that the landlord has promised this tenant that no other tenant in the Center will be allowed to conduct some activity.

We suggest that every landlord compile an Exhibit to go on all leases that list the current tenants and their “permitted use” and their “exclusive uses.” Then in all new leases, the tenant agrees that it will not do anything that would be the same as those permitted uses and the exclusive uses, i.e. they become “prohibited uses” under the lease. The Exhibit would also contain a list of prohibited activities that the landlord desires, including anything from any REA of record.

EE. Lock-out Notice.

NOTICE OF LOCK-OUT

VIA CERTIFIED MAIL RETURN RECEIPT

Date

Tenant Name
Address
City, State, Zip

Re: * (“Landlord”)/ * (“Tenant”)

Ladies and Gentlemen:

Landlord previously notified Tenant of its default in the payment of rent. The default was not cured and, pursuant to the Lease and the laws of the State of Texas, Landlord has exercised its right to change the door locks on the premises.

This lock-out is not a termination of your Lease, only a termination of your right of possession. You remain liable for all rental and other payment obligations under the Lease. Landlord reserves all rights and remedies provided under the Lease and allowed by law.

OPTIONAL: Landlord has applied your security deposit in the amount of \$_____ to the amount outstanding under the Lease.

OPTIONAL [IF TENANT APPEARS TO HAVE VACATED] It appears that Tenant has removed substantially all of its personal property from the premises. Landlord will deem the property to be abandoned and will dispose of it unless Tenant notifies Landlord in writing within 60 days that it is not abandoned.

You may obtain a new key, after paying all past-due rent, during *hours available, which must be during tenant’s normal working hours / your regular business hours* by contacting *name* at *address/phone number*.

Agent for Landlord

c: Tenant
Tenant File
Bank for Subordination

LANDLORD, LTD. LETTERHEAD

LOCKOUT NOTICE

Date:

Tenant Name

You are in default under the Lease, and the undersigned has terminated tenant's right to possess these premises and has changed the locks. Tenant may obtain a new key, after paying all past-due rent to the Landlord between * hours available, which must be during tenant's normal working hours*by contacting _____ at __ _____.

Add Landlord signature.

Note: to be posted at the Premises.

FF. Asbestos Disclosure Notice

Date:

Landlord’s Name and Address:

Tenant’s Name and Address:

Description of Property:

THIS ASBESTOS DISCLOSURE NOTICE (“NOTICE”) IS A DISCLOSURE OF KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT MAY BE DESIRED. THIS NOTICE IS NOT A WARRANTY OF ANY KIND.

A. Landlord’s Disclosure

1. Presence of asbestos-containing or presumed asbestos-containing material (check one):

Known asbestos-containing material is present in the Property (explain):

The Property was constructed before 1981, and presumed asbestos-containing material is present in the Property (explain): _____

The Property was constructed after 1980, and Landlord has no knowledge of asbestos-containing material in the Property.

2. Records and reports available to Tenant (check one):

Landlord has provided Tenant with all available records and reports pertaining to asbestos-containing material in the Property (list documents: _____)

Landlord has no records or reports pertaining to asbestos-containing material in the Property.

B. Tenant’s Acknowledgment. Tenant has received copies of all information listed above. Tenant is aware of Tenant’s responsibility to ensure compliance with 15 U.S.C. sections 2641 through 2656 and 29 C.F.R. sections 1910.1001 *et seq.* and 1926.1101 *et seq.*

Landlord Date

Tenant Date