



COMMERCIAL LEASE AGREEMENT

Percentage Rent

Prepared by: Agent _____
Broker _____

Phone _____
Email _____

NOTE: This form is used by a leasing agent or landlord when retail space in a project is leased by a tenant for a fixed-term to grant the tenancy and set the terms for the tenant's payment of rent in an amount based on a percentage of the tenant's gross sales.

DATE: _____, 20_____, at _____, California.
Items left blank or unchecked are not applicable.

1. FACTS:

1.1 _____, as the Landlord,
leases to _____, as the Tenant,
the Premises referred to as _____

which is part of the Project known as _____.

1.2 Landlord acknowledges receipt of \$_____ to be applied as follows:
 Security deposit \$ _____
 First month's rent \$ _____
 \$ _____
 \$ _____

1.3 The following checked addenda are part of this lease agreement:
 Addendum — Lease/Rental [See **RPI** Form 550-1] Option to Renew/Extend Lease [See **RPI** Form 565]
 Broker Fee Addendum [See **RPI** Form 273]
 Condition of Premises Addendum [See **RPI** Form 560] Option to Purchase [See **RPI** Form 161 & 161-1]
 Tenant's Property Expense Profile [See **RPI** Form 562] Option to lease additional space
 Property description Building rules
 Plat map of leased space _____

2. TERM OF LEASE:

2.1 The lease granted commences _____, 20_____, and expires _____, 20_____.
a. The month of commencement is the anniversary month.
2.2 The lease terminates on the last day of the term without further notice.
2.3 If Tenant holds over, the monthly rent will be increased to 120% of the monthly rent applicable immediately preceding the termination of this lease agreement, prorated at 1/30th of the monthly rent for each day until the Premises is delivered to Landlord.
2.4 Tenant may surrender this lease only by a written surrender agreement with Landlord. [See **RPI** Form 587]
2.5 This lease agreement is a sublease of the Premises which is limited in its terms by the terms and conditions of the attached master lease agreement.

3. POSSESSION:

3.1 Possession to be delivered to Tenant and Tenant to take possession on commencement of the lease, or on _____, 20_____.
3.2 If Landlord is unable to recover and deliver possession of the Premises from the previous tenant, rent will not accrue and Tenant will not be liable for rent until possession is delivered.
3.3 Tenant may terminate the lease if Landlord does not deliver possession within 10 days after commencement of the lease.
3.4 If Landlord is unable to deliver possession of the Premises, Landlord will not be liable for any damages.

4. RENT:

4.1 Tenant to pay rent monthly, in advance, on the first day of each month, including rent for any partial month pro rated at 1/30th of the monthly rent per day.
a. Tenant to pay additional rent due as called for in this lease agreement.
4.2 Rent to begin accruing on commencement of the lease, or on _____, 20_____.
4.3 **BASE RENT:** Monthly base rent to be paid as follows:
a. **FIXED BASE RENT:** Monthly base rent for the entire term is fixed at \$_____.
b. **GRADUATED BASE RENT:** Monthly Base rent, from year to year, is graduated on anniversary months as follows:
Initial year's monthly rent to be \$_____, and continues until:
i. _____% increase in monthly rent over prior year's monthly rent for years _____ to _____,
_____ % increase in monthly rent over prior year's monthly rent for years _____ to _____,
_____ % increase in monthly rent over prior year's monthly rent for years _____ to _____,

- ii. Monthly rent commencing on the ____ anniversary to be \$ _____,
 Monthly rent commencing on the ____ anniversary to be \$ _____,
 Monthly rent commencing on the ____ anniversary to be \$ _____.
- c. **CPI ADJUSTED RENT:** Monthly base rent for the initial 12 months of the term is the amount of \$ _____, there after adjusted annually on the first day of each anniversary month by increasing the initial monthly base rent by the percentage increase between the applicable Consumer Price Index for All Urban Consumers (CPI-U) figures published for the third month preceding the month of commencement and the third month preceding the anniversary month.
 - i. The applicable CPI-U (1982-1984 = 100) is:
 - Los Angeles-Riverside-Orange County, San Francisco-Oakland-San Jose,
 - San Diego, National, _____.
 - ii. Annual rent increases under CPI-U adjustments are limited to an increase of ____%.
 - iii. On any anniversary adjustment, if the CPI-U has decreased below the CPI-U for the prior 12-month period, the monthly rent for the ensuing 12 months will remain the same as the rent during the prior 12 months.
 - iv. If the CPI-U is changed or replaced by the United States Government, the conversion factor published by the Government on the new Index will be used to compute annual adjustments.
 - v. Following each ____-year period after commencement, including any extensions and renewals, the monthly rent is to be adjusted upward to current market rental rates for comparable premises.
 - vi. Computation of any future annual CPI-U adjustments in monthly rent on each anniversary month after adjustment to current market rental rates will treat the monthly rent for the initial 12 months of each market rent adjustment as the initial monthly base rent, and treat the first month of each market rent adjustment as the month of commencement for selecting the Index figures.
 - vii. Landlord to reasonably determine and advise Tenant of the adjusted rental rates no less than 3 months prior to the effective date of the adjustment.

4.4 **ADDITIONAL PERCENTAGE RENT:** Additional percentage rent equal to ____% of gross sales income made from the Premises during each calendar year, less credit for base rent, real estate taxes, insurance, assessments and common area maintenance (CAM) charges paid by Tenant for the calendar year, is to be paid as described below:

- a. The percentage rent due for each month of the lease will be paid and delivered with a signed written statement of the gross sales income and percentage computation by the tenth day of the following month.
- b. The additional percentage rent computed for each month to be credited for base rent, taxes, insurance, assessments and CAMs paid by Tenant for the month.
- c. Within one month after each calendar year and on expiration of the lease, Tenant to compute and deliver a written statement of the year's sales and the additional percentage rent calculated for the calendar year, less credit for base rent, taxes, insurance and CAMs paid for the calendar year, to annually determine the percentage rent remaining due from Tenant or to be refunded to Tenant by Landlord, which difference will be paid on delivery of the annual statement.
- d. Gross sales income includes all money or equivalent received by Tenant, subtenant, licensees or concessionaires, in the ordinary course of business, whether wholesale or retail, cash or credit, less credit for goods returned by customers.
- e. Landlord has the right, on reasonable notice, to audit Tenant's books regarding sales information.

4.5 Rent to be paid by:

- a. check, cash, or cashier's check, made payable to Landlord or _____.
 Personal delivery of rent to be during the hours of _____ to _____ as payee's address _____
 on the following days _____.
- b. credit card # _____ / _____ / _____ / _____; expiration date _____, 20____; security code _____ which Landlord is authorized to charge each month for rent due.
- c. deposit into account number _____ routing number _____ at _____ (Financial Institution) _____ (Address)
- d. _____.

4.6 Tenant to pay a charge of \$ _____, or ____% of the delinquent rent payment, as an additional amount of rent, due on demand, in the event rent is not received within 5 days, or _____ days, after the due date.

4.7 If any rent or other amount due Landlord is not received within the grace period provided in Section 4.6, interest will accrue from the due date on the amount at 18% per annum until paid. On receipt of the payment of any delinquent rent, Landlord to promptly make a written demand for payment of the accrued interest which will be payable within 30 days of the demand.

4.8 Tenant to pay a charge of \$ _____ as additional rent, due on demand, for each rent check returned for insufficient funds or stop payment, in which event Tenant to pay rent when due for each of the 3 following months by cash or cashier's check.

5. OPERATING EXPENSES:

- 5.1 Tenant is responsible for payment of utilities and services supplied to the Premises.
- 5.2 Tenant to pay all taxes levied on trade fixtures or other improvements Tenant installs on the Premises.
- 5.3 As additional base rent, Tenant to pay _____% of the real property taxes and assessments levied by governments, for whatever cause, against the land, trees and buildings within the Project containing the Premises, within 30 days after written demand from Landlord.
 - a. Tenant is not liable for increases in real property taxes and assessments resulting from a change in ownership.
- 5.4 Tenant will, on request of Landlord, authorize their utility companies to release energy consumption data directly to Landlord for Landlord's Data Verification Checklist used for energy benchmarking purposes and, upon further request, provide energy consumption data on the Premises. [See RPI Form 552-9]
- 5.5 If Landlord pays any charge owed by Tenant, Tenant will pay, within 30 days of written demand, the charge as additional rent.
- 5.6 As additional monthly base rent, Tenant to pay _____% of the CAMs for the Project incurred each month, within 10 days of written statement and demand for payment.
 - a. CAMs are the cost to landlord of maintaining and operating the "Common Areas" of the Project, including all sidewalks, corridors, plazas, hallways, restrooms, parking areas, interior and exterior walls and all other open areas not occupied by tenants.
 - b. CAMs include all costs incurred by Landlord relating to the operation of the Project containing the Premises including hazard insurance premiums maintained by Landlord and charges for property management of the Common Areas.

6. REPAIR AND MAINTENANCE:

- 6.1 The Premises are in good condition, except as noted in an addendum. [See RPI Form 550-1]
- 6.2 Tenant will keep the Premises and its improvements in good order, condition and repair, including all equipment, such as plumbing, HVAC components, electrical, lighting, and _____.
- a. Tenant's obligations include repair, replacement or retrofitting needed to keep all improvements on the Premises in good order, condition and repair.
- b. See the attached maintenance modification addendum. [See RPI Form 552-6]
- 6.3 Except as stated in Section 6.2 and subject to reimbursement under Section 5.5, Landlord will maintain in good order, condition and repair the structures and common area components and equipment within the Project which exist on the commencement of this lease agreement, including structural foundations, exterior walls, roof, parking areas, lawns and shrubbery, sidewalks, driveways/right of ways, and common area HVAC, electrical systems, plumbing, fire alarms and sprinkler systems, and _____.
- 6.4 If the cost incurred under Tenant's obligation for any item in Section 6.2 exceeds the equivalent of 1 month's rent for the month prior to occurrence of the obligation, then the item is to be repaired, replaced or retrofitted and paid for by Landlord.
 - a. The cost for items under Section 6.2 or of any capital improvement to the Project paid by Landlord under Section 6.3 will be allocated over a 12-year period.
 - b. Tenant is obligated to pay an amount equal to the cost of the capital improvement borne by Landlord multiplied by the fraction 1/144 (i.e., 1/144th of the cost per month) as additional rent each month during the remainder of the term of this lease agreement and any subsequent lease extensions up to 12 years.

7. USE OF THE PREMISES:

- 7.1 The Tenant's use of the Premises will be _____.
- 7.2 No other use of the Premises is permitted.
 - a. Tenant may not conduct any activity which increases Landlord's insurance premiums.
- 7.3 Tenant will not use the Premises for any unlawful purpose, violate any government ordinance or building and tenant association rules, or create any nuisance.
- 7.4 Tenant will not destroy, damage, or remove any part of the Premises or equipment, or commit waste, or permit any person to do so.
- 7.5 Tenant will deliver the Premises, including tenant improvements as noted in Section 11.3 and all keys to the Premises, on expiration of the lease in as good a condition as when Tenant took possession, except for reasonable wear and tear.
- 7.6 Landlord warrants that the Premises comply with building codes, regulations and zoning that were in effect at the time each improvement, or portion thereof, was constructed. Said warranty does not apply to Tenant's intended use of the Premises, modifications which may be required by the Americans with Disabilities Act (ADA) or any similar laws as a result of Tenant's use.
- 7.7 Tenant is responsible for determining whether the building codes, zoning and regulations are appropriate for Tenant's intended use.

- 7.8 If the Premises do not comply with these warranties, Tenant is to give Landlord written notice specifying the nature and extent of such non-compliance, and Landlord is to promptly correct the non-compliance at Landlord's expense. If Tenant does not give Landlord written notice of the non-compliance with this warranty within 6 months following the commencement date, Tenant, at Tenant's expense, will correct the non-compliance.
- 7.9 The Premises has, has not, been inspected by a Certified Access Specialist (CASp).
 - a. If inspected, the Premises has, has not, been determined to meet all applicable standards under Calif. Civil Code §1938 and §55.53.

8. APPURTENANCES:

- 8.1 Tenant has the right to use Landlord's access of ingress and egress.
- 8.2 Tenant has the use of _____ parking spaces for the running of its business.

9. ASSIGNMENT, SUBLETTING AND ENCUMBRANCE: [Check only one]

- 9.1 Tenant may not assign this lease or sublet any part of the Premises, or further encumber the leasehold.
- 9.2 Tenant may not transfer any interest in the Premises without the prior consent of Landlord.
 - a. Consent may not be unreasonably withheld.
 - b. Consent is subject to the attached alienation provisions. [See RPI Form 552-7]

10. SIGNS AND ADVERTISING:

- 10.1 Tenant will not construct any sign or other advertising on the Premises without the prior consent of Landlord.
- 10.2 Landlord will maintain a directory in the lobby of the Premises displaying the name and suite number of Tenant. Landlord has the right to determine the size, shape, color, style and lettering of the directory.
- 10.3 Landlord will provide a sign to be placed on the primary door to Tenant's suite. The fees for the cost and installation will be paid by Tenant.

11. TENANT IMPROVEMENTS/ALTERATIONS:

- 11.1 Tenant may not alter or improve the Premises without Landlord's prior consent to include tenant improvements necessary for Tenant to occupy.
 - a. Tenant will keep the Premises free of all claims for any improvements and will timely notify Landlord to permit posting of Notices of Nonresponsibility. [See RPI Form 597]
- 11.2 Any increases in Landlord's property taxes caused by improvements made by Tenant will become additional rent due on demand.
- 11.3 On expiration of this lease, tenant improvements as authorized by Landlord are to:
 - a. become fixtures and part of the Premises not to be removed by Tenant.
 - b. be removed by Tenant in their entirety.
 - c. be partially removed by Tenant as follows: _____.

12. RIGHT TO ENTER:

- 12.1 Tenant agrees to make the Premises available on 24 hours' notice for entry by Landlord for necessary repairs, alterations, or inspections of the Premises.

13. LIABILITY INSURANCE:

- 13.1 Tenant will obtain and maintain commercial general liability and plate glass insurance coverage insuring Tenant and Landlord against all claims for bodily injury, personal injury and property damage arising out of Tenant's use of the Premises.
- 13.2 Tenant to obtain insurance for this purpose in the minimum amount of \$_____.
- 13.3 Tenant to provide Landlord with a Certificate of Insurance naming Landlord as an additional insured. The Certificate is to provide for written notice to Landlord if a change or cancellation of the policy occurs.
- 13.4 Each party waives all insurance subrogation rights they may have.

14. FIRE INSURANCE:

- 14.1 Tenant will obtain and maintain a standard fire insurance policy with extended coverage for theft and vandalism for 100% of the replacement value of all Tenant's personal property and the restoration of tenant improvements.

15. HOLD HARMLESS:

- 15.1 Tenant will hold Landlord harmless for all claims, damages or liability arising out of the Premises caused by Tenant or its employees or patrons.

16. DESTRUCTION:

- 16.1 In the event the Premises are totally or partially destroyed, Tenant agrees to repair the Premises if the destruction is caused by Tenant or covered by Tenant's insurance.
- 16.2 Landlord will repair the Premises if the cause is not covered by Tenant's insurance policy and is covered by Landlord's insurance policy.
- 16.3 This lease agreement may not be terminated due to any destruction of the Premises, unless:
 - a. the repairs cannot be reasonably completed within 30 days;
 - b. the cost of restoration exceeds 70% of the replacement value of the Premises;
 - c. the insurance proceeds are insufficient to cover the actual cost of the repairs; or
 - d. the Premises may not be occupied by law.

17. SUBORDINATION:

- 17.1 Tenant agrees to subordinate the leasehold estate to any new financing secured by the Premises which does not exceed 80% loan-to-value ratio, and interest of 2% over market, and not less than a 15-year monthly amortization and 5-year due date.

18. TENANT ESTOPPEL CERTIFICATES:

- 18.1 Within 10 days after notice, Tenant will execute a Tenant Estoppel Certificate verifying the existing terms of the lease agreement to be provided to prospective buyers or lenders. [See **RPI Form 598**]
- 18.2 Failure by Tenant to deliver the Certificate to Landlord will be conclusive evidence the information contained in the Certificate is correct.

19. EMINENT DOMAIN:

- 19.1 In the event a portion or all of the Premises is condemned for public use, Landlord may terminate the lease and Tenant's possession. If the lease is not terminated, Tenant will receive a rent abatement for the actual reduction (if any) in the value of the leasehold interest held by Tenant.
- 19.2 Tenant waives the right to any compensation awarded from the condemning authority for the whole or partial taking of the Premises.
- 19.3 Tenant to be compensated by the condemning authority only for the tenant improvements paid for by Tenant.

20. WAIVER:

- 20.1 Waiver of a breach of any provision in this lease agreement does not constitute a waiver of any subsequent breach.
- 20.2 Landlord's receipt of rent with knowledge of Tenant's breach does not waive Landlord's right to enforce the breach.

21. DEFAULT REMEDIES:

- 21.1 If Tenant breaches any provision of this lease agreement, Landlord may exercise its rights, including the right to collect future rental losses after forfeiture of possession.

22. BROKERAGE FEES:

- 22.1 Landlord and Tenant to pay Broker fees per the attached Schedule of Leasing Agent's Fee. [See **RPI Form 113**]

23. MISCELLANEOUS:

- 23.1 See attached addendum for additional terms. [See **RPI Form 550-1**]
- 23.2 In any action to enforce this lease agreement, the prevailing party is entitled to receive attorney fees.
- 23.3 This lease agreement is binding on all heirs, assigns and successors except as provided in Section 9
- 23.4 This lease agreement is to be enforced under California law.
- 23.5 This lease agreement reflects the entire agreement between the parties.
- 23.6 This lease agreement is secured by a trust deed. [See **RPI Form 451**]
- 23.7 The performance of this lease agreement is assured by a Guarantee Agreement. [See **RPI Form 553-1**]
- 23.8 If lease exceeds one year, Tenant and Landlord acknowledge receipt of the Agency Law Disclosure. [See **RPI Form 550-2**]
- 23.9 Notice: Landlord has actual knowledge the property is located in a special flood hazard area or an area of potential flooding. Tenant may obtain information about flood and other hazards at <http://myhazards.caloes.ca.gov/>. Landlord's insurance does not cover Tenant's possessions. Tenant may purchase renter's insurance and flood insurance to insure their possessions from loss. Landlord is not required to provide additional information about flood hazards beyond this notice.

24. _____

I agree to let on the terms stated above.

Date: _____, 20____

Landlord: _____

Signature: _____

Landord's Broker: _____

Broker's DRE #: _____

is the broker for: Landord
 both Tenant and Landlord (dual agent)

Landord's Agent: _____

Agent's DRE #: _____

is Landord's agent (salesperson or broker-associate)
 both Tenant's and Landlord's agent (dual agent)

Signature: _____

Address: _____

Phone: _____ Cell: _____

Email: _____

I agree to occupy on the terms stated above.

Date: _____, 20____

Tenant: _____

Signature: _____

Tenant: _____

Signature: _____

Tenant's Broker: _____

Broker's DRE #: _____

is the broker for: Tenant
 both Tenant and Landlord (dual agent)

Tenant's Agent: _____

Agent's DRE #: _____

is Tenant's agent (salesperson or broker-associate)
 both Tenant's and Landlord's agent (dual agent)

Signature: _____

Address: _____

Phone: _____ Cell: _____

Email: _____