

# COMMERCIAL PERCENTAGE (%) RENTAL LEASE AGREEMENT

This **Commercial Percentage (%) Lease Agreement** made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

## PARTIES

### Lessor

Name of lessor: \_\_\_\_\_

Mailing address: \_\_\_\_\_

hereinafter referred to as "Lessor", and

### Lessee

Name of lessee: \_\_\_\_\_

Mailing address: \_\_\_\_\_

hereinafter referred to as "Lessee",

Each party [lessor and lessee] collectively referred to as "parties", agree as follows:

**DESCRIPTION OF LEASED PREMISES:** The Lessor agrees to lease to the Lessee the following described \_\_\_\_\_ square feet (SF) of \_\_\_\_\_ [type of space] located at \_\_\_\_\_ [street address], State of \_\_\_\_\_.

Additional Description: \_\_\_\_\_.

Hereinafter known as the "Premises".

**USE OF LEASED PREMISES:** The Lessor is leasing the Premises to the Lessee and the Lessee is hereby agreeing to lease the Premises for the following use and purpose:

\_\_\_\_\_  
\_\_\_\_\_.

Any change in use or purpose the Premises other than as described above shall be upon prior written consent of Lessor only.

**USE OF LEASED PREMISES:**

The Lessor is leasing the Premises to the Lessee and the Lessee hereby agrees to lease the Premises for the following uses and purposes: \_\_\_\_\_

Any change in use or purpose the Premises other than as described above shall be upon prior written consent of Lessor only.

**TERM OF LEASE:**

The term of this Lease shall be for a period of \_\_\_\_ year(s) \_\_\_\_ month(s) commencing on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and expiring at Midnight on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. ("Initial Term")

- **Base Rent.** There shall be base rent in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), said net monthly payment is-hereafter referred to as the "Base Rent". The Base Rent shall be due on the \_\_\_\_ day of each month.

- **Percentage Rent.** There shall be \_\_\_\_% percentage rent of: (select one)

- Gross Sales
- Sales after Operating Expenses
- Other. \_\_\_\_\_

This is known as the "Percentage Rent." The Percentage Rent is due at the completion of each tax  - Quarter  - Year.

**OPTION TO RENEW:** (select one)

- Lessee may not renew the Lease.

- Lessee may have the right to renew the Lease with a total of \_\_\_\_ renewal period(s) with each term being \_\_\_\_ year(s) \_\_\_\_ month(s) which may be exercised by giving written notice to Lessor no less than 60 days prior to the expiration of the Lease or renewal period.

Rent for each option period shall: (select one)

- Not increase.

- Increase as calculated by multiplying the Base Rent by the annual change in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics by the most recent publication to the option period start date.

- Increase by \_\_\_\_%  - Increase by \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

**EXPENSES:** [Select the lease type: Gross, Modified Gross, or Triple Net (NNN)]

- **GROSS.** Tenant's Initials \_\_\_\_\_ Landlord's Initials \_\_\_\_\_

Both parties intend that this Lease be regarded as a "Gross Lease" and that the Base Rent represents the entire monthly rent.

Due to this, the Lessee is not obligated to cover any additional expenses relating to the ownership and operation of the Premises, including utilities, real estate taxes, insurance (except for personal property), charges, and expenses of any kind. Maintenance of the exterior structure and all major systems, such as heating, electrical, and plumbing, are the responsibilities of the Lessor. Parking lot and surrounding grounds shall be maintained by the Lessor, including the removal of any snow or environmental hazards. For the Premises, the Lessor shall maintain at their expense casualty insurance against fire losses, which may or may not include extended coverage. In this Lease, the Lessee must provide and maintain personal liability and property damage insurance with a limit of one million dollars (\$1,000,000.00), naming the Lessor as "also named insured", and provide such insurance certification or policy to the Lessor prior to its effective date.

. **MODIFIED GROSS.** Tenant's Initials \_\_\_\_\_ Landlord's Initials \_\_\_\_\_

Initials of the Lessee \_\_\_\_\_ Initials of the Lessor \_\_\_\_\_

Both parties intend that this Lease be regarded as a "Modified Gross Lease".

Additionally to the Base Rent, the Lessee is required to pay the following expenses every month:

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The lessor is responsible for paying the following monthly expenses:

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. **TRIPLE NET (NNN).** Tenant's Initials \_\_\_\_\_ Landlord's Initials \_\_\_\_\_

Both parties intend that this Lease be regarded as a "Triple Net Lease".

- I. **Operating Expenses.** In relation to the Premises, the Lessor is not required to provide any services, perform any acts, or pay any expenses, charges, obligations, or costs of any kind. During the term of the Lease and any extensions thereof, the Lessee agrees to pay one hundred percent (100%) of all Operating Expenses as hereinafter defined. The term "Operating Expenses" shall include all costs to the Lessor of operating and maintaining the Premises, and shall include, without limitation, real estate and personal property taxes and assessments, management fee(s), heating, air conditioning, HVAC, electricity, water, waste disposal, sewage, operating materials and supplies, service agreements and charges, lawn care, snow removal, restriping, repairs, repaving, cleaning and custodial, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct operating costs of operating and maintaining the Premises and related parking areas, unless expressly excluded from operating expenses.
- II. **Taxes.** Lessee shall pay, during the term of this Lease, the real estate taxes including any special taxes or assessments (collectively, the "taxes") attributable to the Premises and accruing during such term. Lessee, at Lessor's option, shall pay to Lessor said taxes on a monthly basis, based on one-twelfth (1/12) of the estimated annual amount for taxes. Taxes for any fractional calendar year during the term hereof shall be prorated. In the event the Lessee does not make any tax payment required hereunder, Lessee shall be in default of this Lease.
- III. **Insurance.** Lessee shall maintain, at all times during the Term of this Lease, comprehensive general liability insurance through an insurance company licensed to do business in the State in which the Premises are located and satisfactory to Lessor, adequately protecting and indemnifying Lessor with a single limit coverage not less than \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for injury to or \_\_\_\_\_ dollars (\$ \_\_\_\_\_) death of persons and \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for property damage. In accordance with this Lease, Lessee shall provide Lessor with a certificate(s) of insurance covering such insurance so maintained by Lessee and naming Lessor and Lessor's mortgagees, if any, as additional insureds.

**SECURITY DEPOSIT:**

Furthermore, a deposit of \$ \_\_\_\_\_ dollars (\$ \_\_\_\_\_) is required and payable in advance or at the time of signing this Lease. This deposit shall serve as security for the faithful performance of the terms and conditions of the Lease and shall be held in escrow by the Lessor in a separate, interest-bearing savings account. Unless the Lessor grants permission in writing, the Security Deposit cannot be used to pay the last month's rent.

**LEASEHOLD IMPROVEMENTS:**

As a result of this agreement, the Lessee agrees to refrain from making any leasehold improvements, alterations, or changes (except those specified in any attached addenda) to the leasehold premises or the exterior of the building without first obtaining the Lessor's written consent, which cannot be withheld unreasonably and all leasehold Affixed or attached improvements to the Premises will remain the property of the Lessor

at the expiration or termination of this Lease Agreement. In addition, any leasehold improvements must be made in accordance with federal, state, or local codes, ordinances, or regulations, taking into consideration the building's construction type. It is the Lessee's responsibility to pay for any improvements made to the Premises, except for the following:

It shall not be construed that the Lease authorizes the Lessee or any other person acting on behalf of the Lessee to encumber with a mechanic's lien or any other type of encumbrance the rents or interest of the Lessee in the Premises or any other type of interest acquired by the Lessee under and through anyone else. Lessee shall not be construed as Lessor's agent, employee, or representative. Lessee will promptly pay liens placed against Premises that are caused by Lessee's actions and take steps to have them removed as soon as possible. Upon failure of the Lessee to remove the Lien, the Lessor shall take steps to remove the lien, and the Lessee shall be in default of this Lease.

#### **LICENSES AND PERMITS:**

All permits acquired by the Lessee that are required for use of the Premises shall be kept on-site and readily accessible at all times and available upon request by the Lessor and/or their agents, as well as any local, state, or federal officials.

#### **OBLIGATIONS OF LESSEE:**

Maintenance and general upkeep of the entranceway into the Premises shall be the Lessee's primary responsibility whenever necessary. All minor repairs and maintenance of the leasehold premises will also be the responsibility of the Lessee, especially those that need immediate attention and that the Lessees, or their employees, are able to handle and perform on their own. This includes, but is not limited to, replacing light bulbs, repairing and cleaning windows, cleaning and clearing toilets, etc., as well as maintaining the Premises in a clean, safe, and good condition by the Lessee. All rubbish and hazardous wastes shall be properly and promptly removed and disposed of according to all local, state, or federal laws, rules, regulations, and ordinances.

If and when the Premises structure is damaged by the Lessee, their employees, agents, business invitees, or independent contractors serving the Lessee, or in any other way as a result of the Lessee's use or occupancy of the Premises, the Lessee is primarily responsible for filing the proper claims with his or her insurance company or the damaging party's insurance company. In addition, the Lessee is responsible for ensuring that the building is safeguarded from said damage and that all notices relating to said damage are given in a timely manner, including to the Lessor and the party responsible. Lessees will be responsible for any damage not covered by insurance.

It shall be the Lessee's sole responsibility, during the term of this Lease, and in the event of renewal, to keep the interior of the Premises in good repair, except for reasonable wear and tear. Any plate glass that has been damaged due to the neglect or actions of the Lessee or the guests or invitees of the lessee would be replaced under this obligation. A Lessee shall not knowingly commit or permit to be committed any act or thing that violates the rules and regulations prescribed from time to time by any federal, state, or local authorities and shall expressly not be allowed to store hazardous waste materials. A lessee is also responsible for bringing her contemplated operation

and business activity into compliance with any federal, state, or local laws or regulations.

**INSURANCE:**

Whenever the Lessee fails to obtain or maintain the insurance required hereunder throughout the term, the Lessor has the option, but not the obligation, to obtain such insurance and charge the Lessee as additional rent. Also, lessee agrees to not keep any articles or goods on the Premises that may be prohibited by the standard form of fire insurance policy. In case the insurance rates applicable to fire and extended coverage covering the Premises increase as a result of Lessee's use of the Premises, Lessee shall pay Lessor, upon demand, such increase in insurance premiums as shall be caused by said use or Lessee's proportionate share.

**SUBLET/ASSIGNMENT:**

There may be no assignment, transfer, or sublet by the lessee without the Lessor's prior written consent and approval.

**DAMAGE TO LEASED PREMISES:**

Whenever the Lessee's occupancy of the Premises is adversely affected by a fire or other casualty other than one caused by the Lessee's intentional acts or neglect, the rent set forth herein shall be abated or adjusted in proportion to the extent to which the Leased Premises have become unfit for use and occupation by the Lessee, and until the demised Premises have been restored to a condition, at least as close to the condition of the Premises that existed immediately before such damage, at the Lessor's expense. As a result, it is understood that in the event of total or substantial destruction of the Premises, the Lessor shall not be obligated to restore, replace, or rebuild more than the amount of insurance proceeds that are available for reconstruction.

**DEFAULT AND POSSESSION:**

Any time the Lessee fails to pay said rent and expenses as set forth in this Lease, or any part thereof, when due and payable, or shall otherwise be in default of any other terms of said Lease for a period of more than 15 days, the parties hereto agree and covenant that, upon receiving notice of said default, the Lessor may terminate the Lease immediately and reenter the Premises immediately, taking possession of the same and any personal property, equipment and fixtures the Lessee may leave on the Premises, which items may be held by the Lessor as security for the Lessee's eventual payment or satisfaction of any rental default or other default under the Lease. Also, if the Lessee fails to pay, the Lessor may take any and all actions it deems necessary to safeguard its interest in the personal property and equipment in order to prevent the unauthorized removal of said property or equipment, which threatened action would constitute irreparable harm to the Lessor and a violation of its security interests. Furthermore, in the event of default, the Lessor may expressly undertake all reasonable preparations and efforts to release the Premises including, but not limited to, the removal of all inventory, equipment, or leasehold improvements of the Lessee's, at the Lessee's expense, without the need to first procure an order of any court to do so, although obligated in the interim to undertake reasonable steps and procedures to safeguard the value of Lessee's property, including the storage of the same, under As well, the Lessee understands that the Lessor may sue the Lessee for any damages or past rents due and owing and may pursue all additional legal remedies.

Any party who prevails in a legal action to enforce any terms or provisions in this Lease shall be entitled to recover a reasonable attorney's fee in addition to all costs.

For rent that is past due more than \_\_\_\_\_ days, a payment penalty will be imposed as follows: (select one)

- A daily interest rate of \_\_\_\_\_ percent (\_\_\_\_%) until the amount is paid in full.

- A daily late fee of \$\_\_\_\_\_ dollars (\$\_\_\_\_\_ ) until the full amount is paid.

Consequently, all delinquent rental payments are applied first to interest due and the remainder to delinquent rental payments.

#### **INDEMNIFICATION:**

By using and occupying the Premises, the Lessee agrees to indemnify, defend, and hold the Lessor harmless from any and all claims or liabilities that may arise from any cause whatsoever, and shall further indemnify the Lessor in the event of any losses that the Lessor may suffer due to the Lessee's use, occupation, or care, custody, and control of the Premises. Moreover, the Lessee covenants and agrees to indemnify and hold harmless the Lessor from all claims or liabilities arising from latent defects in the premises that the Lessor is unaware of at the time of signing the lease or any time during the Lease Term.

#### **BANKRUPTCY - INSOLVENCY:**

As part of the lease, the Lessee agrees that if all or a substantial portion of the Lessee's assets are placed in the hands of a receiver or trustee for a period of 30 days, or if the Lessee makes an assignment for the benefit of creditors or becomes bankrupt, or if the Lessee institutes any proceedings under the bankruptcy act or any amendment to it, such Lease or interest in and to the Leased Premises shall not become assets in such proceedings. In such a case, and in addition to any and all other remedies the Lessor has hereunder or under law, the Lessor may declare the term hereof to be terminated and reoccupy the leased land, take possession of the improvements on it and remove all persons from it, and the Lessee shall not have any further claim.

#### **SUBORDINATION AND ATTORNMENT:**

When requested by the Lessor, Lessee's rights hereunder will be subordinated to the lien of any mortgages now or hereafter in force against the property, as well as all advances made or to be made upon the security thereof, as well as any underlying lease, provided, that in such a case the mortgage holder or the Lessor agrees that this Lease shall not be divested or affected by foreclosure or other default proceedings under the mortgage, obligation secured thereby, or Lease, so long as the Lessee shall not be in default under the terms of this Lease. Despite any such default proceedings under this Lease, lessee agrees that this Lease remains in full force and effect Secured by a mortgage or obligation. Lessee shall, As a result of a sale or assignment of Lessor's interest in the building where the Premises are located, or any proceedings

brought for foreclosure of, or if the Power of Sale is exercised under any mortgage made by the Lessor covering the Premises, the Lessor will attorn to the purchaser and recognize him or her as the Lessor under this Lease.

#### **OTHER TERMS:**

- a. **Use by Lessee:** Lessee shall comply with all rules, regulations, and laws of any governmental authority with respect to use and occupancy. On the Premises, the Lessee will not conduct a business or permit any act which is contrary to or in violation of any law, rule, regulation, or requirement that may be imposed by an authority or any insurance company with which the Premises is insured, nor will the Lessee allow the Premises to be used in any way that invalidates or conflicts with any insurance policies. Extensive or extra hazardous materials may not be brought onto or retained on the premises. Moreover, Lessee shall not install or use any equipment that will interfere with other tenants' peaceable and quiet enjoyment of the Premises.
- b. **Signs:** Lessee shall not place on any exterior door, wall, or window of the Premises any sign or advertising matter without Lessor's prior written consent and the approval of the \_\_\_\_\_ [Municipality]. After initial approval by Lessor, Lessee agrees to maintain the sign or advertising matter in good condition and repair. A uniform reasonable sign policy or plan may also be imposed on Lessee by the Lessor with respect to the building. Lessee agrees to remove all signs and repair all damages caused or resulting from such removal upon vacating the Premises.
- c. **Pets:** Except as otherwise provided for in this Lease Agreement, pets are not permitted on the Premises unless they are legally required for disability or handicap reasons.
- d. **Premises Condition/Inspection by Lessee:** The Lessee has had the opportunity to inspect the Premises and acknowledges with its signature on this lease that the Premises are in good condition and comply in all respects with the requirements of this Lease. Further, the Lessor does not warrant or represent that the Premises will be fit or available for any particular purpose, and the Lessor is not liable for any patent defects. Moreover, the Lessee represents that the Premises have been inspected and that the Lessee is leasing and will take possession of the Premises in their "as is" condition.
- e. **Access to the Premises (right of entry):** The Lessor and its agents are hereby granted the right to enter the Premises at any time or times for the purpose of inspecting or showing the Premises, as well as making any necessary repairs to the building or equipment as may be required of the Lessor under this Lease or in connection with the inspection, maintenance or repair of the building as deemed necessary.

#### **ESTOPPEL CERTIFICATE:**

A statement certifying that the Lease is unmodified and in full force and effect shall be executed, acknowledged, and delivered to the Lessor, and/or to any other party



specified by Lessor, upon at least ten (10) days prior notice by the Lessor. Alternatively, if the Lease has been modified, it remains in force and effect except as modified, stating the modifications, stating when the fixed rent and additional rent have been paid, and specifying whether or not there are any defaults by the Lessor under this Lease and if so, each one.

**HOLDOVER:**

If and when Lessee remains in possession of the Premises after the Lease expires, is canceled, or is terminated sooner, without executing a new Lease or addendum, such holding over in the absence of a written agreement to the contrary shall create and be construed as a monthly tenancy that may be terminated by either party upon thirty (30) days' notice if the Lessor elects.

**WAIVER:**

A waiver of one default by Lessor shall not constitute a waiver of any subsequent default.

**GOVERNING LAW:**

The laws of the State of \_\_\_\_\_ shall govern this Lease.

**NOTICES:** Payments and notices shall be addressed to the following:

Lessor

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Lessee

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**AMENDMENT:** There shall be no amendment to this Lease unless reduced to writing and subscribed by the parties with all the formality of the original.

**BINDING EFFECT:** The Lessee and Lessor, as well as their respective successors, heirs, assigns, executors, and administrators, shall be bound by this Lease.

IN WITNESS WHEREOF, the parties hereto set their hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Signature of Lessee**

**Printed Name**

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**Signature of Lessor**

**Printed Name**

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**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF \_\_\_\_\_

\_\_\_\_\_ County, ss.

In my presence on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
\_\_\_\_\_, as the LESSOR of this Commercial Lease Agreement, who  
presented to me a government-issued photo identification proving that he was the  
above-named person, executed the foregoing instrument and acknowledged that they  
had executed it as their free act and deed..

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF \_\_\_\_\_

\_\_\_\_\_ County, ss.

In my presence on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
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