

PROJECT #2  
**LEASE ABSTRACT**

Group #2

Joel Curtis

Taylor Ellner

James Looney

Landon Parker

Varun Rajan

## LEASE DIGEST FORM

## Part 1: Data

Project Name: <i>Building Name</i>	Lessee (Exact Name or State of Incorporation) Trade Name/DBA: <i>Tenant Name</i>		Guarantor of Lease: <i>None</i>	
Landlord: <i>Ownership, LLC</i>	Date of Lease: <i>Unknown</i>	Lease Premises (Address): <i>Suite - 3rd Floor</i>		Business of Tenant: <i>A National Association</i>
Initial Lease Term: <i>Seven (7) Years</i>	Lease Commencement & Expiration Dates: <i>Estimated Commencement - September 1st, 2013</i> <i>Expiration Date: 7 years following Commencement Date</i>		Renewal Options: <i>Two, Five (5) year Terms</i>	
SF Bldg. - sf: <i>197,719 sf</i>	SF Tenant Space - %: <i>8,316 sf or 4.20%</i>	Parking Req. (#Cars Exclusive Spaces): <i>29 Spaces</i>	Spaces/SF: <i>3.5 Spaces / 1000 sf.</i>	Security Deposit: <i>\$0.00</i>

## Part 2: Summary of Lease Economics

BASE RENT OVER TERM	TOTAL \$	AVG. \$/SF	COMMENTS
Year 1	\$222,453.00	\$26.75	
Year 2	\$226,611.00	\$27.25	
Year 3	\$230,796.00	\$27.75	
Year 4	\$234,927.00	\$28.25	
Year 5	\$239,085.00	\$28.75	
Year 6	\$243,243.00	\$29.25	
Year 7	\$247,401.00	\$29.75	

- 1) Annual Rent: Step: Yes Date: Annually Amount: \$0.50/SF
- 2) Percentage Rates Applicable?: No
- 3) CPI Inflation increases applicable?: No
- 4) Free Rent: None Months: N/A Amount: N/A
- 5) Other Rental Concessions (I.T., Moving Expenses, etc.): None

- 6) Budgeted Tenant Improvements: Up to \$42/SF (or \$349,272.00)
- 7) Leasing Commissions: None, no mention of broker
- 8) Tenant's Obligation for Operating Expense Reimbursements:

	<u>\$/SF</u>	<u>Pro Rata Share</u>
a. Real Estate Taxes	4.20% of Total	4.20%
b. Insurance	4.20% of Total	4.20%
c. CAM	4.20% of Total	4.20%
d. Utilities	4.20% of Total	4.20%
e. Exterior Structure	4.20% of Total	4.20%
f. Roof	4.20% of Total	4.20%
g. HVAC Replacement	4.20% of Total	4.20%
h. HVAC Maintenance	4.20% of Total	4.20%

- 9) Expansion Rights: No

### Part 3: Review of Lease Provisions

	Yes	No	Section
1. Can the lease be amended or terminated by tenant and landlord without the lender's approval?	Yes		Pg. 28, Section 20
2. Does the tenant have an option to purchase or right of first refusal that would <u>not</u> be subordinate to the bank's lien without the use of an SNDA?		No	Pg. 28, Section 20
3. Does the lease contain a subordination clause relative to mortgagee liens as well as a provision for the tenant to attorn to such mortgagees in the event of foreclosure?	Yes		Pg. 28, Section 20
4. Does the lease provide any offset rights to the tenant that could result in reductions of rent payable to the bank as a successor landlord?		No	Not Mentioned
5. Does the lease contain any landlord obligations or tenant rights that the bank would be unable or unwilling to satisfy or fulfill as successor landlord? (examples might include construction of improvements, tenant expansions - especially conflicting expansions, etc.)	Yes		Pg. 29, Section 20, Paragraph (c)

6. Is assignment or subletting by tenant permitted without the landlord's prior consent?		No	Pg. 19, Section 12, Paragraph (a)
7. Is the landlord prohibited from leasing to a competing business within a specified distance, or are there any other provisions which create similar leasing limitations for the landlord?		No	Not Mentioned
8. Does the lease provide for the bank's right to receive notice of any of landlord's default, and an adequate period of time for the bank to cure any such default?	Yes		Pg. 28, Section 20
9. Does the lease limit the landlord's liability to its equity interest in the project?	Yes		Pg. 31, Section 23, Paragraph (a)
10. Does the lease expressly limit the liability of the bank (as a potential successor landlord) to the resulting from the past defaults of prior landlords?	Yes		Pg. 28, Section 20
11. If self help provisions allow the tenant to perform landlord obligations when the landlord has failed to perform them as required, are these self help rights limited to "good and workmanlike improvements" to the premises specifically and exclusively occupied by the tenant?		No	Pg. 18, Section 11, Paragraph (c)
12. Without the use of an SNDA, does the lease protect the bank (or any successor landlord) from loss of rental income resulting from prepayment of rent (for a term greater than 30 days) to a prior landlord?		No	Not Mentioned
13. Does the tenant indemnify landlord for environmental risks and agree to comply with environmental regulations?	Yes		Pg. 30 - 31, Section 22
14. Can tenant close and continue to pay rent? (Dark Clause)	Yes		Not Mentioned
15. If rebuilding is allowed following a casualty or condemnation loss, are the insurance or condemnation proceeds controlled by the bank and is there adequate time to complete rebuilding before any tenant can exercise a right to terminate?	Yes		Pg. 23, Section 15, Paragraphs (a) & (b)
16. Is the landlord's obligation to rebuild limited to the extent of condemnation or insurance proceeds?	Yes		Pg. 23, Section 15, Paragraph (b)
17. Is the casualty and condemnation language consistent with other leases in the same project?	Yes		Under the assumption of similar clauses between other tenants

## Part 4: Miscellaneous Provisions

1. Any Special Conditions (riders, etc.)
  - a. Rider No. 1 (Renewal)
2. Any required pre-approval of the Lease?
  - a. We did not find any pre-approval for the lease.

## Abstract of Lease Provisions (Parts 1-6, 21-23, Exhibit C 1-3, Rider No. 1)

I. Section 1: **Business Points**

1. Landlord: Ownership LLC, Texas based LLC
2. Tenant: Tenant Name, a national association
3. Building: Building Name, RSF: 197,719 sq.ft
4. Term: Seven (7) years(excluding renewal or extension, if any)
5. Commencement Date(estimated): September 01, 2013
6. Security Deposit: \$0.00

**A. Parking Permits:**

1. For every 1000 RSF the landlord will provide three- and one-half parking spaces.
2. Each of these parking spots are to be used by single automobile and will be **Unreserved.**
3. Upon the commencement of the lease, for a period of 30 days the tenant has the liberty to obtain three parking spots for **Reserved Parking** in the Parking Facilities.
4. Location of the Reserved Parking spaces will be determined by the landlord.
5. The tenant has to pay a monthly fee plus any taxes.

6. The current quoted rate for unreserved parking space is \$25 per month and \$50 per month for reserved spaces.
7. This rate will only be applicable for the current lease term. In the case of an extension or renewal of the lease new rates will be quoted by the landlord.

## II. Section 2: Interpreting This Lease

### **Usage of words:**

1. If a word in the lease has been written in bold, italicized and printed in quotation marks it indicates the definition of a term which will include all dramatical variations for the word.
2. Any cross reference to a different part of the lease will be marked by the word, '**Paragraph.**'
3. The word '**Including**' does not restrict or omit any item that is not mentioned.
4. Unless otherwise mentioned a 'day' means a calendar day and not a business day.

### **B. Building Standard:**

Symbolizes the quantity, quality and type of certain services that the landlord finds suitable to be applied for the building which shall be consistent with other class A buildings in Woodlands, Texas.

### **C. Applicable Law:**

1. Denotes any law or regulation that could affect the building put forward by any governmental or non-governmental body at the present time or in the future.
2. Any legal action occurring will be held in Montgomery County.
3. Any clause in the lease if invalidated in the future will be removed from the lease and will in no way affect the validity of the lease as a whole.

**D. Entire Agreement:**

1. Lease contains the entire final agreement between both parties.
2. Representations or warranties not mentioned in the lease are not allowed.
3. Any clause in the lease if invalidated in the future will be removed from the lease and will in no way affect the validity of the lease as a whole.

**III. Section 3: Understanding The Project**

**Project and the Rentable Area**

1. The project described in the lease includes the land, the building and any appurtenances which includes improvements that are performed now or will be performed in the future for the benefit of the project.
2. The RSF of the building mentioned in the lease now will be verified by the landlord's architect and all the calculations will be provided to the tenant for further verification.

3. If there is any difference in the final measurements of the end product from the pre-agreed one, the landlord has to revise the measurements in the lease.
4. The Landlord should also revise any of the rates that will be charged based on the RSF.

#### IV. Section 4: **Term**

1. Commencement date of the term will be the earliest of either 90 days after the delivery date or the day the tenant takes possession of the space.
2. Expiration date will be the last day of the calendar month up to which the term is set.
3. The tenant has the right to occupy the space after the delivery date and prior to the commencement date so as to perform any of the tenant's work.
4. During this time frame the tenant will not be required to pay the base rent or his/her share of operating expenses.

#### V. Section 5: Preparing The Premises

##### A. Condition

Tenant agrees to accept the premises "as-is", subject to minor adjustments pursuant to the Construction Agreement attached as Exhibit "C".

##### B. Acceptance

By taking possession of the premises, and to the fullest extent permitted by applicable law, tenant waives:

- i. Any claims due to defects in the premises and/or project, except



- a. Punch List items specified in reasonable detail
  - b. Latent defects in work performed by landlord, of which tenant notifies landlord within one (1) year.
- ii. All express and implied warranties of suitability, habitability and fitness for any particular purpose.

Nothing shall alleviate Landlord's maintenance and repair obligations. Tenant waives the right to terminate the lease due to to Punch list.

## VI. Section 6: Rent And Security Deposit

### A. Definition

**“Rent”** includes base rent, Tenant's share of operating expenses, and any and all other sums payable by tenant under this lease. All rent shall be payable to the Landlord in lawful money of the United States of America. Rent shall be paid in monthly installments of base rent and operating expenses on or before the first day of each calendar month. Any possession that takes place for a partial month shall have prorated rent on a daily basis.

### B. Base Rent

Tenant shall pay Landlord Base Rent and Tenant's share of Operating Expenses, beginning on the Commencement Date.

### C. Security Deposit

With the execution of this lease, tenant shall pay the Landlord a Security Deposit in order to secure Tenant's faithful performance. The Security Deposit is not shall not be considered rent, or a measure of the Landlord's damages . Security Deposit shall be held without interest and

Landlord may use the Security Deposit to pay for curing and event of default by the Tenant.

Landlord shall return this Security Deposit upon Expiration Date of this lease or surrender of possession.

## VII. Section 21: Rights Reserved By Landlord

### A. Access to the Premises.

The Landlord, contractors, manager, and designated agents have the right to enter the premise with reasonable notice for the following reasons and make a good faith effort to minimize interference with Tenant's enjoyment and use of the property.

1. Inspection
2. Making repairs and improvements
3. Confirmation of Tenant's compliance with lease
4. Showing the premise to purchasers, mortgagees or future tenants.

In emergency situations, Landlord has the right to enter without notice, have use to any and all means to open any doors including secured areas of the tenant.

### B. Project Modifications

The landlord has the right to alter, decorate, repair, or construct improvements upon the project or any adjacent to the property. Improvements include inspection, place, replace and repairs in the premise and utilities, pipes and similar equipment outside the premise. The Landlord has sole discretion to modify public areas, as long as not materially impair or adversely impair tenants access. The landlord does not have any liability for shutting off of light, air, or view by any structure. Also, tenant acknowledges

that during construction of improvements shall affect the lease and or liability to the landlord. Tenant waives any claim of nuisance or construction eviction against landlord.

#### C. Rights to Relocate

To require the tenant within 60 days prior written notice, but can not exceed more than 1 time during initial term, to relocate the premises to any other premises within the building. All reasonable expenses of moving Tenant will be paid for by the landlord including the same leasehold improvements.

#### D. Other Rights

Other measures that the Landlord deems reasonably necessary for ongoing operations, maintenance and protection, the tenant shall fully cooperate with all of such further measures undertaken by Landlord.

### VIII. Section 22: Hazardous Materials

#### A. Definition

Is any toxic, ignitable, reactive or corrosive substance now or hereafter regulated by any governmental authority. Contamination means any release or disposal of a hazardous material on premise that will adversely affect premise. Claims arising from contamination shall include restriction of use, reduction of value, adverse impact on lease, and all cost of remediation, site investigation, removal and restoration work.

#### C. Restrictions

The tenant cannot bring, keep, use or dispose of any hazardous material in or about the premises without landlord's prior written consent. Exception if the Tenant shows to landlord satisfaction that all hazardous material in the ordinary course of

Tenants business shall be stored and used in compliance with the Applicable laws and give the landlord written notice of the current material safety data sheet of the hazardous material.

#### D. Remediation

In any case of contamination or omission due to a tenant party, the tenant shall take all actions necessary to comply with laws and to return the premises, or any other adjoining property to its prior condition. If tenant fails to take necessary remediation actions within 30 days after written notice to landlord, landlord may take such action and tenant shall reimburse landlord within 30 days of landlord expense.

### IX. Section 23: Landlord's Interest

#### A. Landlord Liability

Failure by the landlord to perform its obligation under the lease shall be limited to the landlords interest in the building. The Tenant waives rights of recovery against any landlord party and all claims against landlord mortgagee for consequential, special or punitive damages. Landlords party is not held personal liability as part of this lease.

#### B. Conveyance

The landlord has the right to convey any or all party in this lease at any time. After conveyance by landlord the conveying party shall release the tenant from all obligations to the new landlord, the tenant will be required to attorn and look solely to new landlord for any obligations.

X. Exhibit "C": Construction Agreement

**A. Construction Documents**

Concerning the Construction Documents, the tenant must submit to the lender no later than 45 days to the Delivery Date the finished and detailed drawings and specifications. The Architectural and engineering drawings must be approved by the tenant.

The Construction Schedule must have a flow chart providing a schedule of the anticipated dates of completion of the various phases of construction.

The Landlord's Approval of the Construction Drawings must be within 10 days of receipt of the Construction Documents. The Landlord must either approve or disapprove of the drawings in writing to the Tenant. If the Landlord disapproves, the Landlord must give specific reasons why. The Tenant has 10 days to submit corrections to the Landlord. This Tenant must respond within 5 days and similarly, the Landlord must respond in 5 days as well. This process (at intervals of 5 days or less) will continue until the Landlord approves the Construction Drawings.

The Approval Standard for the Landlord shall not unreasonably withhold, delay, or disapprove of the Construction Drawings. It's scope shall include the structural integrity of the building, the safety of persons or property within the Project, and compliance of the Project with Applicable Law.

The Landlord's Liability does not include the Approved Construction Drawings. It is up to the Tenant to be sure that the Approved Construction Documents are in compliance with Applicable Law, contain no errors or omissions, and results in a safe place for habitation.

If the Tenant's work is \$50,000 or more then the Tenant shall submit its Construction Documents to the Texas Department of Licensing and Regulation for approval and when

approved will give written notice to the Landlord that the construction documents have been approved.

### **B. Pricing, Bids, and Construction Contract**

After the receiving the Approved Construction Documents, the Tenant will quickly price the construction of the Tenant's work and provide the a list of Proposed Contractors to the Landlord which shall include the names of the general contractor, subcontractors, and suppliers.

The Tenant's Contractors need to be licensed, identified in the price estimates, and approved by the Landlord. The Tenant is allowed to use the same contractor as the Landlord or choose their own. If the Tenant chooses the Landlord's contractor, the Tenant can begin work before the Substantial Completion of the building as long as it does not interfere with the Landlord's construction of the building. If the Tenant chooses their own contractor, they must wait until the Substantial Completion of the building before beginning work.

The Tenant or Tenant's Contractor(s) shall provide to the Landlord all of the contracts for the Landlord's review. The Landlord has 5 business days to to place condition on the commencement of the work if the contracts fail to meet the minimum insurance requirements or include an unreasonable portion of the costs of the Tenant's Work

### **C. Landlord's Contributions**

The Landlord's Contributions are to reimburse the Tenant up to \$42.00 per RSF for the cost of constructing the Tenant's work, deemed as the Tenant Allowance. These funds can cover the space planning, design consulting or review services and construction drawings and shall be only for permanent improvements that will belong to the Landlord.

The Payment of the Construction Allowance must have the following:

- An Application for Payment from the Tenant that must be submitted no more than once a month and on or before the 15th of the month and must contain a detailed report of cost and expenses. The Application for Payment will be for the aggregate of the previous month less 10% for retainage
- Certification of Applications for Payment: each application of payment will be certified by the Tenant and Tenant's Contractor
- Release and Supporting Documents to be attached to the Application for Payment that will show the partial release of lien rights through the date of application along with copies of all invoices in which reimbursement is requested.
- Liens shall result in the Tenant's Contractor's payment being reduced by 200% of the amount of any mechanic's liens or materialman's liens until proof can be shown that the lien has been satisfied (or a surety bond has been obtained to indemnify the Landlord).
- The Payment of Applications for Payment will be within 30 days of Tenant's submission. The Landlord can choose not to pay at their discretion if the work is incomplete, insufficiently described, or not supported by partial lien waivers and supporting invoices. The Landlord may withhold payment "to the extent that the quotient obtained by dividing (1) the sum of such payment, all prior payments made to Contractor, and retainage withheld by Owner with respect to prior payments made to Contractor, by (2) the total Construction Allowance, would exceed (B) the percentage of the Tenant's Work completed through the date of the (application)".

- Security for Completion: 10% of the amount approved under each application will be withheld by Landlord until the final payment by the Landlord is made. Also, Tenant acknowledges that this clause does not fall under the mechanic lien statute.
- Additional Conditions for Payment: Landlord does not have to make payment if:
  - 1) Tenant is in default under this Lease; or 2) any part of the payment is for defective or unperformed work.
- Payment of Final Application for Payment will be done when the last occurs of:
  1. Final certificate of occupancy from the architect,
  2. Landlord's receipt of final invoices marked paid (or evidenced otherwise),
  3. Landlord's satisfaction that the Tenant's Work has been completed as according to construction documents,
  4. Landlord's receipt of final lien waiver,
  5. Affidavit from the Tenant and Tenant's Contractor which says that the final lien waiver includes all materials and services for which a lien could be filed (or a surety bond instead),
  6. Landlord's receipt of final as-built plans and specifications certified by the Tenant's architect that is satisfactory to the Landlord,
  7. 35 days have elapsed from the later of the Commencement Date and the last day of the month in which the Tenant's work is completed and no



affidavit as required by Applicable Law has been filed against the Premises as a result of the Tenant's work.

- Unused Allowances will be forfeited if not used within 12 months of the Commencement Date. The funds must be used for the purposes of this agreement.

XI. Rider No. 1: Option To Extend

**A. Renewal Period.**

Tenant may extend the Term for two renewal periods of five years each by written notice to Landlord. The written notice must be given no earlier than 12 months and no later than 9 months prior to the expiration of the initial Term.

The Tenant must remain in occupancy of the Premises and no uncured Event of Default can have occurred.

The Base Rent for the Renewal Period will not be less than the previous year. All terms for the Lease shall continue to apply unless stated otherwise in Rider No. 1. No option shall exist to extend the lease after the second Renewal Term.

**B. Acceptance**

Landlord will notify the Tenant of the new terms within 30 days that the Renewal Notice is sent. The Tenant will have 15 days to accept the terms in writing or reject the terms. If the Tenant does not accept the Base Rent, the Tenant must notify the Landlord promptly, and they will have 15 days to try to come to an agreement concerning the Base Rent. If they cannot come to an agreement, the Landlord will propose a Base Rent one last time to the Tenant, and the Tenant will have 5 days to accept or reject in writing. If accepted, the Landlord and Tenant will

execute a lease amendment. If the Tenant does not respond at all, it will be assumed that the Tenant has accepted the Final Proposal.

### **C. Market Rental Rate**

The Market Rental Rate is as follows:

- A rate that a willing tenant would be willing to pay and that a willing landlord would be willing to accept,
- As of the Commencement Date of the applicable term,
- Considers the highest and most profitable use,
- Considers the location and quality of the Building, lease term, amenities of the Project, condition of the space, and any concessions or allowances offered by the Landlord

### **Judgements:**

We felt like this was a good lease. Positives that stood out to us were:

- Tenant must give the Landlord and the Mortgagee written notice if the Tenant believes that there has been a breach in the agreements (Section 20). This allows the Mortgagee to 1) be aware of the relationship between Landlord and Tenant and 2) for the Mortgagee to possibly interfere in the situation if necessary
- Mortgagee is not is not liable for any act or omission of any prior Landlord or subject to any defenses or rent that Tenant paid in advance (Section 20). There might be claims against the Landlord. If the Lender takes over the lease, they will not be responsible for past grievances.

- Improvements belong to the Landlord (Exhibit C, Section 3). If the lender needs to liquidate the Premises, then the improvements might help the building to be more attractive to buyers.

**Recommendations:**

Our group also had some recommendations:

- If Mortgagee takes over the lease, make sure that the Mortgagee is not liable beyond the asset of the building.
- We would recommend the Mortgagee not accepting a No-Disturbance clause. The Mortgagee is not necessarily in the business of property management and might prefer to terminate any leases and sell the building.