



Elective Passive Company / Operating Company Lease Instructions

When completing the lease, please complete all the blank spaces and have notarized.

Please note some very important items:

1. PARTIES

- The Elective Passive Company (EPC), or Landlord, is the entity holding the Commercial Real Estate pledged as collateral, but never received loan funds. However, the funds may refinance the EPC real estate collateral.
- The Operating Company (OC), or Tenant, is the primary borrower and the entity that receives the loan funds.

2. PREMISES

- Premises is the property address of the Commercial Real Estate pledged.

3. TERM

- The term of this Lease must equal the loan term, in both number of years and the commencing and ending date.

14. NOTICES

- Landlord refers to the EPC Borrower. List the EPC borrower legal business name and mailing address.
- Tenant refers to the OC Borrower. List the OC Borrower legal business name and mailing address.



ELECTIVE PASSIVE COMPANY (EPC) / OPERATING COMPANY (OC) LEASE

1. PARTIES

This Lease is made and entered into this ____ day of _____, _____ by and between _____ (hereinafter referred to as "Landlord") and _____ (hereinafter referred to as "Tenant").

2. PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, on the terms and conditions hereinafter set forth, that certain real property and the building and other improvements located thereon situated in the City of _____, State of _____, commonly known as _____ (said real property is hereinafter called the "Premises").

3. TERM

The term of this Lease (the "Term") shall be for ____ years commencing on _____ and ending on _____.

4. RENT; SECURITY DEPOSIT

Base Rent shall be an amount no more than necessary to pay annual debt service plus expenses related to owning and holding the property including, but not limited to, annual insurance, real estate taxes and maintenance. Rent shall be payable without notice or demand and without any deduction, off-set or abatement in lawful money of the United States to the Landlord at the address stated herein for notice or to such other persons or such other places as the Landlord may designate to Tenant in writing.

In addition to Base Rent, Tenant shall and hereby agrees to pay to Landlord on the first day of each calendar month a sum equal to all sales tax, tax on rentals, and any other governmental charges, taxes and/or impositions now in existence or hereafter imposed based upon the privilege of renting the Premises or upon the amount of rent collected therefor, without any offset defense or deduction whatsoever, in lawful (legal tender for public or private debts) money of the United States of America, at Landlord's address or elsewhere as designated from time to time by Landlord's written notice to Tenant. In addition, Tenant agrees to be fully responsible for the payment of documentary stamps, if any, due pursuant to this Lease.

There is no security deposit payable in connection with this Lease.

5. TAXES

(a) *Real Property Taxes:* Landlord shall pay all real property taxes and general assessments levied and assessed against the Premises during the Term.

(b) *Personal Property Taxes:* Tenant shall pay prior to the delinquency all taxes assessed and levied upon trade fixtures, furnishings, equipment and other personal property of Tenant contained in the Premises.

6. UTILITIES

Tenant shall make all arrangements and pay for all water, gas, heat, light, power, telephone and other utility services supplied to the Premises together with any taxes thereon and for all connection charges.

7. ALTERATIONS AND ADDITIONS

Tenant shall not, without the Landlord's written consent, make any alterations, improvements, or additions in or about the Premises.

8. HOLD HARMLESS

Tenant shall indemnify and hold Landlord harmless from and against any and all claims arising from Tenant's use or occupancy of the Premises or from the conduct of its business or from any activity, work or things which may be permitted or suffered by Tenant in or about the Premises including all damages, costs, attorney's fees, expense and liabilities incurred in the defense of any claim or action or proceeding arising therefrom. Except for Landlord's willful or grossly negligent conduct, Tenant hereby assumes all risk of damage to property or injury to person in or about the Premises.

9. ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily or by operation of law assign, transfer, sublet, mortgage or otherwise transfer or encumber all or any part of Tenant’s interest in this Lease or in the Premises without Landlord’s prior written consent which consent shall not be unreasonably withheld. Tenant shall not enter into a sublease that is not in compliance with Small Business Administration (“SBA”) occupancy requirements as described in the most recent SBA Standard Operating Procedures.

10. DEFAULT

It is agreed between the parties hereto that if any rent shall be due hereunder and unpaid, or if Tenant shall default and breach any other covenant or provision of the Lease, then the Landlord, after giving the proper notice required by law, may re-enter the Premises and remove any property and any and all persons therefrom in the manner allowed by law. The Landlord may, at its option, either maintain this Lease in full force and effect and recover the rent and other charges as they become due, or in the alternative, terminate this Lease. In addition, the Landlord may recover all rentals and any other damages and pursue any other rights and remedies which the Landlord may have against the Tenant by reason of such default as provided by law.

11. SURRENDER

On the last day of the Term, Tenant shall surrender the Premises to Landlord in good condition, broom clean, ordinary wear and tear and damage by fire and the elements accepted.

12. HOLDING OVER

If Tenant, with the Landlord’s consent, remains in possession of the Premises after expiration or termination of the term of this Lease, such possession by Tenant shall be deemed to be tenancy from month-to-month at rental in the amount of the last monthly rental plus all other charges payable hereunder, and upon all the provisions of this Lease applicable to such a month-to-month tenancy.

13. BINDING ON SUCCESSORS AND ASSIGNS

Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition. The terms, conditions and covenants of this Lease shall be binding upon and shall be to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

14. NOTICES

Whenever under this Lease a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by registered or certified United States mail, postage prepaid, addressed at the addresses as set forth below:

TO LANDLORD AT: _____

TO TENANT AT: _____

Such notice shall be deemed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this paragraph.

15. WAIVERS

No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provisions.

16. TIME

Time of payment and performance is of the essence. In addition to other remedies available at law, equity, or under this Agreement, in the event that payment or performance does not occur in accordance with the terms of this Agreement, Landlord may terminate this Agreement immediately, without further liability or penalty.

17. SUBORDINATION

This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to all advances made on the security thereof and to all renewals, modifications, consolidations, replacement and extension thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Tenant agrees to execute any documents required to effectuate an attornment or subordination. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder, or, at Landlord's option, Landlord shall execute such document on behalf of Tenant as Tenant's attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to execute such documents in accordance with this paragraph.

18. MISCELLANEOUS

(a) **Governing Law; Venue; Severance; Prevailing Party.** This Lease shall be governed by and construed in accordance with the laws of the State of _____. Venue for any and all actions or proceedings which arise from this Lease shall be _____ County, _____. If any provision of this Lease or the application thereof to any person or circumstance shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. The parties hereto hereby waive trial by jury with respect to any and all proceedings maintained regarding this Lease. In the event of any and all actions and proceedings by any party hereto to enforce its rights and/or remedies hereunder, the non-prevailing party shall pay the reasonable attorneys' fees and costs incurred by the prevailing party in connection with each such action or proceeding.

(b) **Captions; Construction; Gender.** The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect any interpretation hereof. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease, and time shall be of the essence with respect thereto. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(c) **Inspection.** Landlord may enter the Premises at any reasonable hour to exhibit same to prospective purchasers and/or tenants; to inspect the Premises to see that Tenant is complying with all its obligations hereunder; and to make repairs required of Landlord under the terms hereof and/or repairs to any adjoining space.

(d) **Entire Agreement; Amendment; Waiver.** This Lease (including all exhibits hereto) constitutes the entire understanding between Landlord and Tenant and shall bind the parties, their successors and assigns. This Lease hereby terminates any and all other leases and other agreements between the parties hereto regarding the Premises. No representations, except as herein expressly set forth, have been made by any party to the other, and this Lease shall not be amended, modified or cancelled, except by a written instrument, signed by both Landlord and Tenant. Landlord's failure to enforce any term, provision, or condition hereunder shall not be deemed to be a waiver.

(e) **Brokers.** Landlord and Tenant each represent to one another that each has had no dealings with any brokers or finders in connection with this Lease and each party hereby indemnifies and holds the other harmless from any and all liabilities, costs, damages, claims and/or expenses (including, without limitation, reasonable attorney's fees and costs through all levels) arising from its breach of the representation made pursuant to this paragraph.

(f) **No Recordation.** Neither this Lease, nor any memorandum hereof, shall be recorded by Tenant in the Public Records of _____ County, _____, or in any other place. Any attempted recordation by Tenant shall render this Lease null and void and entitle Landlord to the remedies provided for by Tenant's default.

(g) **Counterparts; Facsimile Signature.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. A facsimile of a signature to this Lease shall be deemed an original signature.

[signature page follows]

The parties hereto have executed this Lease on the date first above written.

Signed, Sealed and Delivered
in the Presence of:

Print: _____

Print: _____

Print: _____

Print: _____

LANDLORD:

a [State] [entity type]

By: _____

TENANT:

a [state] [entity type]

By: _____

Name: _____

Title: _____