

LEASE NOTICE TO 504 BORROWERS, ATTORNEYS, & PRIVATE LENDERS

RE: LEASES FOR OCCUPANTS OF 504 PROJECT PREMISES

BORROWER (EPC): _____

Operating Company (OC): _____

Entire premises must first be leased directly to the Operating Entity (OC). OC can then sublease allowable space to subtenant(s).

* **PLEASE HAVE THE LEASE PREPARED AT THE TIME OF PRE-CLOSING**

** **IF A MEMORANDUM (see attached format) IS TO BE RECORDED IN PLACE OF A FULL LEASE, PLEASE HAVE THAT PREPARED AT THE TIME OF PRE-CLOSING**

*** **IN EITHER CASE, BE SURE TO INCLUDE THE FOLLOWING INFORMATION**

1. **MUST BE IN RECORDABLE FORM**

- A. Must contain Legal Description
- B. Must be Acknowledged and Notarized
- C. Must have a "Drafted By" Statement

2. **TERM OF LEASE:**

LEASE TERM, INCLUDING OPTIONS TO RENEW EXERCISABLE SOLELY BY THE TENANT, MUST RUN THROUGH DEBENTURE MATURITY DATE OF:

Most common format would be an initial term of 6 years, with 3-five year options to renew.

1. **LEASE AND MEMORANDUM OF LEASE IF ONE WILL BE FILED, MUST CONTAIN SUBORDINATION LANGUAGE (As follows:)**

Relationship of Lease to Mortgage: Lessee agrees that this Lease shall be subordinate to any mortgage which may now or hereafter encumber the leased premises and to any and all advances to be made thereunder and to the interest thereon and all renewals, replacements, and extensions thereof.

SBA 504 GUIDELINES RE: LEASE TERMS BETWEEN
ELIGIBLE PASSIVE CONCERNS (EPC's)
AND
OPERATING COMPANIES (OC's)

1. EPC must use loan proceeds to acquire and/or improve or renovate real and/or personal property that it leases to an OC for the conduct of the OC's business.
 - OC must lease 100% of the real property directly from the EPC.
 - OC must occupy required % of real property.
 - Third-party tenants, as allowed by % must sublease from OC.
 - Personal property, if any, must be leased to the OC, except in a Co-Borrower situation where the personal property is owned by the OC.

2. The lease between the EPC and the OC must be in writing and must be subordinated to SBA's mortgage on the property.
 - Subordination language, per TCM Lease Notice, should be incorporated into Lease (And into Memorandum of Lease – if used for Recording)
 - Lease or memorandum will be recorded along with SBA security documents.
 - Nondisturbance language is not permitted.

3. Said lease, including options to renew exercisable solely by the OC, must have a remaining term at least equal to the term of the SBA loan (i.e. 20 years out from sale of Debenture).
 - See TCM Lease Notice.
 - These terms must also be incorporated into recording document (i.e. Lease or Memorandum).

4. The amount of rent paid by the OC to the EPC must be substantially the same as the debt service on the Third Party Lienholder (Bank) Loan and the SBA 504 Loan.
 - Rent can include additional amounts to cover EPC's other expenses of holding the property (i.e. taxes, utilities, insurance, repair/replacement reserve, unless OC is responsible under the lease)
 - The concept behind this requirement is two-fold 1) that allowing EPC's is an exception rule to SBA's regulations which prohibit the Agency from financing assets held for their passive income, and 2) that the OC should be using the profits to expand the business, not paying it out in rent to the passive Borrower.

5. EPC (as landlord) must execute a Collateral Assignment of Leases and Rents, consented to by OC.
 - This is another recording document which TCM will provide for execution at closing.

The following provisions are for rough guidance only, as a courtesy to Borrowers striving to follow SBA Rental Guidelines. They should not be interpreted as legal advice. The Borrowers, with the aid of their own counsel, are responsible for compliance with requirements of the SBA 504 Loan Program.

These provisions are to be incorporated into the Lease only. They do not need to be referenced in the Memorandum of Lease for recording.

[Introductory Language]

BASE RENT

- 1) An amount sufficient, as determined on an annual basis between [Parties or Lessor and Lessee or Landlord and Tenant], to pay the debt service and debt-related expenses on the Note to _____ (“Bank”) dated _____, XXXX, and any amendments thereto, or replacements or substitutions thereof. Said Note having an approximate balance, on or about [Date of Debenture Sale], of [Bank Permanent Portion \$\$].
- 2) An amount sufficient, as determined on an annual basis between [Parties or Lessor and Lessee or Landlord and Tenant], to pay the debt service and debt-related expenses on the Note to Twin Cities-Metro CDC (“TCM”) dated _____, XXXX, and any amendments thereto. Said Note having been assigned to the U.S. Small Business Administration (“SBA”) thereon, and having an initial balance of [SBA Gross Debenture Amount \$\$] on or about [Date of Debenture Sale].
- 3) An amount sufficient, as determined on an annual basis between [Parties or Lessor and Lessee or Landlord and Tenant], to pay for depreciation, and for building management and/or reserve fees not to exceed 12% of the total amount paid under paragraphs 1) and 2) above.

(Optional)

The Rent amount established for [Calendar/Fiscal] Year 2000 is _____ per month.

SAMPLE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, is made and entered into this ____ day of _____, 20__ by and between _____, (the “Lessor”), and _____ (“Lessee”).

2. **ORIGINAL LEASE:** Pursuant to that certain Lease Agreement made effective _____, as amended _____ (the “Lease”) between Lessor and Lessee, Lessor granted demised and leased to Lessee, among other things, the premises legally described as shown on Appendix “A” attached (the “Demised Premises”).

3. **TERM:** The initial term of this Lease shall commence on _____, and shall continue six years until and including _____, unless earlier terminated as provided under the Lease (the “Lease Term”). Provided Lessee is not in default under the Lease, Lessee shall have options to renew this Lease for three (3) periods of five (5) years each. If the Lessee does not wish to exercise these options, 30 days prior written notice to the Lessor is required.

[**Note to attorney:** Term w/options above ensures Lessee(s) interest runs for length of SBA Loan, while allowing expensing of rent through an “Operating Lease” vs a “Capitalized Lease”.]

3. **SUBORDINATION:** As provided in the Lease, the Lease is subordinate to any mortgage which may now or hereafter encumber the Demised Premises and to any and all advances to be made thereunder, and to all interest and other charges relating to the indebtedness evidenced by any such mortgage, and to all renewals, replacements and extensions thereof.

4. **NOTICE:** The purpose of this Memorandum of Lease is to give notice of the Lease and of the rights created thereby, all of which are hereby confirmed, and this Memorandum of Lease is subject to all of the terms and conditions, provisions, covenants and agreements contained in said Lease, all of which are incorporated herein by reference.

SAMPLE

