



## **Tips for Tenants- DO NOT SIGN THAT LEASE**

The average business Manager will only negotiate a few leases over a career and with limited experience there is the potential for costly mistakes. The Manager will usually seek out advisors (brokers, lawyers, accountants) to assist in the process. An attorney for example is a key member to the team but we are constantly amazed at how many tenants fail to engage this type of expertise early enough in the process.

Big companies, who have their own real estate department, in-house attorneys and multiple business locations, are used to modifying leases to their own standards and property owners are used to negotiating those changes. If you do not fit that profile, you are going to have to do a little work to protect yourself. When the property owner says, "It's our STANDARD lease, everyone signs it!" **STOP!** "Standard" does not mean right or fair to the tenant. When you consider the potential negative effect a lease can have on a company's bottom line, this is penny wise and pound-foolish.

Consider the following sampling of concerns:

- If the large tenant next door wants your space, can the property owner relocate you elsewhere in the building? Most leases say the tenant can be relocated into "similar" space and the property owner will pay for moving costs. What if the new space is larger? What if you have specific business equipment that will be costly to move? Does the lease protect you? How much time do you have before you must tell the property owner whether you will accept the move and can you reasonably refuse or do you have the option to cancel the lease?
- The property owner wants you to indemnify him against everything... but does he indemnify you?
- Did you read the "Additional Rent" or "Common Area Maintenance" section of the lease? Do you know what your company's financial exposure is?

Why is it that the vast majority of tenants sign the property owner's "standard lease" with only minor modifications, if any at all? If any other vendor presented you with a contract, you would not hesitate to modify the language such that your interests would be protected. Remember, "Standard" does not mean right or completely fair to the tenant!

In our experience, tenants often involve their attorney after the negotiation process. When issues arise after the negotiation, the property owner will become resistant to making changes that are detrimental to his position. The attorney's role, as a result, is often limited to reviewing language as necessary to insure that the lease reflects the already fully negotiated business points of the transaction. Clearly, involving an experienced real estate attorney earlier in the process or

ensuring the right to review and modify the Standard Lease can help to insure that all the important issues are in focus early on in the negotiation.

While a competent real estate broker will be generally knowledgeable with regard to the issues, it is our belief that only a Tenant Representative could provide a thorough explanation of both the property owner and tenant considerations when negotiating most lease clauses.

Below are a few examples of what you should know about the lease document when it comes to leasing commercial real estate leases.

**Sample Tenant Considerations:**

- Often people who are starting a new business or requested to make unreasonable credit commitments.
- Landlords often tie increases in base rent to the Consumer Price Index (CPI), is there any rationale for this?
- Which is better for the tenant, a lease which doesn't "gross-up" operating expenses or one where the "gross-up" is calculated as if the building were 95% leased?
- What are the items that the careful tenant most frequently requests be excluded from the definition of "operating expense"?
- What successful strategies do sophisticated tenants utilize in seeking to limit their potential exposure for holding over at the end of the lease term?
- The landlord has asked to be indemnified against everything, what are the tenant's negotiating positions?
- What are the concerns that a tenant ought to have regarding the condemnation provisions of the lease?
- Most significant arguments with respect to rent abatement and set-off arise over the landlord's services clause - the tenant wants a right to set-off rent in the event that necessary services are not delivered. Since landlords typically resist this concept, what are some compromise positions that will still afford the tenant some protection in this regard?
- Most leases provide for the landlord to be able to relocate a tenant to "similar" space. If the tenant is unsuccessful in striking the clause outright, what are the tenant concerns that the lease should address?
- Construction delays or perhaps a current tenant holding over could result in position delays at the beginning of the lease term. How can the tenant protect themselves with respect to their own commitments, most notably the commitment to vacate their present space?
- How do the terms "rentable" and "usable" affect the tenant? With respect to the efficient use of square footage, how does the tenant achieve a true apples-to-apples comparison between buildings? What are the "rules" and who sets the measurement standard. If a re-measurement of the building results in the tenant's rentable square footage increasing, will the rent increase?
- What limitations on its liability should the partnership tenant seek to incorporate into the lease?

*We want to give you an edge that you can't get anywhere else, call us at 905.338.8877 x228*

*Steve Pawlick, Partner  
Coldwell Banker Commercial*