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A Quick Reference Sheet to the Basic Terms used in Commercial Leasing

BASIC LEASE INFORMATION

PARTIES:

Remember that either Party may have a different legal name than its trade name and may have changed names throughout the course of a Lease.

TERM:

A Lease begins on the Effective Date but the Term starts on the Commencement Date. Be sure to understand the effect of a delayed Commencement and the definition of full calendar months.

PREMISES:

A Lease can define space using multiple names, suite numbers or in multiple measurements (sf, rentable sf, usable sf) so clearly identify the space using the definitions from the Lease.

TYPE:

Office, Retail, Industrial, Storage, Telecom, other all have their own trends and items deserving special attention.

Base Rent:

- Given in annual, monthly or dollar per sf amounts.
- Look specifically for % increases and Abatements listed after the Rent Schedule.

Additional Rent:

Based on tenant's share:

- Operating Expenses
- Real Estate Taxes
- Common Area Costs
- Management Fees
- Other

Not Based on tenant's share:

- Percentage Rent
- CPI
- Porter's Wage
- Late Fees/Interest
- Special Service Fees

Calculating Rent:

Calculating tenant's share:

- Net Lease vs. Gross Lease
- Pro-Rata Share
- Inclusions/Exclusions
- Caps on Increases
- Gross-Up for Occupancy

RENT GLOSSARY

Full Gross: all recoveries are included in rent.

Gross Lease: base amount included in year one.

Net Lease: expenses paid with no base amount.

Pro Rata Share: premises SF/Bldg SF.

Recoveries: costs paid by LL, repaid by tenant. Also known as additional rent.

Management Fees: amount charged by LL for operating the building in addition to actual costs.

Base Year: amount of additional rent during a calendar used as a baseline for charging additional rent in ensuing years.

Expense Cap: restriction on annual increases.

Capital Expenditures: an expense of LL that is sometimes included and sometimes excluded from reimbursable operating expenses.

Consumer Price Index: an index which serves to increase base or additional rent.

Percentage Rent: tenant pays to LL a percentage of gross sales.

Porters Wage: an index which serves to increase base or additional rent.

Gross-Up: artificial increase in the operating expenses that vary with occupancy. Usually 95% or 100%.

OPTIONS: Generally speaking, a lease option is a right for either party to alter the premises or the term length. In this sense, it is always important to identify deadlines to exercise an option, the subject space and actions that nullify the option. In addition to these "always important" concepts, look specifically for these components of a lease option.

Contraction/Reduction:

- Whose option
- Notice dates
- Effective date
- Subject space
- Fee (if applicable)
- Conditional events

Expansion:

- Notice dates
- Effective date
- Subject space
- Expansion space rent
- Expansion improvements

Extension/Renewal:

- Notice dates
- Subject space
- Term length
- Rent rate
- Improvement allowance
- Nullifying actions

Purchase:

- Notice dates
- Subject space
- Purchase price
- Nullifying actions

Relocation:

- Whose option
- Notice dates
- Conditions of new space
- Right to refuse (terminate instead)
- Right landlord to rescind

Right of First Offer:

(Before 3rd party negotiations)

- Notice dates
- Subject space
- Subject to rights of others
- If declined, protection against lower rates in future offers
- One time or continuing right
- Rent terms

Right of First Refusal:

(After 3rd party negotiations)

- Notice dates
- Subject space
- Subject to rights of others
- One time right or continuing
- Rent terms

Termination:

- Who has the option
- Notice dates
- Effective dates
- Fee (if applicable)
- Conditional events



A Quick Reference Sheet

Commercial Leasing Fundamentals

RIGHTS & OBLIGATIONS

Alterations:

- LL consent required?
- Exceptions to consent
- LL fee required?

Condemnation:

- Termination right/obligation
- Rent relief
- Award sharing

Guarantors:

- Corporate or personal?
- Amount/limitations?
- Scheduled reductions?

Late Fees/Interest:

- Amount
- Rates
- Grace Days/Waiver

Security–Cash Deposit:

- Interest bearing
- Scheduled reductions?
- Specified form?

Sublease/Assignment:

- Consent/exceptions?
- Recapture/rescind?
- Rent profit split
- LL's review fee?

Utilities:

- Who provides the service?
- Who pays for the service?
- Separately metered?

Antenna/Roof Rights:

- Description of allowed equipment
- Required to screen equipment
- Fees (if any)

Default:

- Monetary/non-monetary?
- Notice before default?
- Remedies?

Hazardous Materials:

- Remedies if introduced
- Indemnification required

Leasing Commissions:

- Broker's name
- Amount, if provided

Security–Letter of Credit:

- Interest bearing
- Scheduled reductions?
- Specified form?

Tenant Allowance:

- Dollar amount (w/fee)
- Unused portion
- Deadline for use

Audit Rights:

- Deadline to request audit
- Who pays cost of audit

Estoppel:

- Number of days to respond
- Mutual requirement?
- Specified form?

Holdover:

- Rate (% over previous month)
- Can LL extend?
- With or w/o consent?

Notice Requirements:

- Delivery method
- Notice of time limit

Signage:

- Monument/pylon rights
- Directory rights
- Initial/recurring charge

True Up:

- Number of days after year end
- Does over/under-payment bear interest?

Casualty:

- Termination right/obligation
- Restoration right/obligation
- Rent relief

Exculpation:

- Supervision fee
- Who fixes what

Insurance:

- Type
- Amount
- Self-insurance

Parking:

- Number, value and location
- Type of spaces
- Termination

SNDA:

- Subordinate or not
- Non-disturbance required?

Use Exclusive Restrict:

- Use=permitted activities
- Exclusive=what no other Tenant can do
- Restrict=what Tenant cannot do

TIPS, TRICKS AND TECHNIQUES

Qualify your lease: Identify lease type (office, retail, industrial, or residential) to increase attention to likely issues (i.e., for retail, remember to look for percentage rent, go dark, radius restriction, etc.).

Abstract backwards: Read documents starting with the most recent first and strike out sections of previous documents as they are discovered to be inapplicable.

Use Excel: Excel offers methods of calculating complex rent schedules as well as clear ways to organize timelines of space occupancy for complicated leases.

When summarizing, use consistent language, beginning with action words: Give your notes on a lease in a predictable, consistent format, starting with action words like “extends, reduces or amends.”

Find more useful information at www.lesterandlester.com/resources.