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Tenant's New Lease: What to Look For and Look Out For

By Thomas A. Neufeld

With the downturn in the economy, there are many opportunities for a commercial tenant to obtain a new or renewal lease containing favorable provisions. A tenant must consider several important matters before entering into a new lease or a renewal of an existing lease.

Location

The reduction in prevailing rents allows tenants to lease premises in desirable locations that were previously unaffordable. The glut of vacant space on the sublease market is at even lower rates, and some of the space may be already built out to easily accommodate a new occupant. A tenant's "back office support activities" may be moved to a more economical location.

Usable Space

The leased premises are described, and the rent is calculated, according to the gross square footage, which includes areas not occupiable by a tenant. The tenant must ascertain, for itself, the actual usable, occupiable space, which may differ considerably from what is initially quoted.

Financial Obligations

Besides the basic rent, tenants often pay for all or part of the building's operating expenses and real estate taxes. The definition and scope of those expenses and taxes may vary widely from lease to lease. A tenant may seek a free rent period and a contribution from the landlord toward the cost of the build-out work. The tenant's responsibility to pay for electricity, overtime heat and air conditioning, cleaning, and other services must be considered.

Length of Term

Tenants are seeking longer term leases in order to lock up today's reduced rental rates. A tenant who does not wish to commit to a long-term lease may prefer a shorter term with an option to extend, possibly at a rent discounted below the fair market value.

Maintenance and Repairs

Care must be taken in determining the scope of the tenant's obligation for the maintenance and repair of the premises. A tenant should avoid responsibility for making improvements required by law unless the requirement arises from the tenant's particular use of the premises.

Alterations

Under what conditions may a tenant make alterations or improvements? Will the tenant be required to restore the premises to its initial condition at the end of the lease term?

Assignment and Sublease

The landlord's consent to a proposed sublease or assignment of the lease should not be unreasonably withheld. The landlord's option to recapture the space or to share in the sublet profits must be considered. A tenant may request the right to sublease a limited portion of its space or establish a "desk-sharing" arrangement.

Security Deposit

A tenant may seek a reduction, over time, in the amount of security deposit. If a guaranty is required, the guarantor may try to limit its duration or the obligations thereunder, and the guaranty should apply only up to the date when the tenant vacates the premises.

Credit-Worthiness of Landlord

A tenant must investigate the financial health of the landlord because it will affect the building services and the ultimate viability of the lease. A tenant should obtain a non-disturbance agreement from the landlord's mortgage lender so that the lease will not be terminated if there is a foreclosure.

Even in a tenant-friendly market, a tenant must carefully scrutinize a proposed lease in order to protect its rights and limit its obligations.

About the Author

Thomas A. Neufeld is an attorney in the New York office of Anderson Kill & Olick, P.C. With over 25 years of real estate law experience, Mr. Neufeld has a broad range of commercial, residential and financing experience. Mr. Neufeld's transactional work includes leases and subleases involving commercial space, stores, offices, garages, warehouses, residences, and equipment leases. Mr. Neufeld can be reached at neufeld@andersonkill.com or (212) 278-1840.

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