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The ABCs of Commercial Real Estate Leases

A Comprehensive Guide Covering:



- LEASE BASICS
- RENT
- OPTIONS
- CLAUSES
- TIPS FOR READING
ABSTRACTING AND
INTERPRETING LEASES

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INTRODUCTION

To the untrained or inexperienced eye, commercial real estate leases can be very confusing or even outright intimidating. Leases tend to be very complex and lengthy documents, mainly comprised of elaborate legal text, detailed financial information and enigmatic real estate terminology. To anyone unfamiliar with commercial real estate leases, the idea of identifying and analyzing the critical information in them can seem daunting and overwhelming.

But, the happy truth is that the vast majority of commercial real estate leases are actually much simpler and easier to understand than they would appear. To decode almost any commercial real estate lease, at least at a basic level, all someone really needs is some expert guidance and a simple, clear explanation of what they're reading and seeing. The goal of this comprehensive guide from Realogic - The ABCs of Commercial Real Estate Leases- is to provide readers with both.

The ABCs of Commercial Real Estate Leases is meant to be a helpful and valuable resource for anyone who wants to understand commercial leases better. Our guide to lease fundamentals lays out the different components of leases, provides definitions for dozens of key lease terms, explains core financial concepts with step-by-step calculations and includes numerous examples of clauses taken from actual leases (to maintain confidentiality, some of the details have been slightly altered).

Numerous members of Realogic's best-in-class consulting team collaborated to create this guide, including experts in lease abstraction, lease administration, real estate law and training. Combined, the group behind this comprehensive document has read, reviewed, abstracted, analyzed and administered tens of thousands of leases of all length and complexity and for every type of commercial real estate property imaginable. To say they're experts on leases is an understatement. For anyone looking to gain a solid, working knowledge of commercial real estate lease basics, this guide is an excellent and reliable starting point. The material in the ABCs of Commercial Real Estate Leases also serves as the foundation for our popular training class, "Understanding Commercial Real Estate Leases".

THE FOUR MAIN COMPONENTS OF A COMMERCIAL REAL ESTATE LEASE

Just to be thorough, let's start our discussion on commercial real estate lease basics by defining exactly what a lease is. For our purposes, a commercial lease is a contract in which, for payment of rent, the party entitled to possession of real property (landlord or lessor) transfers those rights to another (tenant or lessee) for a specified period of time for retail, office, or other commercial purposes.

While commercial real estate leases vary in nature, length and complexity and can include local or regional nuances, all leases are comprised of four main components: Basic Lease Information; Rent and Recoverables; Clauses; and Options. This should be welcome news to anyone who's working to understand commercial real estate leases better and a huge relief to anyone who breaks out in a cold sweat at the mere thought of reading and reviewing a lease. The ABCs of Commercial Real Estate Leases will walk readers through all four core components in detail. Let's start with the first and simplest component, Basic Lease Information.

THE FOUR COMPONENTS OF A LEASE



Basic Lease Information

PARTIES

Identifying the parties is typically an easy task, as the landlord and tenant are identified in the lease preamble or in the first section of the lease. However, this “easy” task can get sticky with the addition of an assignment, name change, merger or consolidation, etc., that may have occurred months or years after lease execution. For this reason, it is important to carefully read the lease documents to ensure the party who is actually bound by the lease at that point in time is accurately depicted. An assignment document, for example, can be rather small in comparison to a lengthy commercial lease, and may be easily lost in the shuffle.

SPACE

Next, you need to identify the space being leased to a tenant (location of space – i.e., Suite Number, and square footage of the space). Commercial leases often measure or quantify space by rentable square footage, although many government leases and other negotiated leases measure or quantify space on a usable basis. The definition of Rentable Square Feet is the usable square feet plus a load factor, i.e. a percentage (typically 7% to 20%, depending on the layout of the building) of such common areas as the building lobby, common hallways and restrooms. Rents are often provided on a per square foot basis. If the lease provides both the usable and rentable square footage, it is critical to identify which measurement Landlord is using to calculate the rent.

TERM

The term of the lease is not always easy to ascertain. In the perfect scenario, the lease provides a clear commencement date and expiration date. However, this is not always the case. Often times there are “floating” commencement dates or timeframes in which the lease will commence rather than an actual firm date. This typically occurs when the parties agree to perform improvements or some construction in the tenant’s space before the tenant may take possession, preventing the parties from pinpointing an exact commencement date. In such case, the lease may provide, for example, that commencement is within 180 days of Landlord “substantially” completing the work, and expire on the last day of the 60th month thereafter. It is imperative that you read and understand the definition of commencement date, expiration date and term, and read any portions of the lease that may have an impact on a commencement date and lease term (such as the Workletter if work is being performed that will determine a lease commencement date).

RIGHTS & OBLIGATIONS OF THE PARTIES

There is no set “standard” of obligations or rights to be addressed by the parties in a commercial lease. Regardless of what may be deemed common or typical, all the rights and obligations provided in a lease are negotiable. However, the rights and obligations of the parties can be broken down into two categories: (1) obligations of the parties (the “must do’s”), and (2) exercisable options and rights of the parties (the “mays” or “can do’s”). Some standard obligations provided in a commercial lease include insurance requirements, maintenance and repair obligations, late fee payments, default provisions, notice requirements, security deposits, sublease and assignment provisions, use provisions, subordination rights and holdover provisions, although this is only a partial list of what clauses may be contained in a lease.

This guide contains a detailed listing of typical lease clauses. Exercisable options or rights of the parties, which are also discussed more fully in the “Options” section, can be granted to either landlord or tenant, and they are typically exercisable upon the occurrence of a certain event, or within a certain time-frame, and subject to specific notification requirements. If not exercised, such options or rights may expire upon a specific event or date, or upon term expiration, or they may be continual and capable of being exercised repeatedly, dependent upon what the parties agree to in the lease. Some common tenant options include the option to renew the term, terminate the term, expand (via an expansion option, right of first offer, or right of first refusal) or contract the premises. Common landlord options include the option to relocate the tenant’s premises, or to terminate the tenant’s term.

When identifying a lease option, it is important to distinguish between a default remedy and an actual exercisable option for a party. For instance, many lease abstractors make the mistake of noting that a landlord has an option to terminate, when in fact, landlord’s “option” to terminate is actually a remedy for the landlord if the tenant defaults on a term of the lease. A default remedy is not an independent exercisable option or right. To help you understand leases better, this guide will take what can be a large and cumbersome document and boil it down to its vital components, some more complicated than others. Depending upon the reader’s perspective, some aspects of the commercial lease may be more vital to capture than others. However, to fully understand what sections of the lease are most important, whether to a landlord, tenant or commercial property owner, a basic understanding of each lease provision must be achieved.

Rent & Additional Recoverable Expenses

BASE RENT (“Minimum Rent”)

In a commercial lease, a tenant typically pays a fixed amount each month as “Base Rent,” also referred to as “Minimum Rent.” Base Rent may be provided as a dollar per square foot amount, a monthly fixed dollar amount, or an annual fixed dollar amount.

ABATEMENTS

An Abatement is the reduction or elimination of a continuing charge (including Base Rent, expense recoveries, percentage rent and/or any other cash consideration) required to be paid by a tenant under a lease for a specified period of time.

ADDITIONAL RENT

Additional Rent is any financial obligation of the tenant payable to the landlord other than Base Rent. Additional Rent may include items such as operating expenses, taxes, percentage rent, CPI adjustments and late fees.

Items of Additional Rent such as operating expenses and tax recoveries are typically based on a tenant’s Pro Rata Share of rented space in the building, property or complex (the “Defined Area”). Most other items of Additional Rent, such as percentage rent, CPI and Porters Wage adjustments, and late fees are independent of a tenant’s Pro Rata Share.

Tenants are usually required to pay their pro rata share of some or all of the operating expenses and taxes associated with the landlord’s ownership and operation of the premises and building. Operating expenses may include any number of items, including taxes. If taxes are not included as an item of operating expenses, then they are typically paid separately.

Operating expenses commonly include the following:



utilities



insurance



maintenance and repairs

janitorial services and supplies

security

landscaping/snow removal

management and association fees

amortization of capital improvements (with restrictions)

HOW LANDLORD DETERMINES ADDITIONAL RENT (“Recoverable Expenses”)

Annually, a landlord prepares a budget estimating what is expected to be spent during the upcoming year (calendar or fiscal) to operate and maintain the building. These expenses are tabulated and applied to each tenant according to the terms of the lease. After applying the terms of the lease against the budgeted expenses, the landlord will know how much needs to be collected from a tenant to cover that tenant’s share of the building expenses. These collections are usually made monthly as part of the tenant’s rent payment.

Within a short period of time from the end of each year, the landlord will determine what its actual operating expenses were for the past year. The landlord will take this final number and subtract from it the monthly payments (“deposits”) that the tenant has made toward these final expenses during the year. The result will either be a credit due to the tenant because final expenses were less than what was “deposited,” or, the tenant will owe an additional amount because the final expenses were higher than what was “deposited”.

This is a very simplistic explanation of the process and multiple variations exist to how a landlord and tenant handle their reimbursements, but generally, the basic mechanics are as outlined above.

THE COMPONENTS

Determining a tenant’s share of operating expenses is very complicated and is based upon a number of variables. These variables include:

- Net Lease vs. Gross Lease
- Pro-Rata Share
- Inclusions/Exclusions
- Caps on increases
- Gross-up for occupancy



Other variables may exist that are specifically written with a building, market or tenant in mind. It is impossible to address all possible variables in one document, but the following should provide a fairly comprehensive guideline.

GROSS LEASES VS. NET LEASES

The determination of whether a lease will be written as “Gross” or “Net” is usually done based upon market traditions. That is, most leases in a particular city or region are all written the same way. This makes it easier for tenants and brokers to evaluate proposals and for landlords to administer the leases.

A “Gross” lease is one in which a tenant pays its share of operating expenses in excess of a certain base amount. That amount can be stated as a Base Year or as an Expense Stop.

For example

- A tenant signs a lease that states it will pay its pro-rata share of operating expenses in excess of those for calendar year 2022. If the tenant moves in on 05/01/22, it will not pay any operating expenses for the remainder of 2022. Once the landlord determines the final costs to operate the building for 2022, it will inform the tenant of that amount, which is the Base Year amount. Going forward, any operating expenses for subsequent years that exceed that dollar amount (the Base) will be due from the tenant.
- Assume it costs \$5.00/sq. ft. to operate the building in 2022 (the Base Year), and it costs \$5.25/sq. ft. to operate the building in 2023. Subtracting the Base Year amount from the current year amount results in the tenant paying \$0.25/sq. ft. in 2022 as its share of operating expenses. If the costs to operate the building for 2023 are \$4.95/sq. ft., the tenant will not owe anything to the Landlord for that year because the Base Year expenses exceed the current year expenses. Unless written otherwise in the lease, the landlord will not owe anything to the tenant for that year.
- The Base Year amount listed in the example above was \$5.00/sq. ft.. This is also known as an “Expense Stop.” A lease may state that the tenant will pay its pro-rata share of operating expenses in excess of a certain dollar amount. That would be a lease with a specified Expense Stop.

A “Net” lease is one in which the tenant begins paying operating expenses based upon the estimate for the year of commencement without any consideration of a Base or Expense Stop amount.

- That is, if the tenant is expected to move in on 5/1/22, the landlord will inform the tenant that operating expenses are expected to be \$5.00/sq. ft. for 2022 and the tenant will begin paying that amount upon commencement. Each year thereafter, the tenant will pay the estimated amount for such year without subtraction of a Base amount.

Variations of these simple “Gross” and “Net” leases exist.

- A “Full Gross” lease is one that does not account for operating expenses. The tenant will pay a base rent (with or without fixed increases) over the term but will not pay expense recoveries. The landlord should have factored the estimated operating expenses for the term of the lease into the base rent, and assumes any risk in the event these estimates are incorrect.

The difference between a “Gross” and “Net” lease is typically accommodated for in the tenant’s Base Rent. Net leases will often have a lower Base Rent than a Gross lease, but in the end, the landlord will be collecting approximately the same amount. For example:

	BASE RENT	OPERATING EXPENSES	TOTAL RENT
3-year term 05/01/22 commencement Gross Lease 2022 Base Year	5/1/22: \$15.00/sq. ft. 5/1/23: \$15.50/sq. ft. 5/1/24: \$16.00/sq. ft.	2022: \$5.00/sq. ft. (tenant pays \$0.00/sq. ft.) 2023: \$5.25/sq. ft. (tenant pays \$0.25/sq. ft.) 2024: \$5.50/sq. ft. (tenant pays \$0.50/sq. ft.)	2022: \$15.00/sq. ft. 2023: \$15.75/sq. ft. 2024: \$16.50/sq. ft.
3-year term 05/01/22 commencement Net Lease	5/1/22: \$10.00/sq. ft. 5/1/23: \$10.50/sq. ft. 5/1/24: \$11.00/sq. ft.	2022: \$5.00/sq. ft. 2023: \$5.25/sq. ft. 2024: \$5.50/sq. ft.	2022: \$15.00/sq. ft. 2023: \$15.75/sq. ft. 2024: \$16.50/sq. ft.



THINGS TO WATCH FOR:

- **Two different Base Year amounts:** one for Operating Expenses and one for Real Estate Taxes
- **Is the Base Year a calendar year or a fiscal year?** This mainly comes into play for Real Estate Taxes. Operating Expenses may be based upon a calendar year while Real Estate Taxes are based on the Fiscal Year of the taxing authority.
- **Will Base Rent be reduced** if operating expenses for a particular year fall below the Base Year? Certain items can be excluded from the Base Year only. Most likely, these would be items that are considered “unusual” and not normally incurred as part of the normal operating/maintenance of the building.

Leases usually allow the landlord to include the amortization of certain capital expenditures over the useful life of the project or equipment being amortized. However, some leases allow for the exclusion of this amortization from the Base Year. To illustrate why this is done:

- Imagine a large capital project completed in 2021 with a useful life of 5 years.
- The amortization schedule for the project reflects \$10,000 annually for years 2021-2026.
- No further amounts can be included in Operating Expenses on this project after 2026.
- A tenant moves in and has a Base Year of 2026. When determining the tenant's Base Year expenses, the \$10,000 of amortization expense is included.
- In 2027, the amortization of this project drops off but the tenant's base year is inflated by \$10,000, thus lowering the amount of expenses that the landlord can collect.
- By adding language to the lease, excluding amortization from the Base Year, the landlord protects itself from under-collecting due to artificially inflated Base Years.

For Base Year gross leases, make note of the landlord's ability to adjust the Base Year in the event real estate taxes are reassessed.

- Often times it takes two or more years to contest a real estate tax assessment but the tenant and landlord cannot wait this long to set a Base Year and begin operating expense reimbursements. When the final decision is made by the taxing authority, the result is often a reduction in real estate taxes.
- Some leases allow the landlord to go back, reduce the Base Year and recalculate any operating expense amounts that were already determined in prior years. The tenant would then owe the landlord additional sums for prior years.
- The landlord is allowed to do this because the reduction in real estate taxes will ultimately reduce taxes for all years going forward. If the Base Year is over-inflated, the landlord will not collect the appropriate amount of reimbursements to cover the tax expenses for current years, so the Base Year needs to be adjusted proportionately.

TENANT'S SHARE ("Pro-Rata Share")

Tenant's Share may also be referred to as Tenant's Proportionate Share, or "Pro-Rata Share." It represents the percentage of the Defined Area that is occupied by a particular tenant.

If a tenant occupies 5% of the Defined Area, it is safe to say that the tenant would be responsible for 5% of the costs to operate that Defined Area. In most cases, a Tenant's Pro-Rata Share is determined by the following fraction:

$$\frac{\text{Premises Square Footage}}{\text{Defined Area Square Footage}} \times 100$$

Some leases will clearly state the square footage of the denominator. This will make the tenant's pro-rata share easy to calculate and verify. Other leases may simply state a percentage amount. In either case, unless the lease states otherwise, a tenant's stated pro-rata share or the stated building square footage cannot change when calculating the tenant's share in subsequent years, unless an amendment or other documentation is executed evidencing such change.

Some leases are written to allow the landlord to recalculate the tenant's pro-rata share from year-to-year based upon building re-measurements.

THINGS TO WATCH FOR:

- If a denominator square footage is not clearly stated, be sure it is understood what makes up the denominator. Is it the square footage of one building or a sum of a combination of buildings?
- If the denominator for the pro-rata calculation is based upon "occupied square footage" or "95% of building square footage."
- Varying pro-rata shares for Operating Expenses vs. Real Estate Taxes for the same tenant.
- A tenant's pro-rata share being based on some other leased square footage and not the square footage it is occupying per the lease.



INCLUSIONS/EXCLUSIONS

A lease will explain what items make up Operating Expenses. Often it is very clear, and the lease will state, “Operating Expenses means all expenses to operate and maintain the Building . . . and include the following: . . .” with a section following that lists the included items.

The first question the reader needs to answer is: are real estate taxes included in operating expenses or are they calculated separately? Combining real estate taxes with operating expenses when they should be separate can result in a loss of income for landlord in a “Gross” lease, as the chart below demonstrates:

COMBINING EXPENSES:		
Base Year = 2022 Opex = \$3.00/sq. ft. RET = \$2.00/sq. ft. TOTAL = \$5.00/sq. ft.	Subsequent Year = 2023 Opex = \$2.75/sq. ft. RET = \$3.00/sq. ft. TOTAL = \$5.75/sq. ft.	Tenant reimbursement, if expenses are combined, is \$0.75/sq. ft. for 2023 based on the following calculation: $\$5.75 - \$5.00 = \$0.75$
SEPARATING EXPENSES:		
Base Year = 2022 Opex = \$3.00/sq. ft. RET = \$2.00/sq. ft. TOTAL = \$5.00/sq. ft.	Subsequent Year = 2023 Opex = \$2.75/sq. ft. RET = \$3.00/sq. ft. TOTAL = \$5.75/sq. ft.	Tenant reimbursement is \$0.00/sq. ft. for Operating Expenses and \$1.00/sq. ft. for Real Estate Taxes based on the following calculations: Opex: No increase over Base RET: $\$3.00 - \$2.00 = \$1.00$

In the above example, the landlord is entitled to a larger reimbursement if expenses are separated, but the decision to separate or combine expenses is dictated by the lease language only.

Other items that may be pulled out of operating expenses and calculated separately include management fees and utilities.

Sometimes, a lease may specifically exclude an item and not bill it separately. Most of these exclusions contain an element of common sense and fairness. For example, a lease would state that the landlord cannot include tenant improvement costs or commissions in the operating expenses of the building. That is because when quoting a lease, the landlord recoups these costs as part of the quoted rental rates. These costs should not be covered by other building tenants.

In contrast, some items are rarely excluded. These are standard expenses such as janitorial costs, security costs or elevator expenses. Exclusions of standard operating expenses are rare but are very important to watch for and make note of. They most often occur in leases for larger tenants who have more negotiating power.

Below is a list of standard operating expense exclusions. It is commonly understood in the industry that these items are not components of Operating Expenses passed on to tenants. It is usually not required that these items be noted in detail. Any excluded item beyond the scope of this list should be noted.

1. Ground Rent
2. Cost of capital improvements to the Building (including capital costs, which are done for code compliance or to reduce expenses).
3. Depreciation or amortization of any improvements.
4. Salaries and employment expenses of personnel above the level of Building or General Manager or Asset Manager.
5. Expenses of any leasing office incurred with regard to leasing the Building.
6. Cost of operating and maintaining any specialty service, such as an observation deck, broadcasting and/or telecommunications facility, or luncheon, athletic or recreational club.
7. Payments for rented equipment, the cost of which would have constituted an excluded capital expenditure if the equipment were purchased.
8. Cost of acquiring or leasing paintings or other objects of art; the costs of maintaining and insuring such objects shall be included.
9. Costs expended to bring the Building into compliance with the ADA.
10. Costs to cure violations of laws to the extent the Building is in violation of laws as of the Commencement Date, including any fines for such violations; provided LL may include in Operating Expenses the cost to cure violation of laws which occur after the Commencement Date.
11. Asbestos, radon or other hazardous materials -- removal or encapsulation.
12. Cost of future renovations to the Building.
13. Lobby renovations.
14. Advertising and promotional expenditures.
15. Costs of legal, professional or consulting fees to the extent such costs are not reasonably intended to reduce Operating Expenses for the Building and to improve the quality of services to tenants.
16. All expenses in connection with dues and/or subscriptions, travel expenses, entertainment expenses and recruitment and interview expenses.
17. Costs of any disputes between any employee or agent of LL, or any mortgagees or ground lessors of LL.
18. Mortgage principal and interest on building or land.
19. Costs associated with leasing space in the building or relocating tenants.
20. Charging back costs (other than deductible) for which LL received insurance proceeds.
21. Late fees, fines, penalties and interest charged on past due accounts.

22. Legal and auditing fees in connection with disputes with tenants. Legal fees and court costs other than those incurred in any dispute regarding application of governmental requirements to the general occupancy, maintenance and operating of the Building and costs and expenses incurred in connection with the enforcement of leases and occupancy agreements, including without limitations, attorney fees and disbursements.
23. Costs of services paid to any affiliate of LL that are in excess of prevailing market costs for such services.
24. Bad debt loss.
25. Charitable contributions.
26. Compensation paid to persons in commercial concessions operated by LL.
27. Ownership expenses, tax preparation fees, LL's financial statements and corporate minutes preparation.
28. Cost of any special services rendered to a particular tenant or costs reimbursed to a tenant for services or costs that are not generally rendered or reimbursed to other tenants.
29. Costs to correct structural defects in the initial construction of the Building.
30. Costs for performing additional services or installation to or for tenants to the extent such service is done without charge to tenants.
31. Financing or refinancing costs.
32. "Takeover Expenses" (i.e. Lease Buy-Outs).
33. Any amounts payable by LL by way of indemnity or for damages or which constitute a fine, interest or penalty, including interest or penalties for any late payment of marketing costs.
34. The cost to LL in curing its defaults under the Lease to the extent such costs exceed the normal cost of Operating Expenses.

CAPS ON INCREASES

Rather than excluding a particular component of operating expenses, as described in the previous section, it may be decided to cap the increases on that item, on the expenses as a whole or on just a portion of the expenses.

By requesting a cap on controllable operating expense increases, a tenant can more easily predict the cost of the lease over the term. It will know that it won't be placed in a precarious financial situation if controllable operating expenses increase beyond the norms.

Caps on increases are either cumulative or annual. A cumulative cap compounds from year-to-year and usually, if the increase in one year does not meet the stated cap, the variance between the actual and the cap can be "saved" and applied to the following year. For example, if the cap is 5% and for a year the increase is only 4%, the increase for the following year can be as much as 6% without violating the cap language in the lease. An annual increase is one which resets each year. Using the prior example, the 2nd year increase cannot go up to 6%, but must remain at 5%.

The most important thing to know is how to identify whether or not a cap is cumulative or annual in the lease language. Some examples:

Cumulative

"Tenant's Pro Rata Share of Controllable Expenses shall not increase by more than 6% over Tenant's Pro Rata Share of Controllable Expenses in the previous calendar year, including the Base Year, on a cumulative, compounded basis."

"In no event shall the total amount of Operating Expenses used for the calculation of pass-throughs each year of this Lease after the Base Year (other than non-controllable expenses such as, for example purposes only, real estate taxes, insurance and utilities) exceed 105% of the total amount of the prior year's Operating Expenses, on a cumulative basis."

Annual

"In no event shall the total amount of Operating Expenses used for the calculation of pass-throughs to Tenant for each year of this Lease after the Base Year (other than real estate taxes, insurance, and utilities) exceed 106% of the total amount of Operating Expenses (other than real estate taxes, insurance, and utilities) passed through to Tenant for the immediately prior year."

As seen in the examples above, caps are often not on all expenses. Rather, they are more specifically defined. Rarely, a lease may cap one expense. Some examples:

- Management fees are capped at 3% of income.
- Capital amortization is capped at \$5,000/annually.
- Amount of management office rent that a landlord can include as an operating expense is capped at an office of no more than 985 sq. ft.

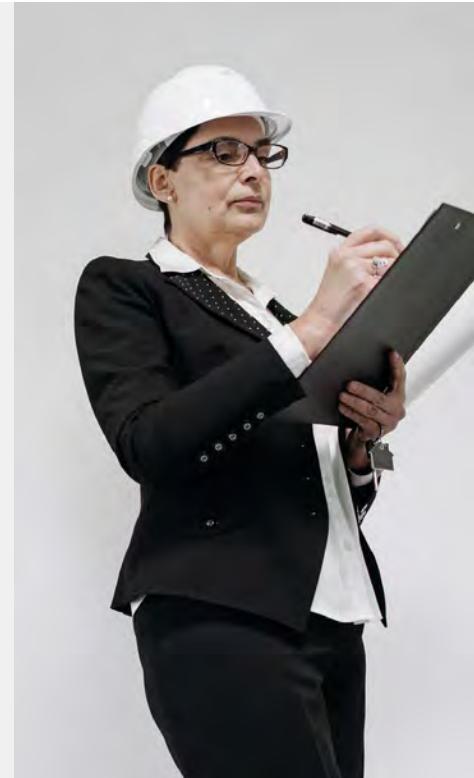
Most often though, the reader will see a cap applied to a group of expenses, most commonly referred to as “controllable” expenses. This language will acknowledge that some of the expenses related to operating a building are beyond the control of the landlord and that the landlord should not be left “holding the bag”, so to speak. These expenses often include (with the first three being most commonly excluded from controllable):

Real Estate Taxes • Utilities • Insurance • Unionized labor • Snow removal

Any expenses deemed “non-controllable” in a lease, will be removed from the cap calculation. The tenant will pay the full amount of these expenses on a year-to-year basis, but all other expenses are subject to the cap calculation.

THINGS TO WATCH FOR:

- Caps are not always based upon a percentage. Sometimes they are based on a flat dollar amount. For example, increases in operating expenses may be capped at \$0.50/sq. ft. annually.
- A lease may state that tenant's share of Operating Expenses for Year 2 are capped at \$5,000/annually and Year 3 expenses are capped at \$5,500/annually.
- A cap that is based on a percentage can also have a “floor”. That is, annual increases in operating expenses may be no less than 2% but not more than 5%. The 2% would be the floor, the lowest percentage increase.
- Caps can also be based upon increases in CPI (Consumer Price Index) and these leases will contain extensive language on the index that will be used, the base index and the comparative index. CPI increases are likely to have an additional layering of a floor/cap provision (i.e., no less than 2%, no more than 5%).



GROSS UPS

A Gross Up is lease clause that allows the Landlord to increase recoverable expenses that vary with occupancy to an amount that would be incurred if a defined level of occupancy were achieved. Gross-up clauses typically allow the Landlord to gross-up variable operating expenses to 95% or 100% occupancy. The gross-up of operating expenses is a generally misunderstood concept that is critical for landlords in order to equitably allocate variable recoverable operating expenses to tenants.

EXAMPLE: ABC Tenant's lease allows the landlord to gross-up variable operating expenses to 100% occupancy for expense recovery purposes. During the year, the average actual occupancy of Realogic Tower is 90%. The landlord identifies Cleaning Expense as the only variable operating expense, and the actual cost for such year is \$90,000. Due to the gross-up clause, the landlord may include \$100,000 in recoverable expenses for cleaning, reflecting a gross-up of the \$90,000 actual cleaning expense to \$100,000 (\$90,000 divided by 90%).

The above example may give the perception that a gross-up provision is only advantageous to the landlord. A tenant's viewpoint is, "Why is the Landlord allowed to gross-up or effectively 'overstate' the Building's variable operating expenses and expect a tenant to pay recoveries on an over-inflated figure?" This mindset is due to tenant's misunderstanding of the concept of properly drafted and implemented gross-up provisions. Gross-up clauses can be effective in safeguarding both the landlord as well as the tenant, especially if the lease includes a provision that the landlord cannot recover more than 100% of actual operating expenses. The effect of a gross-up is to normalize operating expenses and to protect both parties from dramatic swings in recoverable operating expenses. A simple one-tenant example clearly illustrates the fairness of a gross-up clause:



EXAMPLE: One Tenant Building Gross Up versus Without Gross Up

Lack of Gross-Up Clause Unfair - caused LL to lose \$9,000.

A ten-story building contains one tenant who occupies nine floors or 90% of the building on a triple net basis. The balance of the building is vacant. The building has incurred \$90,000 of cleaning expenses. For illustration purposes, cleaning is the only expense presented and is assumed to be 100% variable.

	WITHOUT GROSS-UP	WITH 100% GROSS-UP	
	Year One	Year One	
Actual Cleaning Expenses	\$90,000		\$90,000
Occupancy	90%		90%
Grossed-up Cleaning Expenses	-----	(a)	\$100,000 (d)
Tenant's Pro-Rata Share	90%		90%
Tenant's Share of Cleaning Expenses	\$81,000 (b)		\$90,000 (e)
Landlord's Share of Cleaning Expenses	\$9,000 (c)		\$0 (f)

- Not applicable - expenses are not grossed up and payment is based on actual expenses
- \$90,000*90% (actual expenses * pro-rata share)
- \$90,000-\$81,000 (actual expenses less tenant's share of actual)
- \$90,000/90% (actual expenses/occupancy)
- \$100,000*90% (grossed up expenses * pro-rata share)
- \$90,000-\$90,000 (actual expenses less tenant's share of grossed-up expenses)

With a gross-up clause, tenant pays 100% of cleaning expenses or \$90,000, which is intuitively fair as the tenant is the sole occupant and is receiving the entire benefit of the cleaning service (the vacant space is not being cleaned). Without a gross-up clause, tenant pays only \$81,000 of cleaning expenses and landlord is responsible for \$9,000 of cleaning expenses. This is not equitable as the tenant continues to receive the entire benefit of the service. As demonstrated in this simple example, a gross-up provision provides an allocable distribution of recoverable variable expenses between tenancy and ownership.

BENEFITS TO LANDLORD

With Gross-Up, landlord pays \$5,000 less.

If occupancy falls and total variable recoverable expenses fall below the Base Year variable recoverable expense amount, landlord will not collect recoverable expenses. If landlord grosses-up variable expenses, the tenant will continue to pay their fair share of recoverable expenses regardless of the occupancy level of the building.

Example: Protection to Landlord Occupancy Declines and Variable Operating Expenses Decline

A ten-story building contains multiple tenants and is 90% occupied. In Year Two, occupancy decreases to one tenant who occupies 70% of the building. The decline in occupancy results in a decrease in recoverable variable operating expenses. As illustrated below, without a gross-up clause, the landlord is burdened with an unfair amount of recoverable variable operating expenses.

	WITHOUT GROSS-UP		WITH 100% GROSS-UP	
	Base Year	Year Two	Base Year	Year Two
Actual Variable Operating Expenses	\$90,000	\$75,000	\$90,000	\$75,000
Occupancy (multiple tenants)	90%	70%	90%	70%
Grossed-up Variable Operating Expenses	----- (a)	----- (a)	\$100,000 (f)	\$107,143 (g)
Tenant's pro-rata share	70%	70%	70%	70%
Tenant's Operating Expense Payment	\$0 (b)	\$0 (b)	\$0 (b)	\$5,000 (h)
LL's Share of Operating Expense Payment	\$90,000 (c)	\$75,000 (c)	\$90,000 (c)	\$70,000 (i)

- a. Not applicable - expenses are not grossed up and payment is based on actual expenses.
- b. No recoveries are paid by tenant in the base year
- c. \$90,000-\$0 (actual expenses less tenant's share)
- d. No recoveries are paid by tenant (Year Two expenses are lower than Base Year stop)
- e. \$75,000-\$0 (actual expenses less tenant's share)
- f. \$90,000/90% (actual expenses/occupancy)
- g. \$75,000/70% (actual expenses/occupancy)
- h. $(\$107,143 - \$100,000) * 70\% = \$5,000$ [(Year Two grossed-up expenses less Base Year grossed-up stop) * pro-rata share]
- i. \$75,000-\$5,000 (actual expenses less tenant's share)

Without a gross-up clause, tenant continues to receive the same services but does not pay its fair share of variable operating expenses in Year Two, while the landlord is unfairly burdened with variable operating expenses due to the decline in occupancy.

BENEFITS TO TENANT

With Gross-Up, Tenant saves \$13,438.

Assuming the lease document contains a gross-up clause, if occupancy increases and variable recoverable operating expenses increase, Tenant is not required to pay a disproportionate share of variable operating expenses, nor is Tenant subject to dramatic changes in variable operating expenses.

Example: Protection to Tenant Occupancy Increases and Variable Operating Expenses Increase

A recently constructed building containing multiple tenants is only 25% occupied. The building successfully leases up to 90% occupancy resulting in a large increase in variable recoverable operating expenses. Without a gross-up provision, the tenant would be required to pay an unfair amount of operating expenses. As reflected below, with a gross-up clause, tenant is responsible for paying their fair share of recoverable variable operating expenses resulting in a savings of \$13,438 (\$17,188 - \$3,750).

	WITHOUT GROSS-UP		WITH 100% GROSS-UP	
	Base Year	Year Two	Base Year	Year Two
Actual Variable Operating Expenses	\$21,250	\$90,000	\$21,250	\$90,000
Occupancy (multiple tenants)	25%	90%	25%	90%
Grossed-up Variable Operating Expenses	----- (a)	----- (a)	\$85,000 (d)	\$100,000 (e)
Tenant's pro-rata share	25%	25%	25%	25%
Tenant's Operating Expense Payment	\$0 (b)	\$17,188 (c)	\$0 (b)	\$3,750 (f)

- a. Not applicable - expenses are not grossed up and payment is based on actual figures
- b. Tenant pays no recoveries in the Base Year
- c. $(\$90,000 - \$21,250) * 25\% = \$17,188$ [(Year Two actual expenses less Base Year stop) * pro-rata share]
- d. $\$21,250 / 25\% = \$85,000$ (actual expenses/occupancy)
- e. $\$90,000 / 90\% = \$100,000$ (actual expenses/occupancy)
- f. $(\$100,000 - \$85,000) * 25\% = \$3,750$ [(Year Two grossed-up expenses less Base Year grossed-up expenses) * pro-rata share]

Without a gross-up clause, tenant continues to receive the same services but pays a disproportionate share of variable operating expenses or \$17,188. With a gross-up clause, tenant is insulated from occupancy fluctuations and pays only its proportionate share of variable operating expenses or \$3,750. The tenant might argue that the above example is an unusual situation and that typically gross-ups result in a higher payment due from tenant. This argument can be countered by having the Lease include a provision-prohibiting Landlord from recovering more than 100% of actual operating expenses from Building tenancy.



SUMMARY

As demonstrated above, gross-ups benefit both the landlord and tenant by providing a fair and rational method of determining recoverable variable operating expenses. Gross-ups also assist both parties in forecasting cash flow as it provides a more consistent allocation of recoverable operating expenses that is not dependent upon stable occupancy.

PERCENTAGE RENT

Percentage Rent is a form of rent paid in addition to, or in lieu of, Base or Minimum Rent. It is almost exclusively reserved for tenants with a retail usage and is based upon a percentage of the tenant's gross sales, with or without a breakpoint.

Breakpoints may be 'natural' or a specified dollar amount. A 'natural' breakpoint reflects the amount of Gross Sales which, when multiplied by the Overage Percentage, equals Base Rent (stated differently, a natural breakpoint is calculated as Base Rent divided by the Overage Percentage). The Overage Percentage is stated in the lease. If a breakpoint is not natural, then the amount of the breakpoint (stated as an absolute Gross Sales amount or Gross Sales per square foot) is determined based upon negotiation between the landlord and tenant.

The following is an example of a Percentage Rent calculation.

- In addition to its Minimum Rent, a tenant is obligated to pay 5% of its gross sales over a natural breakpoint. The Minimum Rent is \$12,000 annually.
- First, determine the natural breakpoint:

$$\$12,000 / 0.05 = \$240,000.00$$

The tenant is required to pay to the landlord, in addition to its \$12,000 of Minimum Rent annually, 5% of all gross sales in excess of \$240,000.

- The tenant will submit gross sales reports to the landlord according to the terms of the lease. Let's say, in this example, a report is due at the end of the year showing all of the gross sales for the year. In this case, the gross sales were \$425,000.

To calculate the amount due to the landlord:

Annual Gross Sales:	\$425,000.00
Less Breakpoint:	\$-240,000.00
Sales over Breakpoint:	\$185,000.00

$$\$185,000.00 \times 5\% = \$9,250.00$$

The landlord is entitled to \$9,250.00 in Percentage Rent.

CONSUMER PRICE INDEX INCREASES

The Consumer Price Index is published monthly by the U.S. Bureau of Labor Statistics and measures the inflation/deflation in the prices of specified goods and services. The index may vary based upon location (national average vs. regional index), type of consumer (all urban consumers vs. wage earners and clerical workers), goods and services included (all items vs. specifically defined goods and services) and base index period (i.e., the starting point for measurement of the index, stated as 100.0). Generally, the lease will tell you what index should be used.

CONSUMER PRICE INDEX ADJUSTMENT

An increase (and sometimes decrease) in the Rent required to be paid by a tenant based upon changes in the Consumer Price Index over a specified time period.

For additional information on the Consumer Price Index, visit: <http://www.bls.gov/CPI/>.

Example: Tenant ABC signs a lease with the following terms.

- Commencement Date is 6/1/22.
- Initial Base Rent is \$20,000 annually.
- Per the lease, “the Initial Base Rent is to increase each 6/1 by the increase in CPI over the Base Index. The Base Index is that published immediately prior to Commencement Date.
- The Index to be used is, “CPI-U, All Urban Consumers, U.S. City Average, 1982/84=100”.



Note the following:

- Each year the table will need to be accessed through the above-referenced government website.
- Most leases reference the index published immediately prior to a particular date. It is standard practice that there is a 2-month lag time in the publication of CPI tables. Therefore, in the example above, a 6/1/22 Commencement Date would mean the index published for 4/22.

To calculate the increases:

The table shows the following:

April 2022 = 194.6
April 2023 = 201.5
April 2024 = 206.686
April 2025 = 214.823

The first CPI increase is scheduled to occur on 6/1/23. Start by comparing the Base Index (194.6) with that published immediately prior to the date of the scheduled increase (201.5).

201.5 – 194.6 / 194.6 = 0.0355 x 100 = 3.55%
3.55% increase in annual Base Rent from the Initial Base Rent
\$20,000 x 3.55% = \$710.00
Effective 6/1/23, Base Rent is \$20,710.00 annually

The second CPI increase is scheduled to occur on 6/1/24. Start by comparing the Base Index (194.6) with that published immediately prior to the scheduled increase (206.686).

206.686 – 194.6 = 0.062 x 100 = 6.21%
6.21% increase in annual Base Rent from the INITIAL Base Rent
\$20,000 x 6.21% = \$1,242.00
Effective 6/1/24, Base Rent is \$21,242.00 annually

Lease Options



OPTIONS

What is an Option?

An Option is a right granted to either the tenant or the landlord. Options are typically granted via lease documentation and includes renewal, expansion, contraction, termination, rights of first offer, rights of first refusal and purchase options

CONTRACTION/REDUCTION OPTION

A Contraction or Reduction Option grants a tenant or landlord the right to reduce the amount of space leased by such tenant.

A contraction option often defines (a) the premises subject to reduction; (b) the notification and effective dates of contraction; (c) the impact on Rent and (d) any contraction fee paid by the party exercising the option.

An Auto-Contraction option is a form of Contraction Option whereby the size of the premises reduces automatically on the effective date without any notification requirement.

EXAMPLE: Premises and Option to Reduce Space.

Landlord leases to Tenant Suite #500 (Premises) as shown cross-hatched on the attached floor plan (Exhibit A). The Premises contain approximately 7,666 Useable Square Feet of office space and the fixtures, improvements and other property now installed. Tenant acknowledges that it accepts the Premises in their current AS IS condition, subject to Landlord's obligation to maintain, repair and replace the Premises as set forth herein. The foregoing sentence shall not be deemed to imply that Landlord, as part of its obligations hereunder, does not have the obligation to repair, maintain or replace existing conditions and defects which require maintenance, repair or replacement. Landlord has made no representation or warranty with respect to the condition of the Premises as of the date hereof except as set forth herein. Notwithstanding anything contained herein to the contrary, Tenant, in its sole and absolute discretion, shall have the right (the "Reduction Right") at any time during the Term of this lease to reduce the size of the Premises from 7,666 Useable Square Feet to an amount not less than 2,500 Useable Square Feet in any configuration. In order for Tenant to exercise the Reduction Right, Tenant shall provide written notice to Landlord of its intention to exercise the Reduction Right and such written notice shall include (i) the date which such reduction notice shall be effective, (ii) the amount of Useable Square Feet Tenant elects to retain (the "Retained Space"), provided the Retained Space is no less than 2,500 Useable Square Feet, and (iii) a drawing or other description of the Retained Space. Landlord agrees to reasonably cooperate with Tenant in order to re-configure or alter the Premises in connection with exercise of the Reduction Right. Upon the date which Tenant indicates the reduction shall be effective, the Premises as defined herein shall consist of the Retained Space and Base Rent shall automatically be reduced to an amount equal to the then current annual Base Rent the square footage of the Useable Square Feet in the Retained Space.

Something to note about this example: The Option to Reduce is imbedded in the paragraph describing the Premises. The title of the Paragraph leads the reader to understand that the option is in there but, be aware that not all leases provide such clues. This is an example that shows how important lease provisions can be buried in mundane sections so it is always important to read the lease in its entirety.

ITEMS TO LOOK FOR: (Using the Example above)

- Definition of Contraction Space: A portion of Suite 500, in any configuration, in an amount not to exceed 5,166 Useable Square Feet so that the Retained Space is not less than 2,500 Useable Square Feet.
- The Notice Date: At any time during the Term
- The Effective Date: As stated in the written notice
- Contraction Payment: None
- Other: Written notice to include a drawing or description of the Retained Space

EXPANSION OPTION

An Expansion Option is an option granted to a tenant which allows it to increase the amount of leased premises at a future date.

In an Expansion Option, the expansion premises, notification date, effective date and rent are typically clearly defined. In addition, the right of the tenant to expand via such an option is not contingent upon the occurrence of any event related to the expansion premises (i.e., availability for lease, offer from third party).

An Auto-Expansion option is a form of Expansion Option whereby the premises expand automatically on the effective date without any notification requirement. This is sometimes referred to in leases as "Must Take Space".

EXAMPLE: Option to Expand.

43.1 Subject to the terms and conditions hereinafter set forth, Tenant shall have an option (an "Expansion Option") to lease an additional 2,000 to 3,000 rentable square feet, as determined by Landlord, of additional space on the eighteenth (18th) floor of the Building (or such lesser remaining rentable square feet of the 18th floor of the Building after any exercise by Tenant of the First Offer right set forth in Article 42 above) that is contiguous to the Premises then being leased by Tenant following the timely and proper exercise of the expansion option by Tenant ("Expansion Premises"), for a lease term commencing as set forth below.

43.2 Tenant must exercise its Expansion Option, if at all, by notice to Landlord given no later than August 1, 2023, time being of the essence. If not timely and properly exercised, the applicable Expansion Option shall terminate pursuant to this Article.

43.3 The term of the lease of the Expansion Premises shall commence (the “Expansion Premises Commencement Date”) upon the date Landlord delivers the Expansion Premises to Tenant, which delivery shall be during calendar year 2024. If Tenant timely exercises its Expansion Option pursuant to this Article, then, subject to the limitations in the Article, Landlord shall designate the size and location of the Expansion Premises and the scheduled Expansion Premises Commencement Date in a notice given at least ninety (90) days prior to the scheduled Expansion Premises Commencement Date.

43.4 If Tenant validly exercises its options to lease the Expansion Premises, then effective as of the Expansion Premises Commencement Date, the Expansion Premises shall be included in the Premises, subject to all the terms, conditions and provisions of the Lease, except as follows:

43.4.1 the rentable area in the Premises shall be increased by the rentable area of the Expansion Premises and Tenant’s Proportionate Share shall likewise be increased.

43.4.2 the term of the demise covering the Expansion Premises shall commence on the Expansion Premises Commencement Date and shall expire simultaneously with the expiration or earlier termination of the Term, including any extension or renewal thereof.

43.4.3 the Expansion Premises shall be rented in “as is” condition as of the Expansion Premises Commencement Date. It is the intention hereof that if Landlord leases the Expansion Premises to a third party prior to leasing the same to Tenant pursuant to this Article, Landlord shall have no obligation to demolish or remove any leasehold improvements made by or on behalf of such third party tenant (i.e., Tenant shall rent such Expansion Premises in “as is” condition as of the Expansion Premises Commencement Date).

43.4.4 the rate of Annual Rent per square foot of net rentable area for the Expansion Premises shall be equal to the Market Rent (as defined or determined in Section 41.2.1 above) and shall be payable at the same times and in the same manner as Annual Rent is paid with respect to the balance of the Premises.

43.5 Tenant may only exercise its Expansion Option, and an exercise thereof shall only be effective, if at the time of Tenant’s exercise and on the Expansion Premises Commencement Date, the Lease is in full force and effect and Tenant is not in default beyond applicable notice and cure periods set forth herein and Tenant has not assigned the Lease or sublet all or any part of the Premises.

Something to note about this Example: In two places, it sends the reader back to other sections of the lease. Section 43.1 refers back to Article 42 and Section 43.4.4 refers back to Article 41.2.1. This is not unusual and when a lease references other sections, it is important for the reader to go to those sections and read them in order to understand the terms of the current section.

ITEMS TO LOOK FOR (Using the example above):

- Definition of Expansion Space
 - An additional 2,000 to 3,000 rentable square feet of contiguous space on the 18th floor (or such lesser rentable sq. ft. remaining after any exercise by Tenant of its First Offer Right granted in Article 42).
- Date when Tenant must exercise
 - No later than 8/1/23.
- Date when Expansion is effective
 - Upon Landlord delivery which shall be during calendar year 2024.
- Rent for Expansion Space
 - Market Rent (as defined in Lease, Section 41.2.1)
- Other
 - No Construction Allowances granted
 - Landlord will provide notice to Tenant designating the size, location and scheduled Expansion Premises Commencement Date in a notice to Tenant given at least 90 days prior to the scheduled Expansion Premises Commencement Date.

EXTENSION/RENEWAL OPTION

An Extension/Renewal Option is an option granted to a tenant allowing it to lengthen the lease term at a pre-defined rental rate. The rate may be a specified dollar amount or quoted as a specified percentage of the market rental for the geographical market in which the property is located.

An Extension/Renewal Option must typically be exercised by the provision of notice from tenant to landlord within a pre-defined time period prior to the expiration of the lease term.

EXAMPLE:

8. Term Extension Option.

8.1 Tenant shall have one (1) option to extend the Term for two (2) years (the "Term Extension Option", the term of the Term Extension Option shall be referred to as the "Term Extension Period"), upon the terms and conditions contained herein, including without limitation the payment of Tenant's Proportionate Share of Direct Expenses determined on the same basis as set forth in Article 4 of the Lease except that the Annual Rent for such Term Extension Option shall be at the then-fair market rate for the Term Extension Period as reasonably determined by Landlord including fair market concessions (e.g., Annual Rent abatement, tenant improvements, etc.), (the "Fair Market Rent") as set forth below.

8.2 Tenant shall provide notice to Landlord ("Term Extension Notice") of Tenant's exercise of the Term Extension Option no later than the sixth (6th) month prior to the expiration of the Initial Term and no earlier than nine (9) months prior to the end of the Initial Term. The Fair Market Rate is the rental rate then being charged by landlords (including Landlord) in the central business district to tenants of a similar credit quality to Tenant for space of similar quality and size as the Premises, taking into account, all relevant factors, including without limitation age, extent and quality of tenant improvements, length of term, amenities of the Building and the Project, location and/or floor height and definition of net rentable area, reasonable projections of Annual Rent, annual Direct Expenses and allowances or concessions that have been granted such as abatements, lease assumptions and existing conditions of leasehold improvement and moving allowances.

8.3 Within thirty (30) days after receipt of the Term Extension Notice, Landlord will advise Tenant of Landlord's determination of the Fair Market Rate and Tenant reserves the right to rescind its Term Extension Notice by notifying Landlord in writing within ten (10) days after receipt of Landlord's determination. If Tenant does not timely rescind its Term Extension Notice, Tenant shall be deemed to have exercised the Term Extension Option.

8.4 Tenant may not exercise the Term Extension Option if on the date Tenant attempts to exercise such Term Extension Option or as of the beginning of the Term Extension Period (a) Tenant is in default under the Lease beyond any applicable notice and cure period, or (b) the Lease or Tenant's right of possession has been terminated, or (c) the Lease is not in full force and effect on said date, or (d) Tenant has assigned the Lease or sublet all or any portion of the Premises.

8.5 Following exercise by Tenant of the Term Extension Option, at the request of either party hereto and within thirty (30) days after such request, Landlord and Tenant shall enter into an amendment to the Lease confirming the terms, conditions and provisions applicable to the Term Extension Period as determined in accordance herewith.

ITEMS TO LOOK FOR (Using the Example Above):

- Renewal term
 - Two (2) years
- Notice Dates
 - No later than 6 months and no earlier than 9 months prior to the end of the Initial Term
- Renewal Rent
 - Fair Market Rent as defined in Section 8.2, including fair market concessions
- Actions or conditions that nullify the option
 - (a) Tenant is in default; (b) Lease or Tenant's right of possession has been terminated; (c) Lease is not in full force and effect; (d) Tenant has assigned or sublet
- Is Landlord required to provide Tenant the market rent within a specified time period?
 - Within 30 days of receipt of Tenant Notice
- Does the option provide for a Tenant Improvement Allowance?
 - Fair Market Rent is to include fair market concessions but no specific TI Allowance noted.
- Other
 - Tenant has a right to rescind its Term Extension Notice within 10 days after receipt of Landlord's determination of Fair Market Rent.

PURCHASE OPTION

A Purchase Option is the right granted to a tenant to purchase a building (typically the building for which they are currently in occupancy) at a specified time in the future and for a specified price.

EXAMPLE: Addendum D – Right of First Offer

In the event at any time or from time to time during the term of this Lease, Landlord desires to sell all or any part of Landlord's Parcel to any person or entity and provided Tenant is not in default under any of the terms and conditions of this Lease, Landlord shall notify Tenant in writing and offer to sell the same to Tenant at a purchase price to be specified by Landlord in such notice. Tenant shall have thirty (30) days from and after the receipt of such offer to accept the same by written instrument delivered to Landlord within such period, time being of the essence. If Tenant accepts such offer, the sale and purchase shall be closed and consummated on the terms and conditions set forth in Landlord's offer within sixty (60) days after Landlord's receipt of Tenant's acceptance and this Lease shall terminate as of the date of closing. If Tenant fails to accept Landlord's offer within the time period set forth above, Landlord shall have the right to sell the same to any third party, provided (i) such sale shall be closed and consummated no later than eighteen (18) months after date of submission of Landlord's offer to Tenant and (ii) the purchase price shall be no more than 10% less than the purchase price contained in the offer submitted to Tenant. Any such sale to a third party shall not affect Tenant's rights to use and occupy the Parcel pursuant to the terms and conditions of the Lease except that upon the closing of such sale, the right of Tenant set forth in this Section shall be extinguished and of no further force or effect. If Tenant fails to accept Landlord's offer with respect to the sale and the sale to a third party is not closed within the time period set forth above, Tenant's right of first offer shall survive and affect any sale during the term of this Lease. However, the right granted to Tenant by this Section shall not bind Landlord or encumber Landlord's Parcel after the expiration or termination of this Lease.

Something to note about this Example: The option is granted in a stand-alone addendum and is not imbedded in an obscure section or area of the Lease but, note that the title of the Addendum would not provide the reader with any clue that this is a Purchase Option. In fact, the title would immediately make the reader think it is a Right of Offer to lease additional space which is the traditional definition of "Right of Offer". So, again, it is important to read all sections of the Lease thoroughly to know what is actually being covered within the section.

ITEMS TO LOOK FOR (Using the Example above):

Notification requirements

Landlord to notify Tenant and provide purchase price within the offer. Tenant to exercise within 30 days from and after receipt of Landlord's offer.

Effective Date

Sale must be closed and consummated within 60 days after Landlord's receipt of Tenant's acceptance.

Who has the option

The Tenant

Identify the space that the option is for

All or any part of Landlord's Parcel

Time constraints, if any

Tenant to exercise within 30 days from receipt of notice; Sale between Landlord and Tenant shall occur within 60 days of Tenant's acceptance; if Tenant does not accept, Landlord may sell to a 3rd party with that sale closing within 18 months from submission of Landlord's offer to Tenant. If sale to 3rd party is not closed with these requirements, Tenant's Purchase Option rights shall survive.

Purchase price and timing of installments, if applicable

Price is to be stated in Landlord's offer to Tenant.

Other

If Tenant fails to exercise, Landlord has the right to sell the same to any third party provided (i) sale shall close no later than 18 months after submission of Landlord's offer to Tenant and (ii) the purchase price shall be no more than 10% less than the purchase price contained in the offer submitted to Tenant.



RELOCATION OPTION

A Relocation Option is an option granted to a landlord (usually, but occasionally granted to a tenant) to change the location of a tenant's premises upon notification to tenant within a certain time period prior to the relocation date.

In most cases, the landlord is responsible for all costs associated with relocating the tenant and improving the new premises. In addition, some leases provide restrictions as to the location in the building to which the tenant may be located, the layout of the relocation premises or the number of times during the lease term during which the landlord may exercise its option to relocate.

EXAMPLE:

24. Landlord's Right to Relocate Tenant. Landlord shall have the right, at its option, upon at least thirty (30) days' prior written notice to Tenant, to relocate Tenant and to substitute for the Premises described herein other space in the Building, at least one floor above the Premises, containing at least as much rentable area as the Premises and having a comparable view and elevator access. Such substituted space shall be improved by Landlord, at its expense, with improvements at least equal in quantity and quality to those in the Premises. Landlord shall pay all reasonable expenses incurred by Tenant in connection with such relocation, including but not limited to costs of moving, door re-lettering, telephone relocation and reasonable quantities of new stationery. Upon completion of the relocation, Landlord and Tenant shall amend this Lease to change the description of the Premises and any other matters pertinent thereto, except Base Rent shall not be amended. Landlord shall use reasonable efforts to minimize the disruption to Tenant's business during the relocation.

ITEMS TO LOOK FOR (Using the Example above):

Notification period 30 days prior	Does Tenant have the right to relocate, or is it solely Landlord's option? Landlord option
The time frame in which the option is effective In this case, this is silent.	Where will the relocation space be located? Any other space in the Building, at least one floor above the Premises.
Who pays the relocation costs? Landlord	Can either party terminate if the relocation space is not acceptable? Silent, so assume no.
Any restrictions to the relocation Substitute Premises to be at least one floor above the Premises	Can rent be increased if relocation premises are larger than the original premises? No, Base Rent shall not be amended.
Is it a one time right? Silent	

RIGHT OF FIRST OFFER / RIGHT OF FIRST REFUSAL

Right of First Refusal (often abbreviated as ROFR): A Right of First Refusal is the right of tenant to match the terms of a proposed contract before the contract is executed. The key feature of a ROFR is the existence of a Third-Party Offer.

Right of First Offer (often abbreviated as ROFO): The right providing tenant the first option of leasing a particular available space before landlord offers it to 3rd parties.

EXAMPLE:

Example One (ROFR):

XXXIV. Right of First Refusal to Lease.

Landlord agrees, subject to existing tenants' prior rights, which rights are identified on Schedule II attached hereto, that if, at anytime during the Term of this Lease and any extension thereof, pursuant to the terms of Article XXXV hereof, Landlord receives a written offer to lease any space on the eighth (8th) floor of the Building which is contiguous to the Premises ("Refusal Space"), Tenant shall have the first right and option to lease the Refusal Space on the following terms and conditions:

If Landlord at any time during the Term obtains a bona fide offer in the form of a letter of intent ("Offer") to lease the Refusal Space from any third party, Landlord shall submit such offer to Tenant and Tenant shall have the right, within ten (10) Business Days after receipt of the offer, to lease the Refusal Space on the same terms and conditions as set forth in the Offer. If Tenant does not give Landlord notice in writing within said ten (10) Business Day period that Tenant intends to exercise its rights hereunder, then Landlord shall be free to lease the Refusal Space on the terms and conditions set forth in the Offer submitted to Tenant and in such event Tenant's rights hereunder with respect to such Offer (but not with respect to any other Refusal Space or other Offer) shall terminate; provided, however, that in the event such lease shall not be consummated, then Tenant's rights hereunder, which shall be continuous and ongoing, shall be reinstated as to subsequent bona fide Offers. Tenant's Right of First Refusal must be exercised as to one hundred percent (100%) of the Refusal Space that is the subject of the Offer upon the terms set forth in Landlord's notice. If Tenant does not notify Landlord of its election to exercise its Right of First Refusal with respect to the Refusal Space that is the subject of the Offer within said ten (10) Business Day period, then, in such case, Tenant shall be deemed to have elected not to exercise its Right of First Refusal with respect to the Refusal Space in question and shall be deemed to have waived its Right of First Refusal with respect to such Refusal Space for the term of any lease entered into by Landlord pursuant to the Offer. If Tenant elects to exercise its Right of First Refusal and so notifies Landlord of same within the aforesaid time periods, then, in such case, Tenant shall lease the Refusal Space as of the availability date set forth in Landlord's notice on the same terms and conditions contained in the Offer, (i) the term "Premises" for all purposes of the Lease shall include the Refusal Space, and (ii) the numerator of Tenant's Pro Rata Share shall increase by the amount of the rentable area contained within the Refusal Space.

Example Two (ROFO):

2. **Right of First Offer**

A. Grant of Option; Conditions. Tenant shall have the one time right of first offer (the "Right of First Offer") with respect to the 1,082 rentable square feet known as Suite No. 287 on the 2nd floor of the Building shown on the demising plan attached hereto as Exhibit F-1 (the "Offering Space"). Tenant's Right of First Offer shall be exercised as follows: at any time after Landlord has determined that the existing tenant in the Offering Space will not extend or renew the term of its lease for the Offering Space (but prior to leasing such Offering Space to a party other than the existing tenant), Landlord shall advise Tenant (the "Advice") of the terms under which Landlord is prepared to lease the Offering Space to Tenant for the remainder of the Term, which terms shall reflect the Prevailing Market (hereinafter defined) rate for such Offering Space as reasonably determined by Landlord. Tenant may lease such Offering Space in its entirety only, under such terms, by delivering such written notice of exercise to Landlord (the "Notice of Exercise") within 5 days after the date of the Advice, except that Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with an Advice, if: (1) Tenant is in default under the Lease beyond any applicable cure periods; (2) the Premises, or any portion thereof, is sublet; (3) the Lease has been assigned; (4) Tenant is not occupying the Premises; (5) the Offering Space is not intended for the exclusive use of Tenant during the Term; or (6) the existing tenant in the Offering Space is interested in extending or renewing its lease for the Offering Space or entering into a new lease for such Offering Space.

ITEMS TO LOOK FOR (Using the Example above):

- Notification Requirements
 - Example One: Landlord to notify Tenant if it receives a bona fide offer; Tenant to exercise within 10 Business Days after receipt of Landlord's offer.
 - Example Two: Landlord to notify Tenant if existing tenant is not extending or leasing Offering Space and shall offer such space to Tenant; Tenant to exercise within 5 days after the date of the Advice.
- Effective Date
 - Example One: As of the availability date set forth in Landlord's notice
 - Example Two: Silent
- Is it a one-time right, or does it continue?
 - Example One: If Tenant does not exercise within the required timeframe, Landlord may lease space under the terms set forth in the offer and Tenant's rights shall terminate. If the lease does not consummate, Tenant's right shall be restated as to subsequent bona fide offers.
 - Example Two: While the lease says "one-time" in the first sentence, there is no clarification of this, so, it is safer to assume it is a continuing right.
- What is the rent for the option space?
 - Example One: Same rate as the bona fide offer received by Landlord.
 - Example Two: Prevailing Market

- What / where is the encumbered option space?
 - Example One: Any space on the 8th floor contiguous to the Premises.
 - Example Two: 1,082 rentable sq. ft., Suite No. 287 of the Building.
- Is the option and encumbered space subject to other rights to other tenants?
 - Example One: Subject to existing tenants' prior rights.
 - Example Two: Subject to rights of existing tenant.
- Does exercising the option impact tenant's other option rights?
 - Example One: Cannot tell.
 - Example Two: Cannot tell.
- If tenant exercises its ROFO/ROFR and the space becomes part of tenants, premises at a certain date, is tenant required to exercise a renewal option?
 - Example One: No.
 - Example Two: No.
- Other
 - Example One: Right must be exercised as to all 100% of the Refusal Space that is the subject of the offer.
 - Example Two: Landlord not required to provide Advice if Tenant is: in default, has sublet or assigned, is not occupying Premises or if Offering Space will not be used for exclusive use of Tenant.

TERMINATION OPTION

A Termination Option is an option granted to either the landlord or tenant to end the term of a lease prior to the scheduled Expiration Date. In some terminations, the lease requires the terminating party to pay a fee for the right to cancel.

A rolling termination refers to an option to end the lease that has no fixed effective date. In such a case, the date that the terminating party gives notice determines the effective date (usually a specified number of days/months after notice).

EXAMPLE:

7. Termination Option.

7.1 Tenant shall have and is hereby granted the continuing option to terminate the Lease effective on or after October 1, 2025 as though the date of such termination were the Termination Date set forth in the Lease, but only by complying strictly with the following conditions: (a) Tenant shall deliver written notice ("Tenant's Exercise Notice") (which notice must specify the termination date [such date, the "Early Termination Date"]) exercising such option no later than six (6) full calendar months prior to the Early Termination Date; (b) such notice shall include a certified or cashier's check payable to Landlord in the amount of one-half (1/2) (the "First Cancellation Payment") of the sum of (i) one (1) month of current gross rent for the Premises, plus (ii) the unamortized Landlord Premises

Contribution (defined in Section 9.5 below) actually utilized by Tenant at 10% interest spread over a 36 month term, as a cancellation fee and not as liquidated damages or a penalty, (c) on or before the Early Termination Date Tenant shall deliver to Landlord a certified or cashier's check payable to Landlord in the same amount as the First Cancellation Payment, and (d) Tenant shall continue to pay all rentals and other charges under the Lease and comply with each and every term and provision accruing under the Lease through the Early Termination Date (and all such obligations accruing through the Early Termination Date shall survive such termination, including but not limited to, any rentals or other charges not yet determined or billed prior to the Early Termination Date).

7.2 It shall be a condition to Tenant's right to exercise the option set forth in the Section 7 that, as of the date of Tenant's Exercise Notice and at any time thereafter up to the Early Termination Date, (i) Tenant is not in default under the Lease beyond any applicable notice and cure period, (ii) neither the Lease nor Tenant's right of possession shall have been terminated and the Lease shall then be in full force and effect, and (iii) Tenant has not assigned the Lease or sublet all or any portion of the Premises.

ITEMS TO LOOK OUT FOR (Using the Example above):

- The Effective Date
 - On or after 10/1/25
- The Notice Date
 - No later than 6 full calendar months prior to the Effective Date
- The Termination Payment (if applicable)
 - Sum of (i) one month of current gross rent and (ii) unamortized Landlord Premises Contribution amortized at 10% over a 36-month term. First half paid with Tenant's notice and second half paid prior to the Early Termination Date.
- Actions or conditions that nullify the right
 - Tenant shall not be in default, must be in possession and shall not have assigned or sublet the Lease.

Lease Clauses

ALTERATION / REPAIR OBLIGATIONS OF LANDLORD & TENANT

Defines which party must physically perform corrections / repairs to the Building and all associated systems. Provides any limitations upon the parties as to how any alterations to the Building and all associated systems may be performed, and provides the associated financial responsibilities of the parties for any repairs / alterations.

ITEMS TO LOOK FOR:

- Supervision fee (usually based on a % of the cost of the work), if any, paid by Tenant to Landlord if Landlord performs repairs / alterations
- Briefly capture what comprises the building “systems” and how responsibility is allocated between Tenant and Landlord
- Whether either party is obligated to materially alter the Building

SAMPLE LEASE: Repair Obligations

Tenant shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease, and shall keep the Premises in good condition and repair, reasonable wear and tear and damage by casualty (subject to the terms of Article XVII) excepted. Tenant's repair obligations include, without limitation, repairs to: (1) floor covering; (2) interior partitions; (3) doors; (4) the interior side of demising walls; (5) electronic, phone and data cabling and related equipment (collectively, “Cable”) that is installed by or for the exclusive benefit of Tenant and located in the Premises or other portions of the Building; (6) supplemental air conditioning units, private showers and kitchens, including hot water heaters, plumbing, and similar facilities serving Tenant exclusively; and (7) Alterations performed by contractors retained by Tenant, including related HVAC balancing. All work shall be performed in accordance with the rules and procedures described in Section IX.C. If Tenant fails to make any repairs to the Premises for more than 15 days after notice from Landlord (although notice shall not be required if there is an emergency), Landlord may make the repairs, and Tenant shall pay the reasonable cost of the repairs to Landlord within 30 days after receipt of an invoice, together with an administrative charge in an amount equal to 10% of the cost of the repairs.

Landlord shall keep and maintain in good repair and working order and make repairs to and perform maintenance upon: (1) structural elements of the Building; (2) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building in general; (3) Common Areas; (4) the roof of the Building; (5) exterior windows of the Building; and (6) elevators serving the Building. Landlord shall promptly make repairs (considering the nature and urgency of the repair) for which Landlord is responsible. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932, and Sections 1941 and 1942 of the California Civil Code, or any similar or successor Laws now or hereinafter in effect.

ANTENNA / ROOF RIGHTS

A tenant may negotiate for the right to install an antenna or other communication equipment on the rooftop of the premises or building in which the premises are located. In this situation, a landlord will typically charge an additional fee or rent for use of the rooftop space. Because the tenant typically is required to pay for use of rooftop space, it is important to carefully review any such provision.

ITEMS TO LOOK FOR:

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

EXAMPLE: [Sample Lease Provision]

Section 54. Satellite Dish

Notwithstanding anything to the contrary contained herein, Tenant shall, subject to the following terms and conditions, be permitted to install for its sole use up to two (2) satellite antenna dishes (each a "Dish") not to exceed one and one-half meters each in diameter and cables in connection with the use of the Dishes (collectively, the "Equipment") on the roof of the Building at a charge to Tenant of \$150.00 plus applicable sales tax per month, per Dish, which shall be deemed as additional Rent under this Lease. The right to install the Equipment is subject to any and all governmental approvals and the sole and absolute approval of Landlord of the Plans and Specifications, design, and location of the Equipment and proper indemnification from Tenant satisfactory to Landlord in all respects. Tenant shall be required to remove the Equipment upon expiration or termination of the Lease Term, at its sole cost and expense, and restore the area of the Building where the Equipment was located to its condition immediately prior to installation. The Equipment shall be installed at Tenant's sole cost and expense.



AUDIT RIGHTS

A right granted to either Landlord or Tenant to inspect the respective party's accounting records and books typically related to the calculation of Operating Expenses or Gross Sales. This is done to ensure proper and accurate accounting methods.

EXAMPLE: [Sample Lease Provision]

If Tenant disputes the amount of Operating Expenses due, Tenant shall have the right to inspect Landlord's accounting records relating to Operating Expenses during normal business hours at any time within 90 days following the furnishing by Landlord of Landlord's Reconciliation, provided Tenant gives Landlord notice no later than 60 days after Tenant's receipt of Landlord's Reconciliation.

ITEMS TO LOOK FOR:

- Does Tenant have the right to audit Landlord's annual statement of recoverable expenses (both tax and operating expenses)?
- Timeframe in which the party with the right must give notice
- Timeframe in which audit must be commenced / completed
- Who covers the cost of the audit?

CASUALTY (DAMAGE & DESTRUCTION)

The Casualty (or Damage & Destruction) clause of a lease dictates what is to occur between the parties in the event the Building, Project or Premises is damaged due to a fire or other casualty (i.e., a natural disaster). It will specify whether or not one or both parties may terminate the lease, if there is a requirement on the part of the owner/landlord to rebuild and within what timeframe the rebuild is to occur.

It is important to note that remedies in the event of damage or destruction of property are usually based on the percentage of the property damaged and the ability of the tenant to continue (or not continue) operating in light of such event.

ITEMS TO LOOK FOR:

- Does either party have the right to terminate the lease in the event of Damage or Destruction?
 - If so, whom?
 - Under what circumstances?
- Is an abatement of Rent applicable in any event related to Damage or Destruction?
- Is the Landlord required to rebuild? Under what circumstances and within what timeframe?

EXAMPLE: [Sample Lease Provision]

Section 6. Damage to Premises.

6.1 Destruction of Premises. Subject to Section 6.2, if the Project is damaged by fire or other casualty, Landlord shall restore the damage to the Premises to the same condition as existed on the Commencement Date exclusive of any Alterations. Landlord shall commence the repair, restoration or rebuilding thereof within ninety (90) days after such damage (subject to delays in the adjustment of insurance) and shall substantially complete such restoration, repair or rebuilding of the Premises to the same condition as existed on the Commencement Date (but excluding any Alterations) as promptly as practicable after the commencement thereof, subject to delays caused by events of Force Majeure or Tenant Delays. Landlord shall promptly and diligently seek adjustment of insurance proceeds after any casualty.

If the fire or other casualty or the repair, restoration or rebuilding required by Landlord shall render the Premises untenantable in whole or in part, the Rent shall proportionately abate from the date when the damage occurred until the date on which the Premises are in the condition required by this Section 6.1, such proportion to be computed on the basis that the Useable Square Feet of the portion of the Premises rendered untenantable and not occupied by Tenant bears to the aggregate Useable Square Feet of the Premises.

6.2 Right to Terminate. If the casualty results in damage to the Premises which Landlord reasonably estimates will take in excess of (i) twelve (12) months from the beginning of restoration to restore the Premises to the same condition as existed on the Commencement Date (but excluding Alterations) and occurs at any time during the Lease Term or (ii) three (3) months from the beginning of restoration to restore the Premises to the same condition as existed on the Commencement Date (but excluding Alterations) and occurs during the last two (2) years of the Lease Term as extended, then in either case either Landlord or Tenant may elect to terminate this Lease upon giving written notice of such election to the other within sixty (60) days after such casualty. If the casualty results in damage to the Project that results in the same restoration periods as set forth above with respect to the Premises, or such restoration is prohibited by any Governmental Regulation or the insurance proceeds are insufficient or otherwise not available, then Landlord may elect to terminate this Lease upon giving written notice of such election to Tenant within sixty-five (65) days after such casualty.

If this Lease is terminated as provided above, such termination shall be effective on the date specified in the first notice received by the other party, but no earlier than thirty (30) days after the occurrence of the event causing such damage. In such event, Tenant shall be obligated to pay the Rent accrued to the effective date of such termination, less any Rent abated pursuant to Section 6.1 which obligation shall survive such termination. Unless this Lease is terminated by either party as provided in this Section 6, this Lease shall remain in full force and effect, notwithstanding such damage or casualty.

CONDEMNATION

Condemnation (or Eminent Domain) is the right of a governmental entity to “take” a property for public use. An example of this would be the razing of a group of homes to make way for a new highway.

A lease will provide instruction to both landlord and tenant as to their rights and obligations in the event of a taking of the property or premises. In virtually every case of condemnation, the owner of the property is compensated by the condemning agency (usually based upon the value of the property being taken. This compensation is often referred to in the lease as an Award and the lease will guide the parties as to the application of the Award.

ITEMS TO LOOK FOR:

- Does either party have the right to terminate the lease in the event of Condemnation? If so, whom and under what circumstances?
- Which party is entitled to the Award? In full or in some other proportion?
- If a specific event is mentioned (i.e., “parties acknowledge that this Project may be taken in order to complete the expansion of City Airport”) it is very important to note this.

EXAMPLE: [Sample Lease Provision]

Section 7. Eminent Domain

7.1 Total Condemnation. In the event of a Substantial Taking of the Project (defined below), both Landlord and Tenant shall have the right to terminate this Lease by written notice to the other within thirty (30) days of the date of the effectiveness of such taking. “Substantial Taking of the Project” means a Taking (defined below) of either of (i) the entire Project; or (ii) a portion thereof, and in Landlord’s commercially reasonable opinion, the remainder of the Project cannot be restored to an economically viable first-class office building without either substantial alteration of the Project or relief from Governmental Regulation. “Taking” means a taking or condemnation for a public or quasi-public use by a competent governmental authority.

In the event this Lease is terminated pursuant to this Section 7.1, the Lease Term shall terminate upon the delivery of possession to the condemning authority and Tenant shall pay the Rent accruing to the date of termination. If neither Landlord nor Tenant terminates this Lease within the applicable time period, this Lease shall continue in full force and effect, as modified pursuant to Section 7.2.

7.2 Partial Condemnation. If a Taking occurs that does not entitle Landlord or Tenant to terminate this Lease pursuant to Section 7.1 or if neither Landlord nor Tenant exercises a right to terminate this Lease granted pursuant to Section 7.1, then Landlord shall repair and restore the Project to the extent practicable, to the condition as existed on the Commencement Date, excluding any Alterations, except that Landlord shall not hereby be required to expend for repair and restoration any sum in excess of an amount equal to the Award (defined below).

If as a result of the Taking, the Useable Square Feet of the Premises is permanently reduced, Base Rent and Additional Rent shall proportionately abate from the date when possession of such portion of the Premises is given to the condemning authority. In addition, if the repair, restoration or rebuilding required by Landlord as a result of such Taking shall render the Premises untenantable in whole or in part, Base Rent and Additional Rent shall proportionately abate from the date when possession of the Premises is given to the condemning authority until the date on which the Premises are, as nearly as practicable, in the condition as existed on the Commencement Date, excluding any Alterations. The proportionate abatement shall be computed on the basis that the Useable Square Feet of the Premises either reduced or rendered untenantable and not occupied by Tenant bears to the aggregate Useable Square Feet area of the Premises.

7.2 Award. Any award, compensation or damages (the "Award") for partial or total taking shall be paid to and be the sole property of Landlord; provided that, Tenant shall have the right, to the extent the Award is not diminished, to make a separate claim against the condemning authority for such compensation as may be separately awarded to the tenant.

DEFAULT

The non-performance of a lease obligation by the landlord or tenant. An act of default may be either monetary (i.e., failure to pay rent when due) or non-monetary (i.e., failure to provide a certificate of insurance). In certain instances, the lease may allow the non-defaulting party to cure the default of the defaulting party, and either bill the defaulting party for costs incurred therein or allow the non-defaulting party to offset costs incurred to cure against other amounts due pursuant to the lease.

EXAMPLE: ABC Tenant is late paying their Base Rent at Realogic Tower. The Landlord sends ABC written notice that they must pay their rent on a timely basis. If ABC fails to pay the Base Rent within 5 days after receipt of the notice, they are in Default under the lease because the lease contains a clause that the tenant has 5 calendar days after receipt of notice from Landlord to cure monetary defaults.

ITEMS TO LOOK FOR:

- Number of days to cure monetary default (Note 'business' or 'calendar' days)
- Number of days to cure non-monetary default
- Indicate if cure periods are after LL notice
- Note if Tenant's failure to comply with the same lease term for a specified number of times automatically constitutes a default

SAMPLE LEASE: Default

If default shall at any time be made by Tenant in:

- (a) the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) business days after written notice thereof shall have been given to Tenant by Landlord; or
- (b) any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, then,

Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

ESTOPPEL

Legally, the act of preventing (estopping) a party from claiming a different state of facts at a later date. When associated with leases, the statement of facts includes that the lease is in existence, that there are no defaults and that rent has been paid and is current as of a specified date. Estoppels are memorialized via an estoppel certificate, which is an agreement that may be relied upon by a third party such as a potential lender or purchaser. Leases often grant the landlord the right to obtain an estoppel certificate from a tenant. However, certain leases (often for larger tenants) also provide the tenant with the right to obtain an estoppel certificate from the landlord. If you cannot locate an estoppel provision in a lease, check the Subordination provision. In some leases, the estoppel provision is contained within the subordination provision.

EXAMPLE: The Landlord of Realogic Tower is in the process of selling the building. As part of their due diligence, the prospective buyer requires the Landlord to obtain Estoppel Certificates from all tenants currently occupying space within the building. ABC Tenant executes the Estoppel Certificate as drafted by the Landlord. After the sale closes, ABC makes a claim to the new Landlord that is in conflict with information contained on the Estoppel Certificate. ABC would be legally 'estopped' from making such claim because they executed the Estoppel Certificate.

ITEMS TO LOOK FOR:

- Number of days (calendar or business) to respond to request
- Whether requirement is mutual upon Tenant and Landlord
- Whether a party other than Landlord may require Tenant to provide an estoppel
- Whether a specified form is to be used

SAMPLE LEASE: Estoppel Certificate:

19. **Estoppel Certificate.** Each party shall, within ten (10) Business Days of receiving a request from the other party, execute and deliver to the other party or its designee a certificate stating, subject to a specific statement of any applicable exceptions, that the Lease as amended to date is in full force and effect, that Tenant is paying Rent and other charges on a current basis, and that to the best knowledge of the certifying party, the other party has committed no uncured defaults and has no offsets or claims. The certifying party may also be required to state the date of commencement of payment of Rent, the Commencement Date, the Termination Date, the Base Rent, the current Operating Cost Share Rent and Tax Share Rent estimates, the status of any improvements required to be completed by Landlord, the amount of any security deposit, and such other matters as may be reasonably requested. If the requested certificate is not delivered to the requesting party within ten (10) Business Days as provided above, the requesting party may then deliver a second written notice requesting delivery of the required certificate, which notice shall state in **BOLD PRINT** that **“FAILURE TO DELIVER THE REQUESTED CERTIFICATE WITHIN FIVE (5) BUSINESS DAYS AFTER YOUR RECEIPT HEREOF SHALL BE DEEMED CONCLUSIVE EVIDENCE OF CERTAIN MATTERS MORE FULLY DESCRIBED IN SECTION 19 OF THE LEASE.”** Failure to deliver such statement within such additional five (5) Business Day period shall then be conclusive evidence against the non-certifying party that this Lease, with any amendments identified by the requesting party, is in full force and effect, that there are no uncured defaults by the requesting party, that not more than one month's Rent has been paid in advance, that the non-certifying party has not paid any security deposit, and that the non-certifying party has no claims or offsets against the requesting party.

EXCULPATION

The sheltering of a party from liability arising out of negligence. In leases, an exculpation clause operates to limit the liability of an owner or landlord from lawsuits by a tenant for breach of contract or non-performance of the assets of a particular property in which the tenant is in occupancy. Exculpation clauses often limit the tenant from claiming rights to other properties owned by landlord or personal liability of the landlord or any of its employees.

SAMPLE LEASE:

LIMITATION OF LANDLORD'S LIABILITY. Landlord's obligations and liability with respect to the Lease shall be limited solely to Landlord's interest in the Building, as such interest is constituted from time to time, and neither Landlord nor any partner or member of Landlord, or any officer, director, shareholder, or partner or member of any partner or member of Landlord, shall have any individual or personal liability whatsoever with respect to this Lease.

GUARANTORS

A Guarantor is a person or entity that agrees to perform the contractual obligations of another if the other party shall fail to so perform. Guarantors for lease obligations may either be personal or corporate.

EXAMPLE: ABC Tenant wishes to sign a lease at Realogic Tower. ABC is a new company with very little net worth. However, the owner of ABC, Rich Mann, is a wealthy individual. As security for entering into the lease, the Landlord requires that the owner execute a personal guaranty whereby Rich Mann agrees to personally pay any lease obligations of ABC in the event that ABC defaults on any of its monetary lease obligations. Rich Mann would be the Guarantor under the lease.

ITEMS TO LOOK FOR:

- Type of Guaranty: Corporate or Personal
- Guarantor name
- Amount (May be “full payment and performance of lease obligations,” etc., or a specified amount)
- Expiration Date of Guaranty, if applicable
- Any scheduled reductions

SAMPLE LEASE: GUARANTY

FOR VALUE RECEIVED, and in consideration for and as an inducement to ABC Management Corporation (Landlord) to enter into the foregoing Lease dated January 1, 2022 (the "Lease"), with ANALYTICS, INC. ("Tenant), the undersigned, John Smith ("Guarantor") hereby absolutely and unconditionally guarantees to Landlord, its successors and assigns, the prompt and full payment of all rent and other payments to be made by Tenant under the Lease, and the full performance and observance by Tenant of all the other terms, covenants, conditions and agreements therein provided to be performed and observed by Tenant, for which the undersigned shall be jointly and severally liable with Tenant. The undersigned hereby waives any notice of nonpayment, nonperformance or nonobservance, or proof of notice or demand. The undersigned agrees that, in the event of a default by Tenant under the Lease, Landlord may proceed against the undersigned before, after or simultaneously with proceedings against Tenant. This Guaranty shall not be terminated, affected or impaired in any manner by reason of: (1) the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; (2) the commencement of summary or other proceedings against Tenant; (3) the failure of Landlord to enforce any of its rights against Tenant; or (4) the granting by Landlord of any extensions of time to Tenant. The undersigned further covenants and agrees that: (1) the undersigned shall be bound by all the provisions, terms, conditions, restrictions and limitations contained in the Lease which are to be observed or performed by Tenant hereunder, the same as if the undersigned were named therein as Tenant; and (2) this Guaranty shall be absolute and unconditional and shall be in full force and effect with respect to any amendment, addition, assignment, sublease, transfer or other modification of the Lease, whether or not the undersigned shall have knowledge or have been notified of or agreed or consented thereto. If Landlord at any time is compelled to take action, by legal proceedings or otherwise, to enforce or compel compliance with the terms of this Guaranty, the undersigned shall, in addition to any other rights or remedies to which Landlord may be entitled hereunder or as a matter of law or in equity, pay to Landlord all costs, including reasonable attorneys' fees, incurred or expanded by Landlord in connection therewith. In the event the Lease is disaffirmed by a Trustee in bankruptcy for Tenant, the undersigned agrees that it shall, at the election of Landlord, either assume the Lease and perform all of the covenants, terms and conditions of Tenant hereunder or enter into a new lease, which new lease shall be in form and substance identical to the Lease. All duties and obligations of the undersigned pursuant to this Guaranty shall be binding upon the successors and assigns of the undersigned. For purposes of this Guaranty, the word "Tenant" shall include the successors and permitted assigns of Tenant. This Guaranty shall be governed by and construed in accordance with the laws of the State of Illinois.

DATED this _____ day of _____, 2021.

NAME: JOHN SMITH

HAZARDOUS MATERIALS

Materials, often defined by governmental law or statute, which, if introduced onto a property by either a landlord or a tenant could result in a reduction of the value of the property or the ability of a tenant to use their leased premises for the purposes outlined in the lease. Hazardous Materials clauses within a lease specify the materials which are considered to be hazardous, provide for remedies if such materials are introduced on the property or in the leased premises and provide indemnities for the non-introducing party should litigation occur.

EXAMPLE: ABC Tenant performs the business of photographic development from its premises at Realogic Tower. Many of the chemicals used in the development process have been identified as hazardous by federal and state laws. The Landlord, to protect itself, includes a Hazardous Materials clause in the lease with ABC, whereby if any of the chemicals used by ABC are stored, handled or disposed of in violation of federal and state laws, ABC shall be responsible for all required clean-up and shall indemnify the Landlord in the event of any litigation.

ITEMS TO LOOK FOR:

- Definition of Hazardous Materials via reference to the Lease Article.
- Responsibility of Landlord for Hazardous Materials.
- Responsibility of Tenant for Hazardous Materials.
- Representations and warranties regarding Hazardous Materials.
- Are any parties to the lease indemnified?

SAMPLE LEASE: Hazardous Materials

Section 15. Hazardous Materials and Infectious Wastes.

15.1 Tenant Covenants. Tenant covenants that it will, and will cause the Tenant Parties to (i) not use, maintain, generate, store, treat or dispose of any Hazardous Materials or Infectious Wastes in or on the Premises or the Project other than de minimus amounts of materials that are required for the normal maintenance and operation of the Premises for normal medical office use and that are used, stored and disposed of in accordance with all Environmental Requirements, (ii) clean or remediate in accordance with all Environmental Requirements any Hazardous Materials or Infectious Wastes which may contaminate, or emanate from, any part of the Project, the Premises or the soils, ground water or aquifer under the Project as a result of Tenant's or the Tenant Parties' use or occupancy of the Premises, (iii) not place or permit to be placed any Hazardous Materials or Infectious Wastes in any receptacle not specifically designated for such materials, (iv) cause all Hazardous Materials and Infectious Wastes to be disposed of by licensed, reputable contractors approved by Landlord and (v) to promptly provide Landlord with any notice received by Tenant or the Tenant Parties concerning Hazardous Materials or Infectious Wastes.

15.2 Indemnity. Without limiting the indemnification contained in Section 13 above, Tenant shall indemnify, defend (with counsel reasonably approved by Landlord) and hold Landlord and the Landlord Parties harmless from and against any Claims, including, without limitation, cleanup, engineering and attorneys' fees and expenses that Landlord or such indemnified parties may incur by reason of (1) a violation of the covenants set forth in Section 15.1 above, (2) Tenant's or the Tenant Parties' use, maintenance, generation, storage, treatment or disposal of any Hazardous Materials or Infectious Wastes in, on or under the Project or the Premises, (3) the violation of any applicable Environmental Requirement by Tenant or the Tenant Parties and relating to the Premises or Tenant's or the Tenant Parties' use, occupancy or operation thereof, (4) any Claim brought or asserted against Landlord or such indemnified parties, regardless of when brought, which directly or indirectly relates to or arises out of any of the matters indemnified in this Section 15.2 or (5) any investigation or claim of any governmental agency or third party for any actions taken by Tenant or the Tenant Parties on or about the Premises. Tenant's indemnity obligations under this Section 15.2 shall survive the cancellation or termination of the Lease.

HOLDOVER

A tenant who remains in possession of leased premises after the expiration date of the lease is in holdover. Leases often provide the landlord to charge holdover rent to a tenant during the holdover period, typically quoted as a percentage (greater than 100%) of Rent, either Base Rent only or Base Rent and Expense Recoveries.

EXAMPLE: Upon the expiration of their lease at Realogic Tower, ABC Tenant does not vacate the premises because the space that they are moving into in another building will not be ready for occupancy for an additional two months. As of the expiration date, ABC is paying the Landlord \$10,000/month for Base Rent and \$4,000/month for expense recoveries. Because of a Holdover clause in ABC's lease which allows the Landlord to charge holdover rent equal to 150% of Base Rent and Additional Rent during the holdover period, ABC must pay the Landlord \$21,000/month (\$14,000 multiplied by 150%) until they vacate Realogic Tower.

ITEMS TO LOOK FOR:

- Rate
 - i.e., 150% of Base Rent, or 125% of Base Rent plus Additional Rent
- If Tenant holds over, can Landlord elect to extend the Lease?
- Whether the holdover provision is different for a holdover with Landlord's consent as opposed to without Landlord's consent

SAMPLE LEASE: Holdover

In the event of holding over by Tenant after expiration or other termination of this Lease, or in the event Tenant continues to occupy the Premises after the termination of Tenant's right of possession pursuant to Paragraph 15 hereof, Tenant shall, throughout the entire holdover period, pay rent equal to two times the Base Rental and any additional Rental which would have been applicable had the term of this Lease continued through the period of such holding over by Tenant. No holding over by Tenant after the expiration of the term of this Lease shall be construed to extend the term of this Lease, and Tenant shall be deemed to be a tenant-at-sufferance during such holdover period. If as a direct result of Tenant's holding over in the Premises after expiration or other termination of this Lease, Landlord suffers damages or incurs additional obligations to any third party who has leased part or all of the Premises, Tenant shall indemnify Landlord to the extent of such damages or additional obligations, including, without limitation, Landlord's attorneys' fees.

INSURANCE

Landlord typically requires Tenant to carry various forms of insurance, often in specific amounts or limits. Types of Insurance that may be required include, but are not limited to:

- **Liability**
- **Workers' Compensation**
- **Employers' Liability**
- **All Risk / Casualty Insurance**
- **Business Interruption Insurance**
- **Automobile Insurance**

Some tenants, most often restaurants, will be required to maintain Liquor Liability Insurance, often called "Dram Shop". This provides coverage for dispensers of alcoholic beverages against lawsuits arising out of bodily injury and/or property damage caused by its customers to a third party.

A lease may also provide Landlord's insurance requirements.

Typical Coverage Amounts / Sample Provisions

Liability: Comprehensive general liability insurance on an occurrence basis in the amount of \$3,000,000 combined single limit, or such higher amount as Landlord may require

Workers' Compensation: In accordance with statutory law

Employers' Liability: No less than \$100,000 per employee and \$500,000 per occurrence

All Risk / Casualty: Full replacement value on all additions, improvements and alterations to the Premises

Business Interruption: Loss of Rent coverage equal to 12 months

Automobile Insurance: comprehensive Automobile Liability insuring bodily injury and property damage, with minimum limits of \$1,000,000 per accident

ITEMS TO LOOK FOR:

- Type of Insurance
- Amount of Insurance
- Is Tenant required to self-insure?
- Can insurance amounts be increased by Landlord?

SAMPLE LEASE: Insurance

Tenant hereby agrees to maintain in full force and effect at all times during the term of the Lease, at its own expense, for the protection of Tenant and Landlord, policies of insurance issued by a responsible carrier acceptable to Landlord in the following coverages:

- a. Comprehensive General Liability Insurance not less than \$5,000,000.00, Combined Single Limit for both bodily injury and property damage.
- b. Fire and Extended Coverage, Vandalism and Malicious Mischief, Sprinkler Leakage (where applicable) insurance, to cover all of Tenant's stock in trade, any and all tenant improvements or betterments, fixtures, furniture, furnishings, removable floor coverings, trade equipment, signs and all other decorations placed by Tenant in or upon the Premises.
- c. Worker's Compensation if required by Florida statutes.
- d. Employer's Liability - Not less than \$100,000.
- e. Business Interruption Insurance for no less than 12 full months.

Tenant shall deliver to Landlord at least thirty (30) days prior to the time such insurance is first required to be carried by Tenant, and thereafter, at least thirty (30) days prior to expiration of such policy, Certificates of Insurance evidencing the above coverage with limits not less than those specified above. Such Certificates shall name Landlord, its subsidiaries, directors, agents and employees as additional insureds and shall expressly provide that the interest of same therein shall not be affected by any breach by Tenant of any policy provision for which such Certificates evidence coverage. Further, all Certificates shall expressly provide that no less than thirty (30) days prior written notice shall be given Landlord in the event of material alteration to, or cancellation of, the coverages evidenced by such Certificates.

LATE FEES/INTEREST

A charge assessed against a tenant for failing to pay rent when due. A Late Charge is typically a one-time charge calculated as a specific dollar amount or a percentage of the amount due. In addition to or in lieu of a Late Charge, a lease may contain an interest provision, whereby the tenant is required to pay a specified interest rate on the amount due from the due date until the date paid.

EXAMPLE: ABC Tenant's lease allows the Landlord to charge a) a Late Charge equal to 5% of the amount due for any Rent unpaid for greater than 5 days from the due date; and b) interest equal to the current Prime Rate plus 2% for any unpaid Rent from the date due until the date paid. ABC failed to pay its Base Rent of \$10,000 which was due on March 1st until March 21st. On the next rent invoice to ABC, the Landlord included a Late Charge of \$500 for March rent and an Interest charge of \$54.79, assuming a Prime Rate of 8% (calculated as $\$10,000 \times 10\% = \$1,000 \times 20/365$).

ITEMS TO LOOK FOR:

- Amount
- Rate
- Number of grace days and notice requirements, if any
- Waiver of Late Fee on one or more occasion within a specified period

SAMPLE LEASE: Late Fees/Interest

Rent shall be made payable to the entity, and sent to the address Landlord designates, and shall be made good by sufficient check or by other means acceptable to Landlord. Tenant agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in the amount equal to the greater of: (a) \$50.00, or (b) 6% of the unpaid rent or other payment. The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant's obligation for each successive month until paid. Furthermore, interest shall accrue on all delinquent amounts from the date past due until paid at the rate of 12% per annum. Notwithstanding the foregoing to the contrary, Tenant shall be entitled to a grace period of 5 days for the first 2 late payments of Rent for any calendar year.

LEASING COMMISSIONS

A fee paid to the leasing broker upon the successful execution of a lease agreement. In many cases, the broker's commission is calculated as a stated percentage of the negotiated Base Rent, with the percentage often determined by the geographical market in which the real estate is located. The calculation mechanics of a commission are often not included within a lease, but rather within a separate Commission Agreement or Brokerage Agreement entered into between the Broker and the landlord. While a lease rarely provides the mechanics of the commission calculation, and, in many cases, the lease is old enough that the payment has been made already, it is important to know the names of the brokers in the event future obligations arise in the event of a renewal or expansion.

EXAMPLE: ABC Tenant hires MNO Brokerage, Inc. to negotiate its lease at Realogic Tower. MNO successfully negotiates a lease with the Landlord, and pursuant to a separate Commission Agreement, is entitled to a leasing commission equal to 5% of Base Rent for the initial 5 years of a lease term and 2.5% of Base Rent for any years in the term greater than 5 years. The lease with ABC is a 10-year lease requiring Base Rent payments of \$100,000/year for years 1-5 and \$150,000/year for years 6-10. MNO Brokerage would be entitled to a leasing commission equal to \$43,750 $[(\$100,000 \times 5 \times .05) + (\$150,000 \times 5 \times .025)]$.

ITEMS TO LOOK FOR:

- Broker's name and which party it represents
- Amount of commission, if provided

NOTICE REQUIREMENTS

Explains the following for official notice from one party to the other:

- The method of delivery (by hand, in writing, Overnight courier, USPS, etc).
- How notice is deemed given (i.e., upon receipt or refusal, within 3 days after postmarked date, etc).
- Are duplicate copies required to associated parties (i.e., legal notice, default notice, etc)?

Often times, if the notice requirements are not followed, important communications (i.e. address change letters, option exercises, etc.) may be deemed invalid.

ITEMS TO LOOK FOR:

- Where notice is to be given
- How notice is to be given
- When notice is to be given

SAMPLE LEASE: Notice

All demands, approvals, consents or notices (collectively referred to as a "notice") shall be in writing and delivered by hand or sent by registered or certified mail with return receipt requested or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in Section 1. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, 3 days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.

PARKING

The right of a tenant to lease a specified number of parking spaces. In some instances, the number of parking spaces to which tenant is entitled is based upon a specified parking ratio (i.e. 2 spaces per 1,000 square feet leased by tenant).

EXAMPLE: ABC Tenant executes a lease for 5,000 sq. ft. of space at Realogic Tower. The lease contains a parking clause, which entitles ABC to 2 non-reserved parking spaces for each 1,000 sq. ft. leased. Based upon this Parking Ratio, ABC would be entitled to 10 non-reserved parking spaces.

ITEMS TO LOOK FOR:

- The number of spaces
- Location of spaces
- The cost of spaces
- Type of spaces (reserved, unreserved, etc.)
- Whether spaces are "must take" spaces or tenant may decrease number of spaces
- The Termination Payment (if applicable)
- Actions or conditions that nullify the right

SAMPLE LEASE: Notice

Landlord hereby grants to Tenant and persons designated by Tenant a license to use 12 non-reserved parking spaces in the surface parking lot ("Parking Facility") located at the Property. The term of such license shall commence on the Commencement Date under the Lease and shall continue until the earlier to occur of the Termination Date under the Lease, the sooner termination of the Lease, or Tenant's abandonment of the Premises hereunder. Tenant agrees to pay Landlord's current charge for use of the non-reserved parking spaces, currently \$65.00 per space per month.

SECURITY DEPOSIT / LETTER OF CREDIT

SECURITY DEPOSIT: A deposit made by a tenant, in the form of cash, letter of credit or both, to secure the tenant's performance of its monetary obligations under a lease and to offset damages due to tenant's negligence.

EXAMPLE of Security Deposit:

As a condition to leasing space in Realogic Tower, ABC Tenant is required to provide a cash security deposit equal to two months Base Rent. The Landlord retains the right to apply this deposit against any past due rent amounts, at which time ABC must replenish the deposit to its original amount or be in default under the lease.

LETTER OF CREDIT: The agreement of a bank on behalf of a customer to honor drafts or other demands for payment upon compliance with the conditions of the letter of credit. As they relate to leases, tenants are often required to post letters of credit in lieu of or in addition to cash security deposits as security for the payment of rental obligations to the landlord.

A term that often comes up with Letter of Credit is "evergreen". This refers to the expiration date of the Letter of Credit. If a Lease requires an "evergreen" Letter of Credit, that is one which has an expiration date but contains a provision that states it may be automatically extended for an indefinite number of periods until the issuing bank informs its beneficiary (the landlord) of its final expiration.

EXAMPLE of Letter of Credit: As a condition to leasing space in Realogic Tower, ABC Tenant is required to provide a \$100,000 letter of credit as security for lease obligations over the five-year lease term. The lease provides that the letter of credit may be for a one-year term, renewable annually with the issuing bank. During the third year of the lease term, ABC defaults on the payment of its rental obligations in the amount of \$55,000. The Landlord notifies the issuing bank and exercises its right to draw on the letter of credit to cover the \$55,000 of lost rental.

Why Might the Parties Prefer a Letter of Credit Over a Cash Security Deposit?

Assuming sufficient collateral or creditworthiness of Tenant or a guarantor, Tenant may have its bank issue to landlord a letter of credit (LOC) to secure the Tenant's obligations under the lease. If the LOC is large enough, the landlord may enter into a lease with a Tenant, such as a startup company, that the landlord would otherwise refuse because of the Tenant's lack of creditworthiness.

From the Tenant's perspective, a LOC may be preferable if the required security deposit is large. A LOC will not tie up large amounts of tenant's cash. Cash that would otherwise be pledged as a security deposit can be used as working capital in the tenant's business.

Also, the credit of the LOC's issuer stands behind the obligation of the tenant. If Tenant is insolvent and/or bankrupt, the issuer still must honor the beneficiary's draws on the LOC.

ITEMS TO LOOK FOR:

- Type: Cash or LOC?
- Interest bearing? (Note rate of interest and frequency of payment)
- Scheduled reductions, if applicable
- Substitution rights, if any
- Form of LOC if specific form is to be used
- Landlord timeframe to return deposit to Tenant upon expiration/termination

SAMPLE LEASE: Security Deposit

The Security Deposit shall be delivered to Landlord upon the execution of this Lease by Tenant and shall be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations. The Security Deposit is not an advance payment of Rent or a measure of Tenant's liability for damages. Landlord may, from time to time, without prejudice to any other remedy, use all or a portion of the Security Deposit to satisfy past due Rent or to cure any uncured default by Tenant. If Landlord uses the Security Deposit, Tenant shall on demand restore the Security Deposit to its original amount. Landlord shall return any unapplied portion of the Security Deposit to Tenant within 60 days after the later to occur of (i) the date Tenant surrenders possession of the Premises to Landlord in accordance with this Lease; or (2) the Termination Date. If Landlord transfers its interest in the Premises, Landlord shall assign the Security Deposit to the transferee and, following the assignment, Landlord shall have no further liability for the return of the Security Deposit. Notwithstanding the foregoing, Tenant, at any time after the first anniversary of the Commencement Date, may provide Landlord with a written notice (the "Security Notice") requesting that Landlord return the Security Deposit to Tenant. Provided that Tenant is not in default under the Lease on the date Landlord receives the Security Notice and on the date Landlord would otherwise return the security Deposit as provided below, and, provided further, that there have been no events of default under the Lease at any time prior to Landlord's receipt of the Security Notice, Landlord shall return the Security Deposit to Tenant within 60 days after Landlord's receipt of the Security Notice.

SAMPLE LEASE: Letter of Credit

Concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant shall deliver to Landlord, as protection for the full and faithful performance by Tenant of all of its obligations under this Lease, and for all losses and damages Landlord may suffer (or which Landlord reasonably estimates that it may suffer) as a result of any breach or default by Tenant under this Lease, an irrevocable and unconditional negotiable standby letter of credit (the "Letter of Credit"), in the form attached hereto as Exhibit F and containing the terms required herein, payable in the City of Los Angeles, California, running in favor of Landlord and issued by a solvent, nationally recognized bank acceptable to landlord, in the amount of \$94,692.00 (the "Letter of Credit Amount"). The Letter of Credit shall (i) be "callable" at sight, irrevocable and unconditional, (ii) be maintained in effect, whether through renewal or extension, for the period from the date of delivery thereof to Landlord and continuing

until the date (the "LC Expiration Date") that is sixty (60) days after the Lease Expiration Date, and Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord at least sixty (60) days prior to the expiration of the Letter of Credit then held by Landlord, without any action whatsoever on the part of Landlord, (iii) be fully assignable by Landlord, its successors and assigns, (iv) permit partial draws and multiple presentations and drawings, and (v) be otherwise subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev), International Chamber of Commerce Publication #500. In addition to the foregoing, the form and terms of the Letter of Credit (and the bank issuing the same (the "Bank")) shall be acceptable to Landlord, in Landlord's sole discretion. Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the Letter of Credit if any of the following shall have occurred or be applicable: (A) such amount is due to Landlord under the terms and conditions of this Lease, or (B) Tenant has filed a voluntary petition under the U.S. Bankruptcy Code or any state bankruptcy code (collectively, "Bankruptcy Code"), or (C) an involuntary petition has been filed against Tenant under the Bankruptcy Code, or (D) the Bank has notified Landlord that the Letter of Credit will not be renewed or extended through the LC Expiration Date. The Letter of Credit will be honored by the Bank regardless of whether Tenant disputes Landlord's right to draw upon the Letter of Credit.

SIGNAGE

The right of a tenant to provide identification of their company name in specified areas or the name of key employees on or within a building. Signage types include monument, facade, pylon, building lobby, floor lobby, suite entry and lobby directory.

ITEMS TO LOOK FOR:

- Monument sign rights
- Lobby sign rights
- Signage rights on exterior of Building
- Pylon sign rights
- When does loss of rights kick in (i.e. upon subleasing, upon reduction in square footage)

SAMPLE LEASES:

(II) Building Directory. Landlord will list the name of Tenant, and, at Tenant's specific written request, Tenant's individual partners who are working in the Building, on the Building directory and in any computer or other directory serving the Building at no cost to Tenant (subject to inclusion in Operating Expenses). Landlord shall make such subsequent additions, deletions and changes as Tenant requests in and to the initial listing after the Phase I Term Commencement Date on a monthly basis without charge. If the Building's system at any time provides the capability for tenants to modify their own listings, Landlord shall permit Tenant to have such access to such system without charge other than the expense of connecting to the system and of Tenant's use of the system. Landlord shall maintain such directories and keep computer directories operational at all times during the Term and the cost thereof shall be included in Operating Expenses pursuant to Article 3 above.

Section 5.34. Monument Sign. From and after the First Amendment Space Rent Commencement Date so long as Tenant leases and occupies up to 66,194 square feet of Net Rentable Area, Tenant shall have the non-exclusive right to have Landlord install Tenant's name on the Building's southern Monument Sign at Landlord's expense. Said Monument Sign shall be limited to three (3) names, one of which shall be Tenant's and Tenant shall be entitled to have its name placed no lower than the second position. Landlord, at Landlord's option and expense, may relocate Tenant's name between the two top spots from time to time on the sign. Tenant's name shall never be lower than the second slot on such sign, however. Tenant's name shall be installed using the same font and color of the other parties listed on said Monument Sign.

SUBLEASE & ASSIGNMENT

SUBLEASE: A lease executed by a tenant (the 'Sub-Lessor') to another lessee (the 'Sub-Lessee') for a term equal to or shorter than that held by the tenant under its original lease with the landlord. In most subleases, the original tenant remains primarily liable to the landlord for the performance of lease obligations, including the payment of Base Rent and Additional Rent, and the Sub-Lessee is liable for payment of sublease rent to the Sub-Lessor. Subleases usually require landlord consent. Sublease Profits are consideration received by a Sub-Lessor from a Sub-Lessee under a Sublease which is greater than the consideration payable by the Sub-Lessor (i.e., tenant) to the landlord under the original lease. In many subleases, the Sub-Lessor is required to share some or all of the Sublease Profits received with the original landlord. For example:

ABC Tenant has subleased 2,500 sq. ft. to XYZ Company. Pursuant to the sublease, XYZ is required to make sublease rental payments of \$15.00/sq. ft./year. Pursuant to the original lease, ABC is making rent payments to the Landlord equal to \$13.00/sq. ft. /year. The Sublease Profit recognized by ABC is \$5,000/year $[(\$15.00 - \$13.00) \times 2,500 \text{ sq. ft.}]$. If ABC's lease with the Landlord so requires, ABC might be required to share some or all of this Sublease Profit with the Landlord.

EXAMPLE: ABC Tenant is leasing 10,000 sq. ft. in Realogic Tower, of which 2,500 sq. ft. is not currently being used for business purposes. In accordance with their lease, ABC sends written notification to the Landlord of their intent to sublease the 2,500 sq. ft. to XYZ Company. The Landlord grants their consent to the sublease, which provides for sublease rent in the amount of \$15.00/sq. ft. /year. XYZ Company (the Sub-Lessee) makes the required sublease payments to ABC Tenant (the Sub-Lessor), and ABC Tenant continues to make its required rental payment to Landlord pursuant to the original lease.

ASSIGNMENT: The transfer of one's property, interest or rights to another. The party making the transfer is the Assignor and the party to whom the transfer has been made is the Assignee. In a lease assignment, the Assignor transfers some or all of their rights to use the leased Premises to the Assignee, and the Assignee usually becomes the "Tenant" for the unexpired remainder of the lease term. In most assignments, the Assignee acquires the same rights and privileges, and assumes the same obligations, which belonged to the Assignor. In addition, the Assignor typically remains liable for any lease obligations which are not fulfilled by the Assignee after the lease has been assigned, unless relieved of such obligations by the landlord. Assignments usually require landlord's consent.

EXAMPLE: ABC Tenant has been purchased by XYZ Company. The purchase agreement requires ABC to assign all of their leases to XYZ. In accordance with the terms of ABC Tenant's lease at Re-alogic Tower, ABC and XYZ enter into an Assignment and Assumption Agreement, whereby ABC agrees to assign their lease to XYZ, and XYZ assumes all of ABC's lease obligations for the unexpired term of the lease.

ITEMS TO LOOK FOR:

- Is Landlord's consent required?
- Does Landlord have recapture rights? (i.e., right to terminate the entire lease or just the portion being sublet)
- Does Landlord share sublease profits?
- Note rate of interest and frequency of payment
- If Landlord exercises its recapture rights, can Tenant rescind (take back) request to Landlord?
- Is there a situation whereby the Tenant can assign/sublease without Landlord's consent?
- Provide specific conditions that must be met for Tenant to assign/sublease without Landlord's consent.
- Provide any limitations on number of subleases Tenant can make.

SAMPLE LEASE: Sublease & Assignment

A. Landlord's Consent Required. Subject to the remaining provisions of this Article 11, Tenant shall not assign, transfer or encumber any interest in this Lease (either absolutely or collaterally) or sublease or allow any third party to use any portion of the Premises (collectively or individually, a "Transfer"), except as expressly permitted under this Lease, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Without limitation, Tenant agrees that Landlord's consent shall not be considered unreasonably withheld if; (1) the proposed transferee's financial condition does not meet the criteria Landlord uses to select Building tenants having similar leasehold obligations; and (2) the proposed transferee is a governmental organization or present occupant of the Property (unless Landlord is unable to accommodate such present occupant's need for additional space in the Building of a size comparable to that portion of the Premises covered by the proposed Transfer), or Landlord is otherwise engaged in lease negotiations with the proposed transferee for other premises in the Property. Any attempted Transfer in violation of this Article is voidable at Landlord's option.

B. Consent Requirements. As part of Tenant's request for, and as a condition to, Landlord's consent to a Transfer, Tenant shall provide Landlord with financial statements for the proposed transferee, a complete copy (unexecuted) of the proposed assignment or sublease and other contractual documents, and such other information as Landlord may reasonably request. Except in connection with a Permitted Transfer, Landlord shall then have the right (but not the obligation) to terminate this Lease as of the date the Transfer would have been effective ("Landlord Termination Date") with respect to the portion of the Premises which Tenant desires to Transfer. Landlord shall provide written notice to Tenant of its election to terminate this Lease ("Landlord Termination Notice") within 2 days after receipt of Tenant's request for Landlord's consent to a Transfer and all of the information required by the Lease. Tenant shall have the right to withdraw its request for Landlord's consent to the proposed Transfer ("Withdrawal Right"), provided Tenant exercises such Withdrawal Right within 5 Business Days after receipt of landlord's Termination Notice. If Tenant timely exercises its Withdrawal Right, the Lease shall continue in full force and effect as if Tenant had not requested Landlord's consent to the proposed Transfer. If Tenant does not timely exercise its Withdrawal Right, Tenant shall vacate such portion of the Premises by the Landlord Termination Date and upon Tenant's vacating such portion of the Premises, the rent and other charges payable shall be proportionately reduced. Consent by Landlord to one or more Transfer(s) shall not operate as a waiver of Landlord's rights to approve any subsequent Transfers. In no event shall any Transfer or Permitted Transfer release or relieve Tenant from any obligation under this Lease, nor shall the acceptance of Rent from any assignee, subtenant or occupant constitute a waiver or release of Tenant from any of its obligations or liabilities under this Lease. Tenant shall pay Landlord a review fee of \$1,000 for Landlord's review of any Permitted Transfer or requested Transfer.

C. Payment to Landlord. If the aggregate consideration paid to a Tenant Party for a Transfer exceeds that payable by Tenant under this Lease (prorated according to the transferred interest), Tenant shall pay Landlord 50% of such excess. Tenant shall pay Landlord for Landlord's share of any excess within 30 days after Tenant's receipt of such excess consideration. If any uncured event of default exists under this Lease, Landlord may require that all sublease payments be made directly to Landlord, in which case Tenant shall receive a credit against Rent in the amount of any payments received, but not to exceed the amount payable by Tenant under this Lease.

D. Change in Control of Tenant. Except for a Permitted Transfer, if Tenant is a corporation, limited liability company, partnership, or similar entity, and if the entity which owns or controls a majority of the voting shares / rights in Tenant at any time sells or disposes of such majority of voting shares / rights, or no longer controls (directly or indirectly) a majority of the voting shares or rights for any reason (including a merger, consolidation or reorganization), such change of ownership or control shall constitute a Transfer. The foregoing shall not apply so long as, both before and after the Transfer, Tenant is an entity whose outstanding stock is listed on a recognized U.S. securities exchange, or of at least 80% of its voting stock is owned by another entity, the voting stock of which is so listed; provided, however, that Tenant shall give Landlord written notice at least 30 days prior to the effective date of such change in ownership or control.

E. No Consent Required. Tenant may assign its entire interest under this Lease to its Affiliate (defined below) or to a successor to Tenant by purchase, merger, consolidation or reorganization without the consent of Landlord, provided that all of the following conditions are satisfied in Landlord's reasonable discretion (a "Permitted Transfer"): (1) no uncured event of default exists under this Lease; (2) in the case of a purchase, merger, consolidation or reorganization, Tenant's successor shall own all or substantially all of the assets of Tenant; (3) such Affiliate or successor shall have a net worth which is at least equal to the greater of Tenant's net worth at the date of this Lease or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization. The term "Affiliate" means any person or entity controlling, controlled by or under common control with Tenant or Landlord, as applicable. If requested by Landlord, the Affiliate or successor shall sign a commercially reasonable form of assumption agreement.

SUBORDINATION / NON-DISTURBANCE

The process by which a person or entity's claims rank below the claims of another party. In a lease transaction, the claims of a tenant against a landlord are often ranked below those of a mortgagee or a ground lessor; however, certain larger tenants will require subordination from a mortgagee or ground lessor. While subordination language is included in most leases, some leases obligate a landlord to obtain a 'Subordination, Non-Disturbance and Attornment Agreement', whereby either the tenant or the mortgagee/ground lessor will formally agree to subordinate their claims to those of the other party.

ITEMS TO LOOK FOR:

- Is the lease subject and subordinate to other entities?
- Is a Non-Disturbance agreement required for subordination of Tenant's Rights?

SAMPLE LEASE: Subordination to Mortgages

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Property, and to renewals, modifications, refinancing and extensions thereof (collectively referred to as a "Mortgage"). The party having the benefit of a Mortgage shall be referred to as a "Mortgagee". This clause shall be self-operative, but upon request from a Mortgagee, Tenant shall execute a commercially reasonable subordination agreement in favor of the Mortgagee. In lieu of having the Mortgage be superior to this Lease, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. If requested by a successor-in-interest to all or a part of Landlord's interest in the Lease, Tenant shall, without charge, attorn to the successor-in-interest.

TENANT ALLOWANCE

A monetary allowance granted from the landlord to a tenant to entice tenant to move into landlord's building which will enable the tenant to prepare the leased premises for tenant's occupancy. Tenant Allowances may include a tenant improvement allowance, moving allowance, space plan/drawing allowance and/or lease buyout.

EXAMPLES:

Tenant Improvement Allowance: To induce ABC Tenant to execute a lease at Realogic Tower, the Landlord offers ABC a \$20.00/sq. ft. tenant improvement allowance.

Refurbishment Allowance: An allowance granted to a tenant subsequent to the commencement date of their lease to be used for the purpose of improving the leased premises. Refurbishment allowances are most often granted in long term leases, whereby the tenant may improve the appearance of the premises at a defined date during the lease term. In some instances the allowance is stipulated as a dollar amount or a dollar per square foot amount to be used at the discretion of the tenant; in other cases, the landlord will agree to provide certain improvements to the premises at their cost, such as repainting and re-carpeting.

ITEMS TO LOOK FOR:

- Dollar Amount (Total dollar amount / amount per rentable sq. ft. / amount per usable sq. ft.)
- Terms (Scope of work and what space it impacts)
- Whether unused portion accrues to benefit of LL or Tenant (If accrues to Tenant, is it cash payment or credit against rent?)
- Note any deadlines / date restrictions on use
- Is Allowance a cash allowance paid directly to Tenant?
- If it is a future Allowance, be sure to note date that Allowance takes effect
- Are the improvements done on a "turnkey" basis with no dollar amount stated?

SAMPLE LEASE: Tenant Improvement Allowance; Tenant's Costs.

(a) Landlord shall provide Tenant with an allowance (the "Tenant Improvement Allowance") as against the cost of the Tenant Improvements. The Tenant Improvement Allowance shall be an amount equal to the product of (x) the number of square feet constituting the Rentable Area of the Premises and (y) \$8.20. To the extent that the total cost of the Tenant Improvements exceeds the Tenant Improvement Allowance, Tenant shall pay the full amount of such excess ("Tenant's Costs") to the applicable contractors, subcontractors, and material suppliers. Tenant shall not be entitled to any credit or payment for any unused portion of the Tenant Improvement Allowance.

(b) The Tenant Improvement Allowance shall be paid by Landlord in installments to Tenant's contractor monthly based upon a request for payment submitted by Tenant not more than monthly, which requests for payment shall be accompanied by (A) a certificate of Tenant's architect certifying to Landlord and Tenant that all work up to the date of the applicable request for payment for which a request for payment is being made has been substantially completed, (B) partial releases of lien from any subcontractor or material supplier which has given Notice to Owner to Landlord along with the items required under Paragraph 5(b)(ii) and (iii), below, for work done or materials supplied through the date of Tenant's request for payment (other than a certificate of occupancy, which is only necessary for final payment, and such lien releases and contractor's affidavits shall be for all amounts other than the actual amount requested to be paid by Landlord at such time), (C) a tenant estoppel certificate (for final payment), and (D) as-built drawings, test and balance reports, duplicate original final releases of all liens, a copy of all warranties regarding any item for which Landlord is responsible to repair pursuant to the Lease, and Tenant shall use all reasonable efforts to have such warranties be transferable to Landlord or issued in favor of Tenant and Landlord, jointly, and copies of all brochures and maintenance manuals. Landlord will retain ten (10%) percent of each progress payment pending Substantial Completion.

(c) Landlord will provide, without cost to Tenant, all reasonable regular business hour and overtime use of elevators and delivery docks used in the construction of the Premises to accommodate Tenant's needs.

(d) Tenant shall pay Landlord a fee equal to 10% of the amount by which the cost of Tenant Improvements exceeds the Tenant Improvement Allowance.

SAMPLE LEASE: Miscellaneous Allowance

Landlord shall make a dollar contribution in the amount of \$49,470.00 (which is \$3.00 per square foot of rentable area of the Premises) for application to Tenant's telephone and computer cabling and relocation expenses (including consultant costs) and other related transaction costs. Further, Landlord shall make a dollar contribution in the amount of \$1,649.00 (which is \$.10 per square foot of rentable area of the Premises) for the application to the cost of the fit plan for the Premises prepared by Smith & Associates.

TRUE UP

Also called a 'Reconciliation Billing', reflects a billing to tenants for the difference between estimated payments made by the tenant for an item of Rent (usually Expense Recoveries) and the actual payment due. Reconciliation Billings are made to a tenant after the landlord has determined the actual amounts to be billed in accordance with the lease provisions.

EXAMPLE: ABC Tenant's lease allows the Landlord to estimate recoverable expenses for the upcoming year and bill ABC monthly for expense recoveries based upon such estimate. The lease also provides that within 120 days after year-end, the Landlord must reconcile recoverable expenses actually incurred against the estimate used for billing purposes, and either refund excess payments made by ABC back to ABC or bill ABC for deficiencies in estimated payments. During the year, ABC made estimated payments of \$300 per month for recoverable expenses. Within 120 days after year-end, the Landlord determines that ABC should have paid \$4,000 for the previous year based upon recoverable expenses actually incurred. The Landlord sends ABC a Reconciliation Billing indicating that ABC owes an additional \$400 for expense recoveries for the previous year.

ITEMS TO LOOK FOR:

- Dates by which Landlord must complete true-ups and consequence to Landlord if such dates are not achieved
- Whether Landlord or Tenant is required to pay interest on overpayment / underpayment of estimated expenses (rare, may be contained in heavily negotiated leases for large tenants)

SAMPLE LEASE: True Up

1.02 As soon as is practical following the end of each calendar year, Landlord shall furnish Tenant with a statement of the actual Expenses and Expense Excess and the actual Taxes and Tax Excess for the prior calendar year. If the estimated Expense Excess or estimated Tax Excess for the prior calendar year is more than the actual Expense Excess or actual Tax Excess, as the case may be, for the prior calendar year, Landlord shall either provide Tenant with a refund or apply any overpayment by Tenant against Additional Rent due or next becoming due, provided if the Term expires before the determination of the overpayment, Landlord shall refund any overpayment to Tenant after first deducting the amount of Rent due. If the estimated Expense Excess or estimated Tax Excess for the prior calendar year is less than the actual Expense Excess or actual Tax Excess, as the case may be, for such prior year, Tenant shall pay Landlord, within 30 days after its receipt of the statement of Expenses or Taxes, any underpayment for the prior calendar year.

USE PROVISION

A clause that defines the business activities which may be conducted by a tenant within their leased premises. This clause can describe limitations on Landlord with regard to general usage of the property.

EXAMPLE: ABC Tenant is a national provider of accounting services. In their lease at Realogic Tower, the use clause is defined as 'the provision of accounting services and any other general office purposes.'

Use Restrictions

- The Use Clause typically defines the uses restricted by Tenant and either limits the use to a specific type or carves out provisions for permitted uses.
- From a Landlord's perspective, failing to limit a tenant's use of a property could result in devaluation and inability to rent adjoining space and land.
- From a Tenant's perspective, ensuring a viable business environment, free of direct competition, is a major component of its success. Restrictive covenants are negotiated to achieve these goals.

EXAMPLES OF BASIC USE RESTRICTIONS:

1. Tenant may not use the premises as a hair salon.
2. Landlord may not put a kiosk in front of Tenant's premises.

Exclusive Use

A type of restriction, typically negotiated by Tenant, that requires landlord to restrict any future tenant, occupant or owner from engaging in the use-type carved out for the Tenant.

The tenant's objective in these cases is to create a competition-free zone to preserve its economic advantage. This provision is often found with "anchor" Tenants.

EXAMPLE OF EXCLUSIVE USE RESTRICTION: Landlord shall not execute any lease for space authorizing the use of the premises for the sale of wireless communication products and services. This restriction does not apply to any portion of the Shopping Center in excess of 15,000 square feet of floor area leased to or owned by a single person or entity.

ITEMS TO LOOK FOR:

- For the general use provision, capture the specific use that is permitted in the premises.
- For restricted use, sometimes this list of restrictions can be lengthy and a reference to the specific lease section will suffice. Other times, you may need to list out each restriction, or list out those restrictions that are material. Many leases contain a generic list of restrictions (i.e. no lodging or sleeping or any illegal activities). These generic restrictions may be located in the Rules and Regulations or in the body of the Lease.
- For exclusive use, capture the entire provision.

SAMPLE LEASE: USE

The Premises shall be used for the practice of dentistry and general office purposes and related uses and no other purpose. Tenant shall not do or permit to be done in or about the Premises, nor bring, keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated, or which is prohibited by the standard form of fire insurance policy, or will in any way increase the existing rate of or affect any fire or other insurance upon the Property or any of its contents, or cause a cancellation of any insurance policy covering the Property, or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants of the Property, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in, on, or about the Premises. Tenant shall not bring hazardous materials into the Building, except for minor amounts as contained in routine household and office cleaning products, without the prior approval of the Landlord.

SAMPLE LEASE: EXCLUSIVE

After March 1, 2022, Landlord will not enter into a lease (except for a renewal of an existing lease) of any street level space in any building in the Center which directly faces and is contiguous to tenant's premises and which permits the tenant thereof to install a street level medical office for the purpose of performing dentistry work.

UTILITIES AND OTHER CHARGES

Standard Utilities to Capture:

Electricity

Four most common methods for charging tenant:

Direct Charge

Simplest method – Tenant contracts directly with utility provider and pays directly.

Sub metered

Meter measures usage from Tenant's premises, but LL contracts with the utility provider, not the Tenant. LL then bills the actual cost plus an administrative charge, if permitted in lease.

Rent Inclusion

Electricity charge is a fixed amount included in the rent, and typically quoted on a per square foot basis. It is not directly related to LL's actual cost and includes a profit add-on for the LL. Electricity clause will typically provide LL the right to conduct a lease audit on a periodic basis to determine if use has increased over certain initial use levels and may have the option to increase the charge if the third party electric provider increases its rates.

Included in Operating Expenses

Electricity is provided by LL and included in Operating Expenses.

Standard Utilities Provisions to Capture:

Method of payment

- ° Paid directly or paid to LL
- ° If paid directly to LL, note any administrative charge that is assessed

Meter / Sub meter or other allocation method

Is electricity included in Operating Expenses?

ITEMS TO LOOK FOR: HVAC

- When is HVAC supplied? (Business hours or season)
- Note if standard HVAC is included in Operating Expenses
- After-hours or excess use charges / charges for additional services
- Is LL required to provide supplemental HVAC units?
- Condenser / chilled water provisions
- Who maintains units and systems?

ITEMS TO LOOK FOR: Water

Capture whether it is provided by LL and for what purposes

SAMPLE LEASE: Utilities

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. In the event that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. If Tenant's use of electricity exceeds the standards for acceptable, normal, and reasonable use within the building as determined by Landlord, Landlord reserves the right to separately meter such provided service and charge Tenant the cost of the service provided plus any costs incurred by Landlord in administering and providing such excess service. Tenant may request additional HVAC service during non-business hours upon 24-hour notice to Landlord, and Tenant will pay Landlord's then-current charge for providing such excess service upon demand.

Tenant shall pay such amounts for any provided service within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or a device that utilizes excessive electrical energy or which may, in Landlord's reasonable opinion, overload the wiring or interferes with electrical services to other tenants.

Retail Lease Provisions

BUSINESS HOURS

In retail leases, the hours during which a tenant is required to remain open for the conduct of business. In some retail leases, tenant's business hours are contingent upon a specified percentage of tenants maintaining the same business hours.

EXAMPLE (1): Tenant's business hours are 9am to 9pm, Monday through Friday, and 10am to 6pm, Saturdays and Sundays, excluding holidays.

EXAMPLE (2): Tenant shall be open for business during all regular center hours, provided 80% of all other tenants of the Center are open for business during regular Center hours.

CONTINUOUS OPERATIONS

A clause in a retail lease which obligates the tenant to remain open for business throughout the term of its lease. This is not to be confused with a Business Hours clause, which specifies the hours during which a tenant is required to remain open for business. A continuous operation clause helps to avoid a situation where a tenant closes its store but continues to pay rent, potentially resulting in no percentage rent and lower traffic and sales for other tenants.

Also see "Go Dark" below.

EXAMPLE: ABC Retail Tenant signs a lease at Realogic Mall which requires them to continuously operate their business throughout their 10-year lease term. After three years, ABC is not happy with customer traffic at the mall and decides to discontinue operating. ABC would be in default of their lease pursuant to the Continuous Operations Clause.

ITEMS TO LOOK FOR:

- Whether Tenant is required to continuously operate
- Exceptions to continuous operations requirement, if any
- Consequences if Tenant violates (i.e., monetary fee due to Landlord, can Landlord terminate)

CO TENANCY

A clause in a retail lease which provides remedies to a tenant in the event that another tenant, typically an anchor or major tenant, ceases its operations at the property. There are two types of co-tenancy clauses: (1) opening co-tenancy and (2) ongoing co-tenancy. An opening co-tenancy clause typically provides that a tenant is not required to initially open until specified anchor tenants and/or a certain percentage of other tenants are open. An ongoing co-tenancy clause typically states that a tenant is not required to remain open if specified tenants and/or specified percentage of tenants are not open.

EXAMPLE: ABC Retail Tenant is concerned that traffic at Realogic Mall will be adversely affected if BIG Anchor Tenant ceases their operations at the mall. To alleviate this concern, ABC negotiates in their lease a Co-Tenancy clause, whereby if BIG Anchor Tenant ceases operations, ABC Retail Tenant may terminate their lease at Realogic Mall.

ITEMS TO LOOK FOR:

- Anchor(s) and/or certain percentage of tenants not open that trigger(s) Tenant's right for remedy
- Description of remedy (typically termination or reduced rental payments, i.e., Percentage Rent in lieu of Minimum Rent)
- Notice requirements, if any
- Termination fee, if any

GO DARK

A clause in a retail lease which allows a tenant to cease operations at a property. Although “Go Dark” provisions are rarely granted, other than to major national tenants, it is a very important provision to be aware of. This clause may be hidden in various lease provisions, such as continuous operations, hours of operation, etc.

This provision varies from Continuous Operations in that it specifically grants a tenant a right to close the Premises during periods that would normally be required, without repercuSSION.

EXAMPLE: From and after the date that Tenant opens for business, Tenant shall not be obligated to continuously operate its business. If for any period in excess of 90 consecutive days Tenant ceases to operate, Landlord may at any time thereafter terminate the Lease and recapture the Premises by written notice.

ITEMS TO LOOK FOR:

- Trigger(s) for Tenant to cease operations
- Notice requirements, if any

LANDLORD AUDIT RIGHTS

This is a clause in a retail lease that grants Landlord the right to audit the books and records of Tenant relating to gross sales.

EXAMPLE: Landlord shall have the right at any time upon prior written notice and during Tenant's business hours at Tenant's general office to examine books and records relating to business conducted in, upon, or from the Premises, or have them audited at Landlord's expense.

RETENTION OF BOOKS AND RECORDS RELATING TO TENANT'S SALES

This is a clause in a retail lease that states how long the Tenant must retain books and records of Tenant's gross sales.

EXAMPLE: Tenant shall keep at its general office complete and accurate books of account and records with respect to all business conducted in, upon, or from the Premises, for a period of three years.

MEDIA FUND / PROMOTION

A fund established by the landlord of a retail property whereby tenants are required to make specified contributions to the fund for the purpose of promoting the property in the local media. The fund is managed by the landlord and, in many instances the landlord is required to make a defined number of promotions per year.

EXAMPLE: ABC Retail Tenant has a lease clause which requires that a Media Fund contribution be made in an amount equal to the lesser of \$0.50/sq. ft. /annum or \$1,000/annum. Upon collection of the Media Fund contributions from ABC and all other tenants of Realogic Mall required to make such a contribution, the Landlord places advertisements for Realogic Mall in the local newspaper and on local radio stations.

ITEMS TO LOOK FOR:

- Tenant's contribution amount and scheduled increases, if any
- Landlord's contribution amount and scheduled increases, if any
- Required participation of other tenants

MERCHANT ASSOCIATION

An association organized by a landlord of a shopping center but operated jointly by landlord and tenants of the center which collects funds for use in the advertising and promotion of the center to the benefit of all tenants. In many instances, the landlord is required to match a specified percentage of the Merchant Association Dues received from tenants.

EXAMPLE: ABC Retail Tenant has a lease clause which requires that ABC participate in the Merchant's Association at Realogic Mall so long as 75% of the other mall tenants are also required to participate, and pay dues equal to \$2,000/year, subject to annual increases equal to the increase in the Consumer Price Index. The lease also requires the Landlord to make a matching contribution on a quarterly basis equal to 25% of the dues received from all contributing tenants. ABC Retail Tenant is allowed to have one member serve in the association. All members meet once a month and determine how the funds collected from tenants and the Landlord should be spent to promote the mall and increase customer traffic therein.

ITEMS TO LOOK FOR:

- Tenant's contribution amount and scheduled increases, if any
- Landlord's contribution amount and scheduled increases, if any
- Required participation of other tenants
- Board member information, if any

RADIUS RESTRICTION

In retail leases, a clause which prohibits a tenant from opening a similar or competing store within a defined area from the location of the leased premises. The intent of a Radius Restriction clause is to protect the sales of a tenant from the leased premises, and in many cases, the landlord has the right to include the sales from the similar or competing store with the sales from the leased premises in the calculation of Percentage Rent.

EXAMPLE: ABC Coffee is a tenant on the ground floor level of Realogic Tower which sells gourmet coffee from their premises to the general public. ABC is required to pay, in addition to Base Rent, Percentage Rent based upon the amount of Gross Sales from the premises. ABC's lease contains a Radius Restriction clause which prohibits ABC from opening a competing coffee store within a 2 block radius of Realogic Tower. Because of heavy demand within the area, ABC opens another store 1.5 blocks from their store at Realogic Tower. Due to the Radius Restriction clause within the Realogic Tower lease, the Landlord can pursue default remedies against ABC and can also require that ABC include sales from the competing store in the computation of Gross Sales from Realogic Tower for purposes of calculating Percentage Rent.

ITEMS TO LOOK FOR:

- Description of geographical radius
- Notice requirements, if any
- Time limitations, if any
- Exceptions to restrictions, if any

Helpful Tips

READ BACKWARDS

Put documents in reverse chronological order, with the most recent amendment on top. Read the documents in reverse order starting with the most recent document.

This allows the lease reviewer to see the most recent changes and the current “situation” of the tenant.

IF YOU ARE SUMMARIZING

- Ensure notes are concise. Do not add extraneous information. Never simply “cut and paste” from the lease into the lease abstract.
- Watch out for options and other important lease language in odd places. For this reason, it is important to read the entire lease, not making any assumptions about what a provision might include simply because of its title or location within the lease document. Sometimes even the Building Rules section on the last page may have important information.

MISCELLANEOUS TIPS

Understand how changes to the “standard” form are reflected in the lease being read. Some examples:

- Are changes to language made in the margins with arrows pointing to the place the change fits in?
- Are sections that aren’t applicable lined-out?
- Are all of the changes placed in an attachment snuck into the back of the lease? There is nothing worse than reading a lease and locating a section called “Addendum” or “Special Stipulations” that sends the reader back by stating, “Section 3.3 is changed as follows:”. The reader will need to go back and re-do their work.
- Are the changes completely hidden and simply worked into the sections without benefit of cross-outs, highlighting, etc.? This is the trickiest type of lease to read as negotiated provisions are not clearly noted.

Knowing this is important before getting started as it saves time to know how revisions are reflected before diving in.

- **Use a current rent roll to compare information** provided in the lease. Lease documents are “controlling,” but it may be important to point out any inaccuracies between the lease and rent roll. Also, the rent roll can help to establish dates, etc., that may not be presented clearly in the lease.
- **Use Excel to check rent steps** and ensure calculations are accurate.
- **While reading the lease documents, always be mindful of “critical dates,”** e.g., future dates or future events provided in the lease that may change material components to the abstract. For example, often Base Years or Tenant’s Pro Rata Share will change on a specific date in the future. It is important not only to capture what the current situation is under the lease, but also what the situation will be in the future if the lease so provides.
- **The final comment is, “Beware!”** --- important terms can appear anywhere! Read the entire document! Renewal options can appear in the description of the Term, rights to terminate can be snuck into sections addressing Repairs & Alterations, a Right of First Offer can be given the title Right of First Refusal and a tenant’s right to future refurbishment funds can be imbedded in the Initial Improvement Workletter. It is important to read the entire lease with an open mind and not assume the items that need to be captured will be laid out nicely.





ABOUT REALOGIC

Realogic is a best-in-class commercial real estate consulting firm based in downtown Chicago. Our company was founded in 1992, and in the nearly 30 years since, has developed a well-earned reputation for our unmatched commercial real estate knowledge, experience, skills and expertise, as well as for the unrivaled quality, integrity and accuracy of our work.

We offer a wide range of services, support and insights to help commercial real estate organizations of any type or size maximize the returns on their investments, including due diligence, underwriting, lease abstraction, lease administration, financial modeling, loan abstraction, closing support and commercial real estate training.

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