Key Business Terms Commercial Leasing Brokers Should Always Consider in Negotiating a Term Sheet (Part 1 of a 2 series article)

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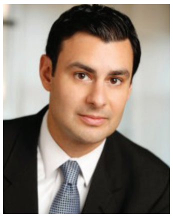

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Commercial leasing brokers who represent both the landlord and tenant are the first "players" in negotiating a commercial lease. These brokers' knowledge of the building and space being offered for lease provides the basis for a detailed term sheet identifying all of the issues which will be addressed in the lease and by having a detailed term sheet, the lease negotiations reduces the issues between the landlord's and tenant's attorney. The term sheet, also referred to as the "letter of intent" should at a minimum cover and resolve the obligations between the parties on some of the major points outlined below. This article is a two part series which will outline all of the essential terms to be negotiated in a term sheet and this first part will focus on the breakdown of the tenant's financial obligations under a lease, how a lease commencement date is determined and various improvements to the premises that may take place and whose responsibility those improvements are.

1. Fixed Annual Rent and increases during the term, if any. Annual rents may increase by an annual percentage or be set for a stated period of years, depending on the starting rate of the fixed rent and whether the landlord/tenant would like to confirm the actual rent increases in lieu of the tenant paying annual operating costs increases. Leases may provide for both annual rent increases and operating costs increases over a base year and this needs to be agreed to prevent later disputes.

2. Lease Commencement Date needs to be confirmed. The timing is critical based upon whether the premises/space is ready and available to be delivered by the landlord to the tenant upon signing the lease or whether it is to be delivered after the landlord has completed alterations. If there is a tenant presently in the space which needs to be vacated, the brokers need to agree upon how and when the space will be delivered by an "outside" date, especially if the new tenant has a lease which is expiring with a significant rent penalty if the space is not available to be delivered to the tenant.

3. Landlord's Work contribution, if any, needs to be agreed upon. The brokers' knowledge of the building and space is crucial in helping to determine what construction may be needed, the costs for same for the tenant's requirements in the space and the building's ability to be able to provide the tenant's requirements, i.e. electric power, IT providers in the building, height of ceiling space for tenant's cabling/wiring if not to be installed under raised flooring. Landlord's depending on the "market" may offer tenants a square foot improvement allowance or in lieu reduce the rent for the tenant to pay for its own tenant improvements. Based on how the landlord amortizes its work allowance over the lease term which will increase the rent, a tenant may decide to finance its own improvements if the cost to the tenant is lower than landlord's cost, i.e. large financial institutions.

4. Operating Expenses and Real Estate tax percentages should be negotiated. If tenant is paying an annual increase in the fixed rent then determine whether increases in landlord's annual Operating Expenses should also be passed on to tenant.

5. Landlord Work if being performed by the landlord should be specifically agreed by the brokers in the negotiations and the parties to the lease to prevent any later disputes. If the landlord is considering alterations or capital improvements to the building/project which affects tenant, the brokers should be informed as part of their due diligence. If the landlord's improvements are included as part of the tenant's operating expense escalation, they could be costly to the tenant and should be negotiated in advance. The broker will either need negotiate to cap the expense or delete it in its entirety, so as not to be an unexpected cost in the near future to the tenant.

As you can see, all of the points above have an immediate impact on the tenant's ability to utilize the space in accordance with its business objectives, the landlord's pricing in terms of the rent they are demanding and the budget a tenant has to account for in entering into a lease. The second part to this series will focus on the various rights the landlord and tenant will want to negotiate in the lease and other non-financial business terms.

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