



## **BOOST YOUR BOTTOM LINE –**

### **MONEY SAVING PROVISIONS FOR LANDLORDS TO CONSIDER IN COMMERCIAL LEASES**

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Rental provisions may be some of the most important economic terms in a commercial lease, but there are many other less obvious provisions that can also have a direct economic impact on a commercial landlord. If you fail to identify and address these provisions in your commercial lease, you may be leaving good money on the table. Some of these provisions are explored below.

1. **Recovery of Abated Rent.** If the landlord provides the tenant with a period of abated rent as an incentive, consider acknowledging that the abatement of rent is conditioned upon the tenant's full and timely performance of all of its obligations under the lease. If at any time during the term of the lease an event of default occurs by the tenant, then the abatement of rent should immediately become void and the tenant should be required to promptly pay to the landlord the full amount of rent abated.

2. **Limiting Caps on Operating Expenses.** In triple net leases, tenants sometimes request caps on the amount that operating expenses may increase from year to year. From a landlord's perspective, such caps should be "cumulative" and "compounding". That way if expenses do not increase by the full amount allowed in any given year, the amount of the shortfall will carry over to the next year. Additionally, the cap should apply only to "controllable" operating expenses and not to expenses that are outside of the control of the landlord such as taxes, insurance, utilities, snow removal costs, and capital expenditures.

3. **Recovery of Landlord's Assignment and Subleasing Expenses.** When tenants seek to assign their lease or sublease all or a part of the premises, landlords will necessarily spend time and money to review the proposed transfer and prepare associated documentation. In some cases, landlords can spend thousands of dollars on document preparation alone. Thus, landlords should require the tenant to reimburse the landlord for its expenses incurred in reviewing the proposed transfer and preparing the associated documents, including, without limitation, landlord's reasonable attorney's fees. The reimbursement can be based upon landlord's actual expenses, a minimum fixed administrative fee, or some combination of actual expenses and set fees. Once the transfer occurs, if the rent payable by a sublessee or assignee exceeds the amount of rent payable under the lease, the tenant should be required to pay the landlord all or a part of the excess consideration received by the tenant. In this way, landlords may discourage tenants from competing with them for leases in their buildings.

4. **Responsibility for Latent Defects.** When the landlord constructs improvements, many tenants want the landlord to be responsible for correcting any latent defects in the landlord's work. When agreeing to such a provision, landlords should make sure that the obligation to correct latent defects is limited to a certain period of time (e.g. a set number of months following the date of substantial completion of the work). When establishing such time period, landlords should take into account the warranty periods in any warranties given to the landlord by contractors and subcontractors performing the work and set a time period for correcting latent defects that is at least one month shorter than the shortest

warranty period. This will allow the landlord to make any claims for latent defects under the warranties before their expiration.

5. **Conditions on Construction Allowances.** When the landlord provides the tenant with a construction allowance, the tenant should be required to use the allowance by a certain date or it is waived. Any portion of the construction allowance remaining after the stated deadline should become the sole property of the landlord and the tenant should not be entitled to any credit, payment or abatement on account thereof. If the actual cost of the landlord's work exceeds the maximum construction allowance, the tenant should also be required to pay the landlord all such excess costs upon demand and the landlord should not be required to proceed with its work until the tenant pays such excess costs in full. If applicable, the landlord might also consider charging the tenant a construction fee that may be deducted from the construction allowance to compensate the landlord for its construction management services in connection with the landlord's work.

Each leasing transaction is different and should be evaluated on a case-by-case basis. Thus, some of the foregoing provisions may not be applicable to your particular transaction. However, incorporating even a few of these types of relevant provisions can have a positive impact on a landlord's bottom line.