

Commercial leasing essays examples



**ASSIGN
BUSTER**

A Proposal for the Lease of a Commercial Premise:

Following being engaged as the exclusive broker for the Explorer Club, I have searched for a suitable building to lease.

The Explorer Club (EC) requires a premise to set up a small retail store (1, 000 square feet) and a space in the same building for offices and an auditorium (50, 000 square feet). It intends to lease for a period of ten years with two and three, five year options for renewal. Most of the promising buildings have ground leases which have been used to secure loans from a high risk lender, Fortress Financial Inc. In five to seven years, the loan will be due for repayment. The remaining time on the leases is twenty years.

Tornado's building on Park Avenue is the best building available. Tornado is the ground lessee and prefers leasing using REBNY style leases that includes a holdover clause that will require the payment of the higher of either, 200% of fixed and additional rent or the fair market rent plus consequential damages.

The building which has fifteen floors will have three floors available for leasing in the next two months. These are the second, third and fifth floor. Being that each floor is 20, 000 square feet, the second and third floor, are appropriate for the auditorium. A portion of the fifth floor will be leased for the offices. A retail space at the ground level will be available in due time since, leases on other floors are expected to be available over the next three years. In case the auditorium is to occupy two floors subject to the approval of the lessees architect and the land owner, the project is bound to take more time and cost. As such, this will give enough time for a lease at ground level to become available.

Debt Liability

The debt secured using the building shall remain and continue to be the responsibility of Tornado during the subsistence of lease. EC shall not be liable to repay any amount, either principal or interest, accruing from that debt. EC should receive any information appertaining to the debt that may affect the lease agreement. This may entail the disclosure of the relevant terms of the debt, progress in servicing the debt and details of the consequences of default. Under no circumstance should the liability of any default attach to EC. The terms of the lease agreement should precise that the obligation servicing the debt lies with Tornado.

Renovations

EC will require to ameliorate the condition of the building to meet its requirements and hence, there will be expenditure in renovating the building. EC will need to increase the number of risers and electric power intended to service the auditorium. There will be removal of asbestos, upgrade of the AC for the auditorium and making the bathroom ADA-compliant. These renovations are likely to cost \$90RSF and may take a period of six months. The period and cost will increase if two floors will be used for the auditorium.

Tornado ought to assist and cooperate with EC in seeking regulatory approval for the renovations to be done as well as during the construction. EC shall be responsible for any expenditure incurred when renovating the building. Tornado will only contribute in making the bathroom ADA-compliant (Division). Other than that, the other form of participation will just be consenting to the renovations proposed. This may be a contentious area that

needs to be adequately addressed in the lease agreement. Another aspect of it that might be of contention is whether Tornado will compensate EC for any improvements once the lease lapses. I would propose a compensation of an amount equivalent to the fair market value of such renovations, taking into account the state of the building at that time(Dyson).

Duration of Lease

The duration of the lease should be in the lease agreement. For commercial purposes, the lease should commence once the renovations are over, regardless of who is responsible for the renovations. However, these may not always be agreeable with the lessor. In such circumstances, one should negotiate for the lease to commence during renovation. During this time, when no revenue is being generated by the asset, a smaller amount of rent ought to be negotiated for. Where the lessor does renovations the lease commences once the renovations are done. However, in a case such as which is anticipated with EC, a reasonable rent should be paid as renovations progress. The time of the lease should not be counted at this time. It should be counted when all works have been finalized to ensure that EC is not prejudiced(Blanker. org).

Expenditure on Building Services

All building services such as electricity, water, gas and service charges shall be chargeable to the lessee, EC. If any of these services are in arrears, the lessor ought to clear the balance. If EC pays such a balance, the amount ought to be deductible from the rent due to the lessor. The lessor shall be responsible for maintaining all the common areas of the buildings and charge the lessees as a service charge. A change of this position ought to be

arrived at following consultations with the lessees.

Various options are available with regard to electricity provision. One may choose sub-metering, inclusion of charges in the rent or direct metering. For EC, the recommended option would be direct metering to avoid being dependent on other individuals to generate one's electricity usage. Despite the cost involved in this option, it would be worthwhile since the business of operating an auditorium is likely to lead to consumption of a lot of electricity. Hence, it would only be prudent to be in control of such expenses and avoid any confusion that may be occasioned by including it as part of the rent.

Subletting and Assignment of Rights

EC shall have the right to sublet or assign its rights to the lease of the premises to any person during the subsistence of the lease(Dyson). This is subject to the consent of the lessor, who is required not to unreasonably withhold such consent. This will ensure that EC has a variety of options at its disposal such as leasing the premises to another person and curtail any effort to limit its use of the lease. For instance, were EC to find that leasing the premises would make more economic sense; it has the freedom to do so subject to the lessor's approval. The term is likely to be agreeable by both parties.

Roof Leasing

Part of the roof should be leased to EC for the mounting of its communication devices such as the broadcast antenna and receiver. A lease of part of the roof will ensure that no other lessee interferes with EC's property that is mounted on the roof. Further, it will give EC an opportunity to adequately utilize its space for its benefit without being wary of any interference by the

lessor or other lessees. The agreement should also specify the intended use of the roof so as to avoid any conflict with the lessor. The rights to that part of the roof will solely vest with EC.

Expenses and Tax Abatement

The operating expenses likely to be incurred by EC include renovation expenses, rent, service charges and the cost of electricity. EC is also required to pay for the rates through the lessor. The lessor should list this as a distinct item while indicating the amount payable. EC should benefit from any tax abatement occasioned by the renovations it will do. Therefore, the lessor ought to factor in such tax abatement. The reason why rates are payable through the lessor is due to the fact that there are other lessees in the building. Thus, leaving this responsibility on each individual lessee might cause default (Blanker. org).

Adequacy of Space

The building has more space that will become available within the next three years. Therefore, if EC is interested in leasing more space it is assured of it. In case EC requires more space, a term may be included in the lease that obliges the lessor to provide it as and when available. This is a crucial ingredient in leasing to ensure that if need arises to expand there is space (Dyson).

Holding over Clause

Despite the fact that the lessor preference for the inclusion of a holding over clause, EC may still enter into a lease agreement with the lessor. EC should push for a provision for compensation for any renovations by the lessor.

Once the lease lapses the lessor is likely to be more inclined to offer a new lease instead of paying for improvements. Alternatively, the lessor may seek for a renewal of the lease prior to the lapse of time. In effect, this avoids the holding over clause (Dyson).

Non-competition Clause

A non-competition clause should be part of the agreement to secure EC's interest by ensuring that no other entity engaging in similar business will be offered a lease in a building owned by the lessor. Thereby, the threat of competition is reduced (Blanker. org).

Dispute Resolution

The agreement must have a clear provision on the amount of rent and when and where it is payable. It should also detail the consequences of default in rent. Drawing from this, conflict is likely to arise between the lessor and lessee. It is therefore prudent to include a provision on how such conflict is to be settled. Mediation and arbitration are the most preferred due to the speedy resolution of disputes. Dispute resolution should feature in the lease agreement (Blanker. org).

Brokerage Fee

EC shall be required to pay an amount equivalent to the 5% of the rent payable to the lessor. This is the brokerage commission. If EC opts not to take up the lease, it will pay a one-off fee of \$ 5, 000. The lease of this building provides great promise for Explorer Club, both in the short term and the long term. It is an economical commercial lease agreement within the

prevailing circumstances. Therefore, I would recommend the Explorer Club to take up the lease due to the enormous benefits that are likely to accrue.

References

Blanker. org. (n. d.). Commercial Lease Agreement. Retrieved March 5, 2014, from Blanker. org: <http://blanker.org/commercial-lease-agreement>

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Dyson, A. (n. d.). Commercial Lease Checklist. Retrieved March 5, 2014, from The Ultimate Guide To Commercial Real Estate Leasing: <http://www.the-real-estate-lease-advisor.com/commercial-lease-checklist.html>