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Insights

Commercial Leasing Series: Top 10 Commercial Leasing Issues You Should Know Before Signing Your Lease!

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Krieg DeVault's **Real Estate and Environmental Team** are embarking on a new series designed to help focus on the areas of commercial leases and more nuanced commercial leasing topics. In the context of a commercial lease, you will find that one or more issues are particularly important to your business and its operation within the space. Other than the general business terms such as rent, term and square footage, there are several other provisions that you should examine before signing a lease. Below are our top 10 recognized commercial leasing issues facing businesses today:

1. PASS-THROUGH OF OPERATING COSTS AND MAINTENANCE
Depending on the lease structure, these provisions can be highly negotiated. For example, in a triple-net structure (where the costs of owning and operating the overall building are passed through to the tenant), there are a number of considerations, including imposing limits on increases in the amounts of operating expenses over the term of the lease, excluding certain costs that can be passed through, and imposing tenant audit rights.

2. THE LEASED PREMISES
This may seem like a simple issue, but it is important to have an adequate and clear description of the leased premises. This can be particularly important in the context of new construction, when often at the time of lease signing, the square footage of the space (which usually determines the amount of rent and the tenant's share of operating expenses) can only be estimated.

3. BUILD-OUT / TENANT IMPROVEMENTS
It is imperative at the outset to have clear guidance for the initial build-out of your space, including who is responsible for what, who pays for what and the sequence in which the build-out must occur in order to ensure timely delivery of the space. Leases often go awry in this stage due to poor planning and the need to deal with disputes between the parties when the project does not go as planned.

4. REPAIRS AND MAINTENANCE / FUTURE ALTERATIONS
The lease should also clearly state who is responsible for what maintenance and repair obligations to the space. The landlord will often be obligated to maintain the remainder of the building, common areas, and grounds to ensure that the tenant can continue to enjoy the full use of its space.

5. PERMITTED USE
These provisions govern what business and other activities can be conducted within the space. They are vital to the landlord to ensure that it can maintain the character and tenant-mix within its property, but tenants will need to ensure that they are not too limiting to restrict changes in business operations and/or lease assignment

or subletting scenarios mentioned below.

6. CASUALTY AND CONDEMNATION

Accidents and other forces of nature happen, and when they do, both parties generally want the space to be restored as soon as possible. However, tenants do not want to pay rent during the period of restoration and may need a right to terminate the lease. Events of condemnation (eminent domain), while not terribly common, do happen and the lease should not be silent in terms of what happens when they do.

7. ASSIGNMENT AND SUBLEASE RIGHTS

This is another example of the need for flexibility to address future business operations. These provisions typically need to be negotiated to allow the tenant to assign the lease in the context of future entity-level transactions such as a sale or a merger. A tenant will also want to have the right to sublease all or a portion of the space. Each of these rights are frequently limited by the landlord to ensure that it maintains an adequate level of control over who occupies the space and to ensure creditworthiness of the party obligated to pay rent for the space.

8. RELOCATION RIGHTS

This is a common provision found in commercial leases and is valuable to the landlord because it offers flexibility in the future leasing of the property. However, a relocation may disrupt the tenant's business and will be expensive. If the tenant is not successful in getting rid of this provision entirely, it will need to negotiate safeguards, including prior notice, ensuring that the tenant gets comparable space within the property and making the landlord responsible for the payment of costs associated with the relocation.

9. EVENTS OF DEFAULT AND REMEDIES

These provisions absent careful review can be fraught for each of the parties. From the tenant's perspective, it will want to ensure that it has notice of any alleged event of default and adequate opportunity to cure before the landlord can exercise remedies. Similarly, the landlord will want to ensure that it has events of default that can be triggered quickly, as well as enforceable remedies against the tenant.

10. OTHER SPECIAL TENANT RIGHTS

Depending on the type of lease and the tenant's business, the tenant may request additional rights with regard to the space, such as lease term extension rights, expansion rights, contraction or early termination rights, parking or exclusivity of use protections over other potential tenants in the building or other portions of the property.

Please contact one of the members of our **Real Estate and Environmental Team** to assist you with navigating your lease to make sure it meets the needs of your business.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.