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Commercial real estate lease term sheet template

Typical term for commercial real estate loan. Types of commercial real estate leases. Typical commercial lease terms. What is a lease term sheet.

Updated March 14, 2023A commercial lease agreement allows a landlord to lease a space for retail, office, or industrial use. The tenant's annual rent is based on the price per square foot (\$/SF) plus any triple-net (NNN) expenses. The timeframe (term) for a commercial lease is commonly 3-10 years with options to renew at pre-determined rates. By State By Type (12) Booth (Salon) Rental Agreement – Tenant pays the owner of a business, typically a salon, for the use of a booth or area for cutting/coloring hair, massage, cosmetics, or nails. Download: Adobe PDF, MS Word, OpenDocument Booth (Massage) Rental Agreement – For a therapist that is seeking to rent a room or share space within a spa. Download: Adobe PDF, MS Word, OpenDocument Co-Working Space Agreement – For office space that is shared amongst many tenants. Commonly no dedicated space. Download: Adobe PDF, MS Word, OpenDocument Facility Event Space Rental Agreement – An agreement to rent a setting for an event. Download: Adobe PDF, MS Word, OpenDocument Garage (Parking) Rental Agreement – Space that is to be used by parking a vehicle. Download: Adobe PDF, MS Word, OpenDocument Gross Lease Agreement – The tenant pays only a base rent amount and the landlord is responsible for all property expenses. Download: Adobe PDF, MS Word, OpenDocument Modified-Gross Lease Agreement – The tenant pays a base rent amount and the property expenses are shared between the landlord and tenant. Download: Adobe PDF, MS Word, OpenDocument Month-to-Month Lease – For commercial tenants renting for 30-day periods. Download: Adobe PDF, MS Word, OpenDocument Office Lease Agreement – For professional settings deemed non-retail. Download: Adobe PDF, MS Word, OpenDocument Percentage (%) Rent Lease Agreement – The tenant pays a base rent amount and a percentage (%) of their sales. Download: Adobe PDF, MS Word, OpenDocument Sublease Agreement – An agreement that allows a current tenant renting commercial property to release the premises to another tenant. Download: Adobe PDF, MS Word, OpenDocument Triple-Net (NNN) Lease Agreement – Tenant pays an agreed-upon amount to the landlord in addition to all expenses apart of the property including but not limited to taxes, common area maintenance (CAM's), and real estate taxes levied by the county and/or city/town. Download: Adobe PDF, MS Word, OpenDocument What is a Commercial Lease? A commercial lease is between a landlord and a tenant seeking to rent space for business purposes. The annual rent is calculated as a price per square foot (\$/SF) of the usable space with 1/12th due each month. Unlike residential leases, landlords will sometimes charge the tenant additional expenses such as common area maintenance (CAMs), real estate taxes, and insurance (depending on the type of commercial lease). Types of Commercial Space (3) There are three (3) main categories of commercial property: 1. Industrial Space Industrial properties are warehouses and factories often located outside of the cities. Prime industrial properties will be close to major transportation routes and will be up to code for manufacturing purposes. The most common types of industrial properties include heavy manufacturing, light assembly, flex warehouse, bulk warehouse, and R&D facilities. 2. Office Office-related properties include a large subset of buildings used for business operations. They can be in the heart of downtown or on the outskirts of towns and suburbs. These properties have three categories based on their quality of construction and location (Class A, Class B, and Class C). 3. Retail Retail properties are ideal for most shopping centers, restaurants, and small shops. These properties can make the lease a bit more complicated depending on the size of the building. The bigger the building, such as a shopping mall, the more likely that there will be multiple tenants renting out spaces for themselves. This will often include additional terms to negotiate how space will be blocked off for different tenants or if one business will have exclusive rights to the property. How to Lease Commercial Space (11 steps) Step 1 – How Much Space is Available? In order to figure out how much is available for use, you will need to measure and calculate the square footage. This can be completed by multiplying the Length and Width of the interior usable space. Step 2 – Set the Price per Square Foot (\$/SF) Select the monthly rent that you would like to charge the new tenant. Unlike residential property, commercial rent is described as a price per square foot (\$/SF). When trying to figure the rental amount, it is a good idea to set a price that is close to what others are asking in your area. Step 3 – Lease Type: Gross or Triple-Net (NNN) When choosing what to charge the tenant a major question they will ask is if the rental amount includes the insurance, real estate taxes, and/or the maintenance of the property. This is very important and should be displayed when marketing the property. Gross Lease – The tenant only pays the monthly amount written in their lease. The landlord will pay the real estate taxes, insurance, and maintenance on the property. Triple (NNN) Lease – The tenant pays the monthly amount written in their lease along with the real estate taxes, insurance, and maintenance of the property. Step 4 – Hire an Agent or Market Yourself Now you will need to get the property listed. This lets other businesses and individuals who are looking for property aware of the availability. Therefore you will need to decide if you want to market the property yourself or to pay a real estate agent to market the property on your behalf.

[] Not applicable (gas service not provided)

6. Permitted Use: (describe)

7. Minimum Amount of Lessee's Casualty Insurance: \$

8. Minimum Amount of Lessee's Comprehensive General Liability Insurance: \$

9. Notices:

If to Lessor:

(Name of Person, Address, Phone Number, Fax Number, and E-Mail)

If to Lessee:

(Name of Person, Address, Phone Number, Fax Number, and E-Mail)

10. Effective Date: (date)

11. Special Provisions (if any) (describe)

Witness our signatures this (date)

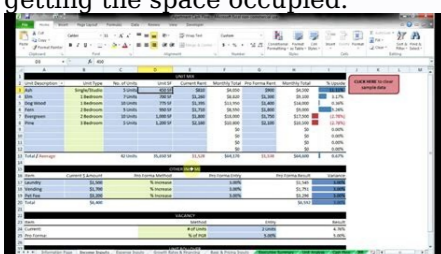
(Name of Lessor) (Name of Lessee)

By: (Printed Name & Office in Corporation) (Printed Name & Office in Corporation)

(Signature of Officer) (Signature of Officer)

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Every real estate agent charges their own rates although it is the industry norm to charge between 4-6% total lease amount. 50% of the fee is paid upon lease execution and the other 50% is paid when the tenant takes occupancy. So if a lease is for 5 years at \$1,000 per month the fee to the agent would be \$2,500 (\$50,000 multiplied by 5% = \$2,500). Popular Commercial Real Estate Companies CBRE Group JLL Cushman and Wakefield Step 5 – List the Property If the property is being handled by an agent then you probably do not have to worry about the property being listed. If you choose to market the property yourself, then you will have to use the power of the internet as your sole source to getting the space occupied.



When adding your property it is best to have nice looking images of the interior and exterior along with any common areas. It is also important to write all the amenities, parking, water/sewer, and any other information that is necessary to the needs of a prospective tenant. Popular Commercial Listing Websites Step 6 – Negotiating the Lease When dealing with a prospective tenant it is best to understand their needs and come to an agreement.

Affidavit And Memorandum Of Agreement For Purchase And Sale

State of TEXAS
County of _____

BEFORE ME, the undersigned authority, on this day personally appeared Mack Baker, President of The Pinnacle Group, L. C., who being first duly sworn, deposes and says that:

- An agreement for the Purchase and Sale of the real property known as _____, being more fully described as:
Lot _____ (), Block _____ (),
Section _____ (),
City of _____, County, Texas,
was entered into by and between the Affiant, as Buyer, and _____, as Seller(s), on the _____ day of _____, 20____.
- The closing of the purchase and sale of said real property, per the terms of the Agreement, is scheduled to take place on or before the _____ day of _____, 20____, or as soon as all title, flood insurance, and building permit issues are resolved.
- A copy of the agreement for purchase and sale of said real property may be obtained by contacting _____, whose mailing address is _____, and whose telephone number is _____.

Dated this _____ day of _____, 20____.

FURTHER AFFIANT SAYETH NOT.

Signed, sealed and delivered in the presence of

AFFIANT – Mack Baker, President

Sworn to and described before me this the _____ day of _____, 20____.

(Seal) _____
Notary Public, State of Texas
Commission expires: _____

(Acknowledgment)

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____ by _____ Mack Baker, President of The Pinnacle Group, a Texas Limited Liability corporation, on behalf of said corporation.

Notary Public, State of Texas
Commission expires: _____
(Seal)

AFTER RECORDING RETURN TO:

The Pinnacle Group, LLC.
402 Carter St.

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Therefore, it may be a good idea for you and your agent (if any) to get creative with the tenant in making a deal that works for both parties. Example – Charge the tenant a percentage (%) rent of their sales rather than a higher monthly amount. Therefore, if the tenant makes money, you benefit as well. Step 7 – Conduct a Credit Check Unless you are dealing with an established company chances are that you will be dealing with an entrepreneur or small business. Therefore you will need to conduct a background and credit check to see their financial status. Whether you're checking a business or individual the best website to use is Experian. Perform a Business Credit Check (Experian) – This will show the credit history of the company with details on how fast they pay-back their vendors and annual sales. Cost is \$39.95 to \$49.95 depending on the selected plan. View a Sample Business Report. The score will be between 0 and 100 with any score above 80 being credit-worthy. Perform an Individual Credit Check (Experian) – It is best to also conduct a credit check on the owner of the business and if they have any financial liabilities that could be separate from the business. Cost is \$14.95 to the prospective tenant. View a Sample Individual Report. Step 8 – Approve or Disapprove the Tenant It is now time for the landlord to make a decision on whether to approve or reject the tenant. If rejected, the tenant should be informed through a Tenant Rejection Letter. Personal Guaranty – If the tenant's business is not credible then the landlord should consider having the tenant sign a Personal Guaranty which binds the owner of the Company to the lease. So if the tenant defaults the individual's assets would be liable, not just the business. Step 9 – Determine the Security Deposit Once the tenant has been approved by the landlord the Security Deposit should be made known to the tenant. In residential real estate, there are State Laws that limit how much a landlord may ask from the tenant. In commercial real estate, there are no limits to how much the landlord would like to charge the tenant. The landlord will commonly ask between 2-3 months' rent in case the tenant stops paying the monthly rent or to safeguard against any damage that the tenant may cause during their time on the property. Step 10 – Write the Lease Use an attorney or draft the lease yourself. Make sure to gather all the information about the property and the tenant and enter into the agreement. Once completed, the document should be signed with the tenant and landlord in the presence of a notary public. This way, the signatures are proven to be valid and the agreement is much more likely to hold up in court if its legality is ever questioned. Step 11 – Taking Occupancy After the security deposit has cleared and the lease has been signed the tenant should take occupancy. This means that the tenant can begin using the space as directed for use in the lease. Both parties will be held accountable for their specified duties until the end of the lease term. Estoppel Certificate – May be requested by the landlord after lease signing to certify a lease exists between the tenant and landlord. Required Clauses Americans with Disability Act (42 U.S. Code § 12183) – Also known as the "ADA", requires that any commercial tenants which offer "public accommodation" (such as a restaurant, retail store, etc.) or have at least fifteen (15) employees adhere to all handicap access rules. This rule is only grandfathered to properties that have not been built or had renovations since 1992. Per 42 U.S. Code § 12183 if the Lessee is using the Premises as a public accommodation (e.g. restaurants, shopping centers, office buildings) or there are more than 15 employees the Premises must provide accommodations and access to persons with disabilities that is equal or similar to that available to the general public. Owners, operators, lessors, and lessees of commercial properties are all responsible for ADA compliance. If the Premises is not in compliance with the Americans with Disability Act any modifications or construction will be the responsibility of the Lessor.

CONTACT INFORMATION	
Name:	USLEGAL
Address:	10000 West 10th Street, Suite 1000, Denver, CO 80202
City:	Denver, CO
State:	CO
Zip:	80202
Phone:	(303) 733-8888
Fax:	(303) 733-8889
Email:	info@uslegal.com
Website:	www.uslegal.com

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Name:	USLEGAL
Address:	10000 West 10th Street, Suite 1000, Denver, CO 80202
City:	Denver, CO
State:	CO
Zip:	80202
Phone:	(303) 733-8888
Fax:	(303) 733-8889
Email:	info@uslegal.com
Website:	www.uslegal.com

Hazardous Waste (42 U.S. Code § 6901) – Forces the tenant to sign in writing that they will adhere to any federal, State, or local laws in regards to the disposal of hazardous wastes. "Shall mean any and all federal, state, or local laws, ordinances, rules, decrees, orders, regulations, or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under, or about the Premises, the Building, or the Property, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Hazardous Materials Transportation Act, any other law or legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing." Other Lease Terms In addition, there may be other areas of the lease, outside of the monthly rent, that the parties may want to negotiate such as: Option to Renew – Use if the tenant would

like to have the option to stay in the property for an extended period, then the option to 'Option to Renew' the lease. This gives the tenant the right to a specified rental for a specified period of time. Option to Purchase – Use if the tenant wants the option to purchase the property for a specified price during the course of their lease. First (1st) Right of Refusal – If the property is for sale and goes under contract with a buyer, this allows the tenant the option to purchase the property for the same price. The tenant will usually be given 30 or 60 days to secure financing if they choose to purchase the property. Sample 1. THE PARTIES. This Commercial Lease Agreement ("Agreement") made on [DATE], by and between: Landlord: [LANDLORD'S NAME], with a mailing address of [ADDRESS] ("Landlord") who agrees to lease the Premises to: Tenant: [TENANT'S NAME], with a mailing address of [ADDRESS] ("Tenant"), who agrees to rent the Premises under the following terms: Collectively the Landlord and Tenant shall be known as the "Parties." 2. DESCRIPTION OF LEASED PREMISES. The Landlord agrees to lease to the Tenant the following described space: Street Address: [ADDRESS] Square Feet: [#] SF Type of Space: [ENTER TYPE] (retail, office, industrial, etc.) Other Description: [DESCRIBE] Hereinafter known as the "Premises." 3. USE OF LEASED PREMISES. The Tenant agrees to use the Premises for: (check one) – All purposes legal under law. – Only the following purposes: [ENTER PURPOSE]. Any change in the above-mentioned purposes of the Premises shall only be permitted upon the Landlord's prior written consent. 4.

HOMEOWNER FINANCIAL STATEMENT

Loan # _____		Property Address _____		
Borrower Name _____		Social Security Number _____		
Property Address _____				
Mailing Address (if Street, Apt.) _____				
Mailing Address (City, State, Zip) _____				
Total number of persons living at address _____		Number of dependents at this address _____		
Home Phone _____		Work Number _____		
Co-Borrower Name _____		Social Security Number _____		
Home Phone _____		Monthly Income (Wages) \$ _____ / month		
Have You rented Credit Counseling Services? Yes <input type="checkbox"/> No <input type="checkbox"/>				
Additional Income (not wages): \$ _____ / month Source: _____				
Mortgage Include: Military, Child Support, Disability, Rental Income, Social Security, Welfare/Paid Off Mortgage				
ASSET TYPE	Estimated Value	LIABILITY TYPE	Payments per month	Balance Due
Home		Mortgage - Child Support		
Other Real Estate		Dependent Care/Child Care		
Checking Accounts		Auto		
Savings - Money Market		Other Mortgages		
IR/401(k)/Savings Accounts		Personal Loans - Credit Cards		
MORTGAGE Accounts		Medical Expenses		
Stocks, Bonds, CDs		HOA Fees/Dues		
Home Equity		Auto/Lease		
Auto 1		Tax Liens & Homeowners Insurance		
Auto 2		Utilities		
Real		Rent - Gas		
		Other Miscellaneous Expenses		
Other Investments _____				
Reason for delinquency _____				

I (we) agree that the financial information provided is an accurate statement of my (our) financial status. I (we) understand and acknowledge that any action taken by the lender of my (our) mortgage loan on any (our) behalf will be made in strict reliance on the financial information provided. My (our) signature(s) below grants the holder of my (our) mortgage the authority to confirm the information I (we) have disclosed in this financial statement, to verify that it is accurate by ordering a credit report, and to contact my real estate agent and/or credit counseling service representative if applicable.

Dated this _____ day of _____, 2007.
By _____ Date _____
Signature of Borrower
By _____ Date _____
Signature of Co-Borrower

TERM OF LEASE. The term of this Agreement shall be for a period of [TERM] commencing on [START DATE], and expiring at midnight on [END TERM] ("Initial Term"). 5. SECURITY DEPOSIT. The Tenant is: (check one) – Not Required to Pay a Deposit. There shall be no deposit required for the successful performance of this Agreement by the Tenant ("Security Deposit"). – Required to Pay a Deposit. The Tenant is required to pay \$[AMOUNT] and shall be due and payable in advance of the Term or at the signing of this Agreement ("Security Deposit"). The Security Deposit shall be held in escrow by the Landlord in a separate bank account as security for the successful performance of the terms and conditions of this Agreement.

The Security Deposit may not be used to pay the last month's Rent unless written permission is granted by the Landlord.
6. RENT. The Tenant shall be obligated to pay \$[AMOUNT] each month with the first payment due upon the commencement of this Agreement and each monthly installment payable thereafter on the [#] day of each month ("Due Date") after the Initial Term ("Base Rent"). The Base Rent shall also be applied to any pro-rata period when the Tenant occupies the Premises for less than a one (1) month period. a.) Percentage Rent. In addition to the Base Rent, Tenant shall be: (check one) – Not required to make payments related to Tenant's sales or revenue ("Percentage Rent"). – Required to pay [#]% of [TYPE OF SALES] (gross sales, net sales, etc.). Such payment shall be made with a receipt and proof of calculation and paid each: (check one) Monthly Quarterly Annually The Base Rent and the Percentage Rent shall be referred collectively to as the "Rent." 7.

LATE FEE. If Rent has not been paid on the Due Date, there shall be: (check one) – No Late Fee. The Tenant shall not be liable to pay a penalty for any late payment due under this Agreement. – A Late Fee. If the Rent is not paid within [#] days of the Due Date, the Landlord will charge a penalty in the following manner: (check one) – Flat Fee. The late fee shall be equal to \$[AMOUNT] and applied each occurrence day until the Rent is paid in full. – Based on Interest. The late fee shall be equal to the Rent Due with interest accumulating at a rate of [#]% per annum and applied each occurrence day until the Rent is paid in full. All late payments made related to Rent shall be first applied to the late fee and all remaining amounts toward the outstanding Rent amounts. 8. EXPENSES. In addition to the Rent, the Parties shall be obligated for the following expenses related to the Premises: Landlord's Responsibilities: [LANDLORD'S RESPONSIBILITIES] Tenant's Responsibilities: [TENANT'S RESPONSIBILITIES] Shared Responsibilities: [SHARED RESPONSIBILITIES] 9. OPTION TO RENEW. The Tenant may: (check one) – Not Renew this Agreement. – Renew this Agreement. The tenant may have the option to renew this Agreement with a total of [#] renewal period(s) with each term being [#] year(s) [#] month(s), which may be exercised by giving written notice to the Landlord no less than 60 days prior to the expiration of this Agreement or renewal period thereafter ("Renewal Periods"). Rent for each Renewal Period shall: (check one) – Not increase. – Increase as calculated by multiplying the Rent by the annual change in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics by the most recent publication to the option period start date. – Increase by [#]% – Increase by \$[AMOUNT] The Initial Term and any renewal periods mentioned shall be collectively referred to as the "Term." 10. LEASEHOLD IMPROVEMENTS. The Tenant shall be: (check one) – Allowed to Make Leasehold Improvements. The Tenant shall be allowed to make leasehold improvements without the written consent of the Landlord. – Not Allowed to Make Leasehold Improvements. The Tenant shall not be allowed to make leasehold improvements without the written consent of the Landlord.

GOVERNING LAW. This Agreement shall be governed by the laws of the State of [GOVERNING LAW]. 12. NOTICES. Payments and notices shall be addressed to the following: Landlord Name: [NAME] Address: [ADDRESS] Phone: [PHONE] E-Mail: [E-MAIL] Tenant Name: [NAME] Address: [ADDRESS] Phone: [PHONE] E-Mail: [E-MAIL] IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms and conditions of this Agreement by their signatures below on the dates indicated. Landlord's Signature: _____ Date: _____ Print Name: _____ Tenant's Signature: _____ Date: _____ Print Name: _____ Supplemental Forms Rental Application – Allows a landlord to verify the income and credit of a business and its owner. Personal Guarantee – Requires the tenant or 3rd party to be personally liable for the obligations under a commercial lease. Experienced commercial real estate landlords and tenants, as well as their brokers and consultants (collectively, "CRE Professionals"), are well aware of the importance of the prospective landlord and tenant reaching agreement on a comprehensive term sheet (often referred to as a "letter of intent") as part of the commercial space lease transaction process.

The term sheet will be relied upon by both parties and their counsel as the "blueprint" of the material terms of the proposed lease. In reliance on that blueprint, the parties will commence spending considerable time and expense preparing, reviewing and negotiating the lease agreement, as well as the performance of landlord's due diligence with respect to the tenant (and applicable guarantors), the performance of tenant's due diligence with respect to the applicable leased premises, and the applicable party's engagement of architects, engineers and contractors with respect to any proposed improvements to be made to the space. This reliance is irrespective of the fact that the term sheet is typically non-binding, other than, in some instances, specific provisions concerning exclusivity periods, confidentiality, brokerage indemnities and certain other deal-specific terms. Without a term sheet accurately reflecting the material terms of the proposed lease, the risk of the lease transaction being delayed or even terminated at some point in the lease negotiation process – when substantial time and money has already been spent – is heightened considerably. However, determining the "material terms of the lease" to be set forth in the term sheet for a space lease is an art, not a science. In particular, CRE Professionals are aware that they cannot attempt to cover every aspect (not even every material aspect) of a lease within the term sheet. Rather, the determination of what to negotiate into the term sheet involves an assessment and balancing of the risk of (i) having the lease preparation process delayed by excessive negotiation, stalemates on important issues or worse (i.e., losing the deal) due to an incomplete term sheet versus (ii) overly negotiating the term sheet and failing to move the transaction to the lease drafting stage in a timely fashion (which delay could even jeopardize the ability to get the lease transaction completed). In addition, in many cases, a strategic judgement will be made to purposely exclude a material term from the term sheet, with the intent to first raise the material term during the lease negotiation process and when the lease is closer to execution. In almost every instance, certain terms of the lease will be included in the space lease term sheet as they represent the threshold, material terms of the lease, such as the identification of the landlord and tenant, identification of the space to be leased, the fixed rent (and any free rent or abatement periods), the lease term, and any landlord work obligations (or tenant improvement allowance). And many terms of the lease, subject to unusual deal specific issues, are generally recognized as not material enough to affect the overall business deal, and are typically excluded from the term sheet, such as default and remedies, basic repair and maintenance obligations, and casualty and condemnation rights. Over the years, in our real estate practice, we have found that there are several specific provisions of the lease commonly deliberated upon by landlords and tenants as part of the "art" of whether to include or exclude, as applicable, such provisions from the space lease term sheet. These provisions include the following: (i) use restrictions, (ii) assignment and subletting rights, (iii) lease term extension options and rights of first offers/refusals on expansion space, (iv) security deposits and required guaranties, and (v) permitted alterations. A discussion of these five material clauses is set forth below. Use Restrictions In certain contexts, such as office leasing, there will be use of the space beyond the intended use of the space that it will want to raise at the term sheet stage.

In a retail lease and, in many instances in an industrial and warehouse lease, a landlord is most often well advised to be clear in the term sheet on any material limitations on the tenant's permitted use, as a landlord may (a) have significant concerns over the control of the tenant mix at the property, (b) be required to change the certificate of occupancy, (c) be subject to use restrictions recorded against the property or required under other tenant leases or agreements, or (d) have a belief that certain uses could be destructive to the property's market value. Likewise, it may be important for the tenant to have certainty, upfront, that all of its planned and potential uses of the property will be permitted under the lease. Depending upon the leverage the tenant has, it may also be concerned about how its business may change in the future, or its ability to assign or sublet the leased premises to a different user in the future; and, accordingly, the flexibility to alter its use (or allow its assignee or subtenant to engage in a different use) may be a materially enough element that it should be raised at the term sheet stage. Assignment and Subletting As is the case with almost all of the material terms of the lease, the ability of a tenant to negotiate assignment and sublet rights in a space lease will be driven primarily by the nature of the tenant, the length of the lease, and the size of the space relative to the property, as well as market conditions. When dealing with a small tenant, for a lease of a small portion of the applicable property and/or for a short lease term, it may be unnecessary to raise assignment and sublet rights in the term sheet. The tenant can expect that it will have little, if any, rights to freely assign or sublet the lease. The one caveat is that any tenant should consider the possibility that it may sell its business (including by merger, or by selling equity in the tenant) during the lease term. In that instance, the tenant (even in a "small lease") may want to negotiate, upfront in the term sheet, the exclusion of the sale of its business from any assignment and sublet prohibition. On the other end of the spectrum, when dealing with a more significant tenant, a lease of a substantial portion of the property and/or a longer lease term, the issue of assignment and sublet rights may be critical and material enough to warrant raising at the term sheet stage. A tenant under such a lease will need to consider, in addition to the sale of its business set forth above, (a) its potential need to sublet and/or license space in connection with its business plan, (b) flexibility to change its business plan, which may involve the need to sublet portions of the space, (c) the potential occupancy of the space by an affiliate of such tenant whether by sublease, assignment or license, and (d) its lease "exit" strategies; and in each of these contexts, to what extent it is willing to agree to be subject to the landlord's prior consent (whether reasonable or not), landlord recapture rights, or the payment of any consideration or profits to the landlord. Even the landlord, in the context of a significant tenant or lease, may be well advised to set forth the assignment and sublet rights in the term sheet, being well-aware that these provisions can become a major issue if they are not resolved until lease negotiations.

Depending upon the various factors affecting the parties' negotiating leverage (as set forth above), the landlord can clarify such matters as in what instances the tenant will need the landlord's consent to an assignment or sublet, whether the landlord will be required to be reasonable, whether and in what instances the landlord will have the right to recapture the leased premises, and any rights for the landlord to share in the profits of any assignment or sublet. Extension Option and Right of First Offer/Refusal on Expansion Space An important consideration for any tenant entering into a lease will be its need to continue in its space beyond the initial lease term, and its ability to expand the size of the space being leased as its business grows. These factors may be even more material in connection with a retail, industrial or distribution lease, where the need to relocate could be very costly (including the costs of entering into a new lease transaction, moving and space build-out costs, as well as the disruption to customers, suppliers, and employees). If the tenant's need to have an extension option on its lease term, or to have the right to expand into other space that becomes available during the lease term, is material to the tenant's business plan, in almost all instances the tenant is well-advised to raise this item at the term sheet stage. There may be strategic reasons, in certain specific circumstances, why a tenant would want the landlord to get deeper into the leasing process before this right is raised. But these options, especially a right of first offer/refusal on expansion space, may have such a material impact on the landlord's ability to maximize its rents at its property that it could significantly impact the landlord's ability to agree to the lease transaction. Accordingly, first raising these concepts during the lease negotiation process puts the tenant at risk of a protracted negotiation (and even a stalemate and loss of the deal) relating to these concepts. Security Deposit and Guaranties Undoubtedly, a material consideration for any landlord will be the financial viability of the tenant and the need to have security enhancements to better ensure that the tenant will satisfy its obligations under the lease. The need for security will be significantly impacted by the lease-up costs the landlord will incur (i.e., brokerage fees, landlord's work, and tenant improvement allowances, etc.) in reliance on the lease. In most instances, the need of the landlord to obtain an appropriate security deposit and/or have a financially acceptable guaranty all or a portion of the tenant's obligations, the most common security enhancements for tenant obligations under leases, will be critical.

Accordingly, in almost all instances, the landlord is well-advised to raise any security deposit and guaranty requirements at the term sheet stage. There may be strategic reasons why a landlord would not want to specify these requirements at the term sheet stage. The most common reason we have seen is that the landlord wants to complete its financial due diligence while the lease is being prepared and negotiated. In those instances, the requirement of a security deposit (including whether cash, letter of credit or other form of deposit will be required) and/or a guaranty (including any basic terms, such as a "good guy" guaranty[1]), as the case may be, should at least be referenced in the term sheet. In addition, in those instances, the landlord should be aware of the risk of a protracted negotiation (and even a stalemate) relating to the terms of the security deposit and/or any required guaranty at a later point in the lease negotiation process. Permitted Alterations Any tenant who intends on making physical alterations to its leased space, as a prerequisite for the tenant's use of its space, in most instances would be best served by having its initial work pre-approved by the landlord at the time it enters into the lease. Depending upon the circumstances, this pre-approval may range from approval of full-blown plans and specifications, to conceptual drawings, to providing a general description of the alterations and that the landlord will not unreasonably withhold its consent to approving the tenant's alterations. At the term sheet stage, the tenant should consider whether its wants the landlord to be aware that it will be seeking such a pre-approval upon entering into the lease. On the other hand, if the landlord is aware that a third-party consent may be required for approval of certain alterations, such as the approval of an adjacent owner under a covenant (often found in "reciprocal easement agreements"), an architectural review board (often found in condominiums and homeowners' associations) or a particular governmental agency (such as the NYC Landmark's Commission), the landlord may need to consider making the tenant aware of these requirements at the term sheet stage. In most lease terms sheets, the parties will not cover the rules concerning ongoing general alteration rights. However, where the lease involves a longer lease term, a greater portion of the landlord's property, and/or a more substantial tenant (in terms of both its financial and non-financial wherewithal), the tenant may be best served to clarify at the term sheet stage what non-structural alterations and structural alterations it will be permitted to make without landlord's consent; or potentially with the landlord agreeing to not unreasonably withhold its consent to certain alterations. For more information on the topics discussed in this update, please contact any member of Tannenbaum Helpert's Real Estate Law practice or your usual contact at the firm. [1] A "good guy" guaranty is a guaranty of payment and performance of the lease, but the guarantor's liability is generally limited to obligations that accrue under the lease prior to the tenant's delivery of vacant possession of the leased premises to the landlord in the condition required under the lease. In almost every case, the guaranty requires prior notice (most typically, 60 to 180 days prior notice) of the guarantor's election to return possession of the leased premises and cut-off its liability under the lease. For more information on the topic discussed, contact: Eric S. Schoenfeld | schoenfeld@thsh.com | 212-508-6713 Ari Davis | adavis@thsh.com | 212-508-6796