

Form: Checklist for Office Leases

Description: A checklist of issues to look out for in analyzing office leases

CHECKLIST FOR OFFICE LEASES

1. Space
 - (a) What is the rentable square footage?
 - (b) What is the usable square footage?
 - (c) Is rent based on usable or rentable square footage?
 - (d) Verify square footage number provided by the landlord.
2. Permitted Uses of the Premises
 - (a) What uses of the premises are permitted?
 - (b) Is the permitted use clause broad enough for possible changes in the business?
 - (c) Is the permitted use clause broad enough for potential assignments or subleases?
 - (d) Can the use clause be drafted to include “any lawful purposes”?
 - (e) Can uses be changed with landlord’s consent, which consent can’t be unreasonably withheld or delayed?
3. Primary lease term
 - (a) What is the commencement date of the lease?
 - (b) What happens if the space is not ready on the commencement date? Is there rent abatement, monetary damages, right to cancel the lease, or other remedies specified?
 - (c) What is the termination date?
 - (d) Does the landlord have the right to terminate early without cause?
 - (e) Does the tenant have the right to terminate early by payment of a fee?
4. Rentals
 - (a) What is the base rent for the primary term?
 - (b) Are there escalation clauses?
 - (c) Are there cost of living increases?
 - (d) Is there a cap on any rent increases?
 - (e) Is there a reasonable grace period and written notice before a late charge is imposed?
5. Common area maintenance, HVAC, and Operating costs
 - (a) What does the tenant have to contribute for common area maintenance, ventilating, heating, air conditioning, and other building operation costs?
 - (b) Is there a cap?
 - (c) Can the amount be increased each year?
 - (d) Real estate taxes and other impositions:
 - (i) Does the tenant have to pay a portion of the real estate taxes?
 - (ii) What increases over base year are allowed?
 - (iii) Is there a cap on tax increases?
 - (iv) Does the tenant have to pay increased taxes that may occur on sale of the building?
 - (e) Are there any special provisions or exceptions on the payment of these expenses?

- (f) When is payment due?
 - (g) What detailed reports does the landlord have to provide the tenant showing the actual expenses?
 - (h) What audit rights does the tenant have to review the landlord's books and records?
 - (i) Are there provisions made for weekend and holiday service? What are the charges?
 - (j) Does the tenant have a remedy for service interruption?
6. Tenant Improvements
- (a) What tenant improvements will be necessary?
 - (b) What is the cost?
 - (c) How much time will it take to complete the tenant improvements?
 - (d) Will the landlord contribute to the cost for the tenant improvements?
 - (e) What approvals will be necessary?
 - (f) What permits will be necessary?
 - (g) Does the landlord or the tenant own any improvements?
7. Repairs and replacements:
- (a) What responsibility does the tenant have for repairs or replacements?
 - (b) What responsibility does the landlord have for repairs or replacements?
 - (c) At the end of the tenancy, is tenant's obligation to return the premises in same condition at the beginning of tenancy, excluding (1) ordinary wear and tear, (2) damage by fire and other unavoidable casualty, and (3) alterations previously approved by landlord?
8. Utilities:
- (a) Direct supply or individually metered?
 - (b) Method of computing payment?
9. Assignment and subletting:
- (a) Is the landlord's written approval required?
 - (b) What standard is there for approval? absolute discretion? reasonable approval?
 - (c) Does the landlord have the right to cancel the lease if notified of a proposed assignment of sublease?
 - (d) If the assignment or sublet is at a higher price than the base rent, who keeps the excess? or what split is there?
 - (e) Can the lease be assigned to affiliates of the tenant without landlord approval?
 - (f) Can the landlord terminate the lease if the stock ownership of the tenant changes?
10. Subordination and attornment:
- (a) All present or future mortgages?
 - (b) Execution of estoppel certificates required?
 - (c) Tenant agrees to attorn to landlord's successor in interest?

11. Destruction:
 - (a) Is there a right of cancellation for the tenant in the event of destruction?
 - (b) What obligation does the landlord have to rebuild?
 - (c) Does the tenant share in any proceeds from insurance?
12. Indemnity and Disclaimer:
 - (a) Indemnity mutual or tenant only?
 - (b) Waiver of claims mutual or tenant only?
 - (c) Waiver of subrogation?
 - (d) Landlord liability limited to interest in property?
13. Default:
 - (a) Does the tenant have a cure period after notice of a breach?
 - (b) What remedies are available for breach?
14. Landlord's warranties:
 - (a) Quiet enjoyment of premises by the tenant?
 - (b) First class services?
 - (c) Security building?
 - (d) Ownership of building?
15. Option to renew
 - (a) Does the tenant have the option to renew the lease?
 - (b) How long is the renewal option?
 - (c) How far in advance must the option be exercised?
 - (d) How is rent determined for the renewal period?
16. Right of first refusal or first offer for additional space
 - (a) What is the scope of any right of first offer or first refusal?
 - (b) How is rent determined?
 - (c) How long does the tenant have before exercising the right?
17. Security deposit:
 - (a) What is the amount?
 - (b) Can it be a letter of credit?
 - (c) Is there interest on the security deposit?
 - (d) Does the lease provide for the return of the tenant's security deposit within a set number of days after termination of the lease?
18. Guaranty:
 - (a) Is a personal guarantee required?
 - (b) When does the guarantee terminate?
19. Mortgages:
 - (a) Can any mortgages adversely affect the tenant's rights if foreclosed upon?
20. Free rent:
 - (a) Will the landlord grant a free rent period?
 - (b) When does it have to be returned (e.g., on breach of lease)?

21. Are there any peculiar landlord obligations that should be included?
22. Compliance With Law:
- (a) Does landlord warrant that the premises are in compliance with applicable law?
 - (b) If tenant is obligated to comply with applicable law, does it exclude matters that should more properly be the responsibility of the landlord (e.g., asbestos problems, disability access)?
 - (c) Is landlord obligated to comply with all laws applicable to its control of the building?
23. Insurance:
- (a) What insurance is the tenant required to maintain?
 - (b) What insurance is the landlord required to maintain?
 - (c) Has the tenant's insurance agent reviewed the insurance requirements in the lease?
24. Rules and Regulations for the Building:
- (a) Are there specific rules and regulations in existence?
 - (b) Can the rules be changed without approval of tenant?
 - (c) Is the landlord required to enforce the rules and regulations against other tenants?
 - (d) Are there any rules that interfere with the expected operations of the tenant?
25. Rights of Entry:
- (a) Exclusive of emergencies, what notice must the landlord give in advance for entry into the tenant's premises?
 - (b) Are there any restrictions on landlord interfering with tenant's business in showing the premises to buyers, lenders or prospective tenants?
26. Signage:
- (a) What signage is the tenant allowed to put in or about the building and premises?
27. Parking:
- (a) How many parking spaces will be available to the tenant?
 - (b) At what cost?