

LANDMARK PARTNERS, INC.

COMMERCIAL REAL ESTATE CONSULTANTS

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Send Joe your lease questions at Joes@Lndmrk.net

Do you know what the most expensive lease clauses are, and what they could cost you?

Have a lease question? [Click here](#) to submit it to us.

With over twenty-five (25) years of commercial real estate experience working on hundreds of lease transactions representing tenants we can help you navigate the market and the lease. Whether you have a lease coming due that you want to renew or need to move we'll save you time and money.

Rent : Seems straight forward enough, you sign a lease and pay rent. Well that is the tip of the ice berg as the saying goes. Most leases define rent based upon a triple net approach. So what is triple net vs gross. The net net lease breaks out the extra items that you will in fact be responsible for in addition to the Net Rent. In fact these categories are where the opportunities arise to protect yourself from being over charged.

First make sure that the square footage you are being charged for matches the square footage you are renting. Check the math, I know it's simple but we have seen numerous times where the math is wrong, double check it. Make sure the square footage is architecturally verified.

Second, confirm what is included in the rent, ie; landlord services, access to common areas, repairs to the building or mechanical systems. Make sure you know what you are getting for what you are paying. We always review lease terms with our clients to make sure that the deal meets their expectations.

Finally, is the lease net or gross. The actual lease terms should clearly spell out the type of lease you are entering into. If you are not sure what a gross vs net lease is please call us we will be glad to review your present lease with you.

Additional Rent: Give us a call or send us an email to receive more information on this clause.

Taxes: Property taxes are a major consideration when reviewing property alternatives. Minnesota remains a state that relies heavily on commercial properties for property tax revenue, even after the tax relief that has recently occurred. You can't avoid paying property tax but you can be as informed as possible about what can be done about it and how to avoid choosing a building that is about to receive a big tax increase.

Is there anything you can do about increase in property taxes? On behalf of some of our clients we have been able to negotiate a lease clause that allows them to protest the tax valuation, at their expense. If successful, the landlord will reimburse them for reasonable expenses of the tax appeal.

If you are looking at moving into a building that is experiencing higher vacancy your tenancy will increase the value of the building. Your tenant improvements will add value too. The tax assessor will get a notice of the building permit and then reexamine the building's valuation as a result of your tenancy and improvements. We help our client's plan accordingly.

Sublet: Most tenants pay little attention to this clause ... often buried in the assignment clause in the middle of the lease. Most tenants see subletting as a secondary issue, unconcerned about leaving space they've just decided to lease. Or the landlord's agent has suggested that they would do everything to relocate a growing firm, even stating that the landlord owns lots of property in the area and normally works with tenants to meet their growing needs. In reality though, landlords sell and buy properties like moving chess pieces. Today they may own a property in the area tomorrow they may not even own the building you are moving into.

Tenants may not realize there is money at risk if the sublet clause is not negotiated correctly. To expand, the only option might be to sublet the space so a firm can move to a larger facility. But, what if the owner decides to sell the property? Any discussion about sublet potential or expansion with the present owner may not apply with a new owner. The clause must be written in your favor or there is no incentive to help. The leasing agent for the building will choose to fill the current vacancies first not even mentioning your sublet to prospective tenants. What alternatives will you have to expand or downsize when and if the time comes. The sublet clause is a good place to start and not a clause to overlook.

Assignment: This clause is usually hidden in the sublet clause or classified as "Assignment and Sublet". The value here is in reducing your liability. IF the landlord allows assignment, your exposure and future obligation is eliminated (as long as the assignee performs).

Most assignments occur when you sell a division or the company. A buyer might need the space and you might need the ability to assign the lease to the new entity. Or, another division takes over the premises. The landlord won't care as long as the ultimate liability is covered by the same guarantor who was in place when the lease was originally signed. Lease language must address this issue clearly to enable you to complete your sale and allow a new buyer to maintain occupancy.

Surrender and Holdover: How this clause is written can either cost you thousands of dollars or save you money when you leave a space. To find out more details on this issue please contact us.

Damage and Destruction: What do you do if the building you are in is damaged by fire, wind, rain or a tornado? A few years ago a fire on the fifth floor of a six story office building in the Twin Cities resulted in smoke damage to the upper floors and water damage to the lower floors. Besides the mess and inconvenience, many tenants could not occupy their space for some time.

There are many situations like these that occur every year. An example from one of our client's experiences: water clean up after an over zealous fire department got a chance to practice their craft. Of course, the

containment of a fire is the mission, but a fire department may cause more damage than the contained fire itself does.

What does Partial Destruction mean? Is it to the entire building, or just your premises, or your floor? Why does the landlord need 120 days to decide whether they want to repair or not? How long will you be out of your space? Can you terminate your lease, do you want to? Are you required to continue to pay rent if you can't occupy the space? What if the damage is to the parking lot, flooding!

All of these issues should be considered when you are negotiating the lease. Should a portion of the rent be eliminated (abated) until the problem is solved. Good questions that we recommend every client explore during lease negotiations.

Maintenance and Repairs: Who does what? Contact us for more details.

Relocation: Most leases allow for the landlord to move tenants around in large multi-tenant buildings. They need this ability when a smaller tenant occupies space next to a larger tenant on the same floor. That doesn't mean you shouldn't negotiate the details of how relocation will take place.

How much lead time is required prior to a landlord moving you if they exercise this clause? Who pays for what associated with the relocation? What if you have a location in the building that offers you significant advances for business exposure, you're a law firm or accountant who likes every tenant and their visitors passing by your space every day, now the landlord wants to relocate you down the hallway out of sight from visitors.

Relocation sometime can work out to a tenant's advantage. You might also want the option to terminate your lease if the relocation clause is exercised by the landlord during the last year of your lease. It may be advantageous to you to move now rather than relocate just to start renewal negotiations in the next few months. There are many subtleties involved in relocation just like any lease clause. Our goal is to make sure you benefit from our experience by bring these issue up prior to lease execution, while there is still time and leverage.

REMEMBER: We are not attorneys and our lease clause comments are our opinions only, garnered through years of representing tenants, not landlords. None of these clauses are to be considered legal opinions or should you consider them legal advice. We strongly recommend you seek legal counsel, if you need assistance with a legal review of a lease contact us we have relationships with numerous attorneys who have expertise dealing with tenant issues.