



Negotiating Letters of Intent:
Critical Issues Related to LOI Negotiations for Commercial Leases

The Obvious:

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| (a) Premises | (d) T.I. Allowance |
| (b) Rent | (e) Free Rent |
| (c) Term | (f) Brokerage |
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The Not So Obvious:

1. **Lease Security Issues:**

- (a) Who the Tenant (and Guarantor, if any) should be
- (b) Guaranty Structure
- (c) Security Deposit – Cash v. Other Devices; Timing

2. **Rent Issues:**

- (a) Is a creative rent schedule helpful or desirable for the Tenant?
- (b) Operating Expense Protections
 - (i) Cap on Controllables
 - (ii) Base Year
 - (iii) Audit Rights
 - (iv) Exclusions
- (c) Termination Options/Sale Kick-Outs
- (d) Flexibility to apply unused Tenant Improvement Allowance as Rent
- (e) Right to Measure the Premises (and adjust Rent if smaller than stated in the Lease)
- (f) Co-tenancy/Occupancy Requirements (and Rent adjustment remedies if not met)
- (g) Renewal Options/Rent Structure
- (h) Amortization of additional improvement costs

3. **Flexibility Issues:**

- (a) Broad Use Clause

- (b) Assignment and Subletting Rights
 - (i) Consent Requirement/Reasonableness standard
 - (ii) Affiliate assignment/subletting rights
 - (iii) Fees
 - (iv) Profit split
 - (v) Release of the Tenant
 - (vi) Recapture
- (c) Operating Hours; After-Hours access and HVAC issues and costs
- (d) Expansion/Contraction Rights or Options; rights of refusal on adjacent space
- (e) Right to make interior, non-structural alterations without the Landlord's consent (or fee)
- (f) Right to "go dark"

4. **Construction Issues:**

- (a) Landlord's approval rights – mechanism, timing, reasonableness standard
- (b) Timing of payment of excess costs
- (c) Tenant Improvement Allowance – Ability to apply to hard and soft costs
- (d) Landlord's Construction Obligations – Shell Condition issues
- (e) Construction Management Fee
- (f) Specialized Build-Out Requirements of Tenant and removal requirements
 - (i) Raised Floor
 - (ii) Fire Suppression System
 - (iii) Supplemental HVAC
- (g) Tenant ability to select architect, contractor, or to require competitive bidding
- (h) Landlord delay and penalties

5. **Control/Risk Allocation Issues:**

- (a) Subordination/Non-Disturbance
- (b) Legal Compliance Obligations (ADA) of Landlord and Tenant
- (c) Notice and cure rights for default
- (d) Site plan/common area control rights
- (e) Indemnity obligations of Landlord and Tenant
- (f) Right to have secure areas in Premises; access control system
- (g) Management Standards for Building (usually First Class)
- (h) Requirements for Building Security

6. **Business Operation/Landlord Interference Issues:**

- (a) Exclusive use rights; anti-competitive protections (including building name)
- (b) Signage Rights
- (c) Affiliate assignment/subletting rights

- (d) Satellite/Telecom Rights
 - (e) Relocation protections
 - (f) Insurance program issues – make sure lease requirements are consistent with Tenant’s insurance program and/or ability to get insurance
 - (g) Hazardous Materials use issues
 - (h) Limit/Delete Financial Reporting Obligations
 - (i) Waiver of Landlord’s Security Interest in Tenant’s personal property (including statutory)
 - (j) Tenant financing/collateral assignment issues
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