

# Cooley

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Leases are complex, long-term agreements, which will affect the operating conditions of a company's business and its financial bottom line for years. Review and negotiation will identify risks and help reduce costs and liability:

**Hidden Lease Costs:** Many provisions in a lease generate revenue for a landlord beyond what is set forth on the term sheet (typically the financial terms which are outlined in a term sheet are limited to the rent and base years for escalations and taxes). Among the "hidden" costs: (i) "operating expense" components, not appropriate to charge through to tenants (such as costs of roof replacement and other capital repairs and replacements, costs of complying with pre-existing violations of law and excessive property management fees), (ii) landlord charges and other costs/burdens imposed upon tenant alterations, which can make it difficult or more expensive to make alterations (such as 15% "supervisory" fees for the installation of carpeting or other decorative installations, using landlord's contractors, slow reimbursement schedule for a work allowance and others), (iii) excessive late payment charges and penalties, and (iv) charges for services which should be included in the base rent.

**Hidden Liability/Expense:** Boilerplate indemnification provisions, and clauses requiring a tenant to comply with all laws applicable to the space being leased, can impose hidden liability and expense, including: (i) expensive alterations to the premises to comply with the Americans with Disabilities Act, (ii) indemnification and defense costs for pre-existing hazardous materials, and (iii) liability for items that are more appropriate for a landlord to cover with insurance.

**Avoiding Interference With Your Business Plan; Hidden "Transfers":** Many leases can impede a tenant's future business decisions by placing roadblocks in the way of mergers and consolidations, sales of businesses and transfers of ownership interests and control of the tenant, and can severely restrict the tenant's ability to assign or sublet to third parties when tenant has increasing space needs or the need to downsize.

**Defaults:** Simple defaults and clerical errors should not result in a tenant losing a valuable lease or paying the landlord excessive amounts to prevent lease termination. Reasonable notice and cure periods for the tenant must be included.

**Engineering Issues:** Attorneys will focus the tenant on engineering issues that should be reviewed by the tenant's consultants, often avoiding serious and costly issues. For example, many leases do not adequately address electrical or air conditioning needs, or the tenant may have to pay for the installation of new risers and lines to bring more power to the space.

**Insurance Issues:** Attorneys will point out insurance issues to be reviewed by the insurance broker/consultant, to be sure that the tenant is insured as required by the lease and/or to point out if the lease provides for inadequate, excessive or inappropriate coverage for either landlord or tenant.

**Cooley LLP as Tenant's Advocate:** No matter how good the tenant's broker may be, the broker's overriding interest in finalizing the transaction in order to get paid conflicts with the tenant's interest, making sole reliance on the broker, without advice of counsel, dangerous. We believe that each tenant is best served by having its broker and its attorney working together as a team. Cooley's National Real Estate Leasing Group is comprised of seasoned professionals who specialize in protecting our clients' interests in the leasing context and we routinely offer practical, creative, and prompt solutions to the problems encountered in facilities leasing. We have also demonstrated our ability to work effectively with the brokerage community in achieving the best possible results for our clients. We understand that your facilities are a critical part of implementing your business plan and we are committed to helping you secure the facilities you need as promptly and inexpensively as possible. We encourage you to contact us as early in your facilities planning process as possible so that we can offer you advice at the letter of intent stage, which can streamline the lease

negotiations process significantly.

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