

Lease Agreement

Taking on that Commercial Space

Asha Nayar Basu, Partner S. Jalan & Company.

Marie Claire, December 2007

So you have wonderful idea for a retail venture and have located a space in that new mall downtown. The size, the rent, the ambience is just perfect for your idea, besides there's plenty of parking available. The latest figures for the footfalls are impressive. But before you approach a landlord, you should understand how commercial leases differ from the residential variety. And before you sign anything, make sure you understand the basic terms of the lease, such as the user restrictions, security deposit, and liability of rent, lease term and the configuration of the physical space.

WHERE TO BEGIN

Typically, you'll be working with an agreement that's been written by the landlord. Understand that some terms may favour the Landlord. But there is no such thing as a 'standard' commercial lease. Each commercial lease is customized to the needs of the parties. You can almost always negotiate significant improvements to the terms.

A commercial lease cannot be easily broken or changed. It is a legally binding contract, and a good deal of money is usually at stake. The landlord is not obliged to charge uniform user charges or rent even for the common expenses as it may be different for different areas of the mall based on location, size of the space and other factors.

COMMERCIAL TERMS

Pay attention to the following:-

- ❖ The length of lease (also called lease term), and the renewal options.
- ❖ Rent, including escalations, and how they are computed.
- ❖ Whether the rent includes insurance, property taxes, and maintenance costs: or whether you will be charged for these items separately.
- ❖ The security deposit and conditions for its return.
- ❖ Exactly what space you are renting (including common areas such as hallways, rest rooms, and elevators) and how the landlord measures the space (some measurement practices include the thickness of the walls).
- ❖ Whether there will be improvements, modifications, or fixtures added to the space; who will pay for and own them after the lease ends.
- ❖ Specification for signs, including where you may put them and the charges for the same.

- ❖ Who will maintain and repair the space and the mall, including the central heating and air conditioning systems. What are proportionate charges for the same. Check with the other occupants of the complex.
- ❖ Whether the lease may be assigned, subleased or terminated, grounds for termination, including notice period and / or penalties for early termination. The right to an exclusive parking space.
- ❖ Whether disputes must be arbitrated as an alternative to court.
- ❖ Check if the landlord has to take permission or pay charges to the governing authority of the building.

LEASING OUT BUSINESS

Carefully investigate the terms of the lease to make sure it meets your business's needs. Check the physical space. If your business requires modifications to the existing space, such as adding cubicles or rewiring, make sure that you (or the landlord) will be able to make the necessary changes. Other less conspicuous items spelled out in the lease may be just as crucial to your business's success. For instance, if you are counting on being the only snack bar inside a new commercial complex, make sure your lease prevents the landlord from leasing space to competitor in the mall. Never sign a lease for a business space without first knowing that you're legally allowed to do business there. Check with local Municipal Corporation if permissions for constructing the mall and its plans were duly sanctioned by the appropriate authorities.

USE AND THE EXCLUSIVE

A use clause limits how you'll use the leased space. Landlords may impose use restrictions for any of these reasons:

- ❖ She has promised other leases that no one will compete with them.
- ❖ She is worried about liability or has a personal aversion to certain kinds of businesses. An exclusive clause is a promise by the landlord that only you and no one else in the mall or building may engage in a particular type of business or carry a certain type of merchandise. Typically, only powerful 'anchor' tenants in malls get exclusives.

The author is lawyer and partner in S.Jalan and Company, Solicitors & Advocates