



COMMERCIAL SUBLEASES

How to Get the Most for the Leased

For the business wishing to stretch their real estate budget, or lease space on a short term basis (less than two years), commercial subleases oftentimes represent opportunities that can not be replicated in the general marketplace. This

discussion identifies tactics and considerations business owners, corporate decision-makers and facility executives can utilize when contemplating this type of lease.

Subleasing 101. A sublease is a lease granted by a tenant to another tenant for all or part of the subject space and term. The original tenant becomes the *sublessor*, and remains liable for all terms and conditions contained in the original lease, including the payment of rent to the landlord. The incoming tenant becomes the *sublessee*, or *subtenant*, and pays rent directly to the original tenant. Rental rates on sublease space typically carry deep discounts and generous incentives.

Note that the landlord generally must give prior written approval for a sublease to be valid. Landlords are likely to approve a proposed sublease, provided the subtenant does not violate any exclusive use restrictions or adversely affect the habitability of the building, including the quiet enjoyment rights of other tenants. Reasons landlords may deny a request to sublease include: a firm that overloads the parking areas, a particularly noisy business, or a use not consistent with the nature of the building or existing businesses.

Locating Sublease Space. Business owners wishing to rid themselves of excess space many times advertise in the newspaper or on the property itself. In the alternative, space may be listed with a real estate brokerage firm that, as part of its' due diligence, should advertise the sublease on their Web site, in print ads, on various Web-based service sites, and on all available CIE (Commercial Information Exchange) sites. Unfortunately, there is no single-source MLS (Multiple Listing Service) site for commercial property.

When dealing with real estate agents, be certain to instruct them to show you every available space, including all subleases. Note, however, that many commercial real estate agents expose you to *their personal listings* only. That means you need to contact every real estate company, as well as every agent *within each company* in order to locate as many spaces as possible...clearly a time-consuming and daunting task.

To streamline the process, many businesses retain the services of an independent commercial real estate advisor; not only to assist in the identification of vacant spaces, including subleases, but also to negotiate favorable terms. A competent advisor maintains a comprehensive database of vacancies, can demonstrate a history of success in similar transactions, and generally has access to information that may not be available to the general public.

Negotiating Tactics. Bargaining leverage favors the party without the problem - and most tenants facing the prospect of paying full price for unneeded space realize they may have to subsidize the transaction. People looking for sublease space should remember that, while everything is negotiable, they would be well-served to focus on those things that have a measurable impact on the *overall* cost of occupancy. Below is a listing of some of these, along with explanations and negotiating tips that have been effective in previous sublease transactions. For additional information on commercial leases, please go to the Articles section of www.CrossRealty.com.

Full or Partial Term

Subleasing for the entire term remaining on the lease, and occupying the space as close to the availability date as possible will generally yield the greatest discounts and concessions.

Rental Rate

Compare the asking rate for the subject space with the asking rates for similar spaces. Depending on the desirability of the space, discount this rate by 15% to 33%. I suggest offering a flat, out-the-door amount, inclusive of any rental taxes.

Free Rent

Request one to two months of free rent for every year of the sublease term...and make every effort to have any free-rent period applied to the earliest months of the sublease. Another way of expressing free rent is "early occupancy at no charge."

Escalations

Resist paying for rental escalations, excess operating expenses or pass-through costs.

Parking

Ask for free covered parking, or a reduction in the rental charge for each leased space.

Telephone System/Furniture Request that the telephone system, including all handsets and operating manuals, as well as any furniture, remain in place and convey at a nominal amount. Note that used FF&E (furniture, fixtures and equipment) have a salvage value of only 10 to 25 cents on the dollar.

Condition

A short term sublease will generally be delivered in an as-is condition. However, you may wish to request the carpet be professionally cleaned and the walls be painted or touched-up. In the alternative, request a cash allowance to refresh the space.

Warranties

Require the sublessor to warrant the heating, ventilation and air conditioning (HVAC), electrical, and plumbing systems for the entire sublease period.

Options to Extend and/or Expand

Generally, extension/expansion rights are personal to the original tenant. Therefore, they should be negotiated directly with the property owner.

Security Deposit

Keep security deposits to a minimum. At the most, agree to one month's rental amount as a security deposit ... and request this be applied to the last month's rent.

Transfer Fees

These are charges the property owner assesses to cover administrative expenses associated with the sublease, and should be the sole responsibility of the sublessor.

Master Lease

Obtain, read, and understand the Master (sometimes called the "Prime") Lease, as well as any addendums and/or amendments. You will be expected to adhere to all the terms and conditions contained in these documents.

Closing Cautionary Comments. The less that potential sublessors or real estate agents know about your other choices, or the circumstances of your business, the better off you will be. So refrain from disclosing other properties you may be considering, which ones you have ruled out, and why.

Also, in the event the original tenant (the sublessor) defaults on its obligations, the property owner could require you to enter into a direct deal at a higher rental rate, or force you to vacate the premises. Therefore, be certain to have your attorney review and comment on the Sublease and Master Lease documents.

Finally, base any offer on your sense of the tenant's urgency, the number of alternate spaces available, and the projected *overall* cost to lease suitable space elsewhere. Remember, it's possible to negotiate too aggressively, and end up losing the space to another subtenant. **SAW**

Stephen A. Cross, CCIM owns CROSS Commercial Realty Advisors and counsels business owners, facility executives and corporate decision-makers on ways to acquire or lease property at the lowest cost and most favorable terms. Please contact him at (480) 998-7998 or steve@crossrealty.com.