

FORMS REVISIONS GOALS

- i. Bridge the disconnect between the lease terms and the way a tenancy and asset actually operate;
- ii. Better manage expectations of the parties from LOI stage through lease negotiations, occupancy, and expiration or renewal as to avoid deal fatigue;
- iii. Reduce overall conflict and confusion throughout the transaction and tenancy.

I. THE NEW “WORK LETTER”

a. What does it provide?

- i. Memorializes both turn-key and planned improvements;
- ii. Imposes conditions on performance of “Tenant’s Work”;
- iii. Clarifies scope of any TI allowance and what it may be used for;
- iv. Clarifies ownership of improvements and removal obligations at term expiration.

b. What are the implications of the new Work Letter on the forms?

i. Lease Commencement Dates:

1. Added substantial completion of Landlord or Tenant Work vs. a date certain;
2. Requires consistency with terms of Work Letter and scope of TIs.

ii. Delayed Possession:

1. Recognizes delayed possession due to Landlord’s inability to timely complete work and addresses duration of delay period before triggering Tenant’s remedies:
 - a. Cancellation of the lease -OR -
 - b. Per diem abatement of Base Rent/Additional Rent.

iii. Utilities and Services:

1. Option boxes inserted for all applicable Landlord-provided utilities/services billed as Operating Costs;
2. Distinguishes from those separately metered and billed to Tenant.

iv. Alterations:

1. Distinguishes “Alterations” from tenant improvements and “Signage”, and the obligations related to installation/removal of each relative to the Work Letter (Section 4);
2. Imposes conditions on Landlord consent for those Alterations not affecting the structure or utilities in the Premises, or those not exceeding \$10k;
3. Provides mechanism for requesting and obtaining Landlord consent to Alterations.

v. Signage:

1. Parses “Signage” from Alterations and tenant improvements and allocates full responsibility for installation and removal to Tenant, unless otherwise stated in the Work Letter.

vi. Liens:

1. Clarifies Tenant's obligations with respect to dispute and/or removal of any liens by posting of a surety bond;
2. Removes Landlord from lien release process.

II. OTHER SIGNIFICANT CHANGES AFFECTING ALL FORMS

a. **Default:**

- i. Non-monetary default period subject to "diligent cure" period of no longer than 60 days;
- ii. Imposes 5-day notice of non-possession from Landlord before default is incurred;
- iii. Landlord default subject to 30-day "diligent cure" period.

b. **Commission:** Addresses commission due upon new lease, expansion, and extension of term (Par. 3) for consistency with paragraph 2 commission option boxes.

c. **Insurance:**

- i. 45-day notice of termination instead of 30 days;
- ii. Additional Insured Endorsement required in lieu of naming landlord as additional insured;
- iii. ST NNN form only – Landlord obligation to maintain building insurance and may bill back to tenant as Additional Rent.

d. **Hazardous Materials:** Creation of permissible tolerances for both landlord and tenant representations and warranties regarding the presence of hazardous materials.

e. **Misc. Clauses:**

- i. Casualty/Condemnation: Clauses made consistent throughout forms but substantively remain the same;
- ii. Holdover: "Month to month" changed to "tenancy at sufferance";
- iii. Notices: Removal of fax transmission;
- iv. Force Majeure: No change, except deferred performance will not proportionately extend term of the lease;
- v. Notary Block: Conformed to new simplified statutory form.

III. FORM-SPECIFIC CHANGES

a. **NNN Retail Lease:**

- i. Gross Sales: Relaxed definition of Gross Sales Records and clarification of Gross Sales Statements requirements.
- ii. Uses: Use and radius restrictions are now optional.

b. **Sublease:**

- i. Additional Charges: Allocates responsibility for utilities beyond what is already available/billed to subtenant;
- ii. Alterations: Distinguishes Alterations from TIs as in other lease forms and imposes alterations removal obligations on subtenant as default position;
- iii. Landlord's Consent to Sublease: Removes the concept of a Landlord estoppel with respect to Tenant's compliance with the lease at the time of subleasing.

IV. NEW FORMS

a. **Letters of Intent:** LOI terms drafted to better translate into the various lease form terms.

- i. MT NNN;
- ii. NNN Retail;
- iii. ST NNN;
- iv. MT BY;
- v. MT Gross;
- vi. ST Gross

b. **MT Base Year Lease:** The NNN and base year forms are no longer one document. NNN and base year now exist as their own forms and have corresponding LOIs.

V. RIDERS AND ADDENDA

- a. **Rent Rider and Option to Extend Rider:** Now work together such that default rental rate upon renewal will be at fair market rate unless the Rent Rider is completed in its entirety for both term and extended term.
 - i. Rent Rider now provides a rent schedule or CPI increase for both the existing term and extended term;
 - ii. Option to Extend Rider now provides a market rent mechanism provided the market rent will not be less than base rent last payable at expiration of the term.
- b. **Parking Rider:**
 - i. Distinguishes rented parking from free parking, each on a reserved or unreserved basis and subject to Tenant's pro rata share;
 - ii. Provides limitation of landlord's liability for reserved parking issues and on landlord's enforcement obligation following 5- day parking obstruction.
- c. **Guaranty of Tenant's Obligations Rider:**
 - i. Allows Landlord to pursue Guarantor, jointly and severally with Tenant, without exhausting remedies;
 - ii. New Provisions –
 - 1. Landlord's right to request Guarantor's financial statements and ratification of guaranty;
 - 2. Notice instructions;
 - 3. Governing law and binding judgment on Guarantor.
- d. **Letter of Credit Rider:**
 - i. LOC as condition to tenant's rights and landlord's obligations under the lease;
 - ii. Gives the landlord the right of approval as to form of LOC;
 - iii. Limits landlord's liability for drawing on LOC.
- e. **Retail Use Rider:** Annotates Section 9 to 14 to apply only in a multi-tenant context.

VI. LISTING AGREEMENTS

- a. **Exclusive Lease Listing / Exclusive Agency Lease Listing:**
 - i. Section 1: Moved up definitions section and clarified the definition of a lease, tenant or lessee, and the definition of a sale or to sell the property.
 - ii. Section 2: In rental rate and term, additional line included to insert other lease terms and conditions that may be material.
 - iii. Section 5:

1. Clarified that clause pertains to the owner's representations and warranties with respect to the information they provide for the premises/property.
 2. No longer refers to the "Information pages" attached to the agreement as containing the property information under owner's warranty.
- iv. Section 6: Triggering events for a payable commission.
1. Definition of "Affiliate" moved up in the clause and definition clarified.
 2. In subsection (d), a commission is due if the owner makes the property untenable by it voluntary or negligent act, or voluntary or negligent failure to act.
 3. Optional section added to set forth how a commission is to be calculated, and an option to state that a commission is not due for any transfer of the property.
- v. Section 7:
1. Disclaimer of liability for CBA revised to state that CBA has no duty to investigate the listed information, assumes no responsibility for third party reliance on the information or dissemination thereof.
 2. Removed statement "Regardless of whether a cooperating member is the firm of the lessee, the owner, neither or both, the member shall be entitled to receive the selling office's share of the commission as designated by the listing office."
- b. **New Form: Sublease Listing**: Largely consistent with the other listing agreements, only with respect to a sublease interest with reference to the master lease and does not contemplate a sale of the property.