

# Leasing Tips & Negotiations

Careful planning, starting with careful drafting of the relevant provisions of a lease, is critical for a local business to anticipate and successfully respond to redevelopment challenges. Commercial leases are complicated and are very different from residential leases. Before signing any commercial lease, a business needs to know what questions to ask, and how rent, load fees, and other added fees are calculated.

Owners and tenants should have the foresight to include well-drafted lease provisions and carefully negotiated redevelopment clauses in leases that help preserve both owner and tenant rights. Additionally, leases should anticipate the challenges that come with partial redevelopment projects which may be accomplished in phases or located on underutilized portions of a property. The Chamber recommends consideration of the following points by both tenants and owners, but advises readers to not act upon this information without seeking professional counsel.

- **Lease Type:** The owner and tenant should clarify the type of lease (e.g., single-, double-, triple-net, bondable, ground, etc.) concerning property expenses including real estate taxes, insurance, maintenance, repairs, utilities, and more.
- **Expectations:** The owner and tenant should be very clear about expectations, particularly with regards to delivery and condition of the space, common area maintenance and protocol with respect to redevelopment, construction materials, access impediments, etc. (e.g., building items or locating construction materials in certain areas or altering portions of the common areas).
- **Termination Provision:** The owner and tenant should clarify how and when a right to terminate the lease can be exercised.
- **Redevelopment Clause:** The owner and tenant may wish to include a redevelopment clause, addressing issues such as the right to terminate a lease before the end of the lease period and any associated compensation.
- **Adequate Notice Provisions:** The owner and tenant may wish to clarify the type of notice that an owner must provide the tenant of any development or redevelopment plans. The parameters and timing of such notice are negotiable, but could include things such as timing, providing professionally-prepared plans, a copy of the land development application, etc.
- **Rent & Rent Abatement:** It is important to discuss when rent commences, timely payment of the rent, the base rent, and any percentage increases. The owner and tenant may also wish to specify rights in the event of contract default due to redevelopment activities, such as lease termination, rent abatement, etc.

## Commercial Lease Terms To Know

The Chamber believes that local businesses looking to rent or buy space should familiarize themselves with some of the common lease terms. Here are a few of the most common:

- **Common Area Maintenance (CAM):** This is the amount of additional rent charged to the tenant to maintain the common areas of the property shared by tenants. Typical examples include such work as landscaping, snow removal, exterior lighting, as well as insurance and property tax.
- **Escalation Clause:** A clause in a lease which allows the owner to increase the rent in the future to reflect changes in expenses paid by the owner, such as real estate taxes, operating costs, etc. This can take three forms: 1) fixed periodic increases; 2) adjustments based on the Consumer Price Index (cost-of-living increases); and/or 3) an increase tied to the increased costs of operating the property.
- **Full Service Rent:** This refers to an “all-inclusive” rent that includes operating expenses and real estate taxes for the first year. The tenant is generally still responsible for any increase in operating expenses over the base year amount.
- **Gross Lease:** A type of lease in which the tenant pays a flat sum for rent, covering all owner-paid expenses, including taxes, insurance, maintenance, utilities, etc. By having all these costs thrown in, you can better forecast your monthly expenses and also avoid potentially high bills associated with these operating costs.
- **Letter Of Intent:** This is an informal and preliminary agreement between the tenant and the owner indicating intent to move forward with negotiations. Always consult your legal counsel before signing any Letter of Intent.
- **Net Lease:** With a net lease, you will pay for other building operating costs such as property taxes, insurance, repairs, utilities, etc. in addition to your rent. For a local business owner this can potentially be a large sum.
- **Non-Compete Clause:** This clause prevents the owner from leasing any other premises on the development to a direct competitor of yours or another tenant operating the same type of business. It might be worth considering such a clause to protect your investment for the long term – especially if you are in the service industry and expect a lot of walk-in traffic.
- **Tenant Improvements:** Defines any improvements to the leased space either by, or for, a tenant. If you expect to make lots of improvements to the space, it’s worth negotiating these with your owner and trying to get as much of these costs covered as you can. The Tenant Improvement (TI) Allowance or Work Letter defines the fixed amount that the owner will contribute towards these improvements, and costs over this amount are then covered by the tenant (also known as the Tenant Finish Allowance).
- **Triple Net Lease (NNN):** A lease agreement on a property where the tenant or lessee agrees to pay all real estate taxes, building insurance, and maintenance (the three "Nets") on the property in addition to any normal fees that are expected under the agreement (rent, utilities, etc.).
- **Usable Square Footage:** This is the square footage rented and used exclusively by the tenant. It includes footage for private rest rooms, storage, and any other areas used only by the tenant. In contrast, Rentable Square Footage combines usable square feet, plus a portion of the common area and typically encompasses 10-15 percent more space.

## Tenant Improvements: Negotiation and Permits

When considering relocation space, tenant improvements can include things like interior design, raised floors or suspended ceilings, heating, ventilation, air conditioning, building controls, fire systems, and more. Owners and tenants typically negotiate for the cost of all or a portion of the tenant's improvements in the lease. The amount of the so-called "Tenant Improvement Allowance," as well as the length of the lease term has a significant impact on the negotiated rental rate.

Some tenants may desire a "turn-key" buildout, in which the owner covers the costs of the build-out based upon a rent rate and space plan. Others may desire a certain dollar amount for the tenant to complete the improvements. Selecting which approach is best requires careful consideration to realize potential cost savings and maximize the value of any improvement allowance.

For tenants responsible for improvements, they should decide whether they want to enter into one contract with a firm that will design and construct the fit out, or whether they wish to enter into multiple contracts with multiple contractors. Additionally, permits are required for certain interior and exterior improvements from the Falls Church Department of Development Services, located in City Hall. The types of permits and permit fees vary depending on the scope of the project, but generally include the following:

- **Building Permit:** For all building work, demolition, retail shelving, systems furniture, door locks, and more.
- **Electrical Permit:** For all work related to circuits, fixtures, receptacles, outdoor signs, transformers, fixed appliances, heaters, motors, and generators.
- **Fire System Permit:** For all fire alarm panels, and devices, stand pipes, and sprinkler systems
- **Fuel-Gas Permit:** For all boilers, gas appliances, gas valves, gas piping, and oil tanks.
- **Mechanical Permit:** For all air conditioners, air handlers, cooling systems, hoods, exhaust systems, ventilation systems, and fan coils.
- **Plumbing Permit:** For all fixtures and drains, sewer installation, sewer caps, water service, building drains, water pipe work, and sewage ejectors.
- **Health Department Permit:** Restaurants will require a permit to operate a food service establishment from the Fairfax County Health Department.

Plan review time is typically six weeks for small commercial jobs and four to six weeks for larger commercial jobs. The more professionally-prepared the plans, the faster a permit can be issued. For this reason, the Chamber encourages local businesses seeking relocation space to engage registered architects, interior designers, and professional engineers familiar with Falls Church's design requirements and permitting and inspection processes.

The Department of Development Services is located in City Hall, and may be reached at (703) 248-5080. Information on specific permits may be found online at: [www.fallschurchva.gov/370/Licenses-Permits](http://www.fallschurchva.gov/370/Licenses-Permits). Improvements also require inspections once the work is completed (and, sometimes, during construction). Inspections may be scheduled online at [www.fallschurchva.gov/Building](http://www.fallschurchva.gov/Building). Finally, a business must apply for a Certificate of Occupancy to confirm that the tenant's use and parking is in conformance with the Zoning Ordinance.

- **Rent Payment & Deposit Refund:** The owner and tenant may wish to include a provision regarding the timely refund of any deposit.
- **Rent Term:** The lease should identify when the lease commences (e.g., when the lease is signed, when the keys are turned over to the tenant, when the tenant opens the business, etc.).
- **Use:** The owner and tenant may wish to include a clause concerning the tenant's use of the property. Such a clause should be broad enough to cover (a) everything that a tenant intends to do at the premises both currently and in the future; (b) whether the use conflicts with any other tenant's exclusive use rights; and (c) whether the tenant obtain an exclusive right to its use.
- **Permits:** The owner and tenant may wish to include a provision regarding both parties options if the tenant is unable to obtain the necessary governmental permits in a certain reasonable period of time.
- **Retention Provision:** The parties may agree to provide the tenant designate certain areas in the redeveloped space for leasing to the tenant under certain situations.
- **Protected Area:** In the case of partial or phased redevelopment, the owner and tenant may wish to include a provision regarding limitations on redevelopment construction in the vicinity of the leasehold premises, such as establishing a "protected area" in which redevelopment activities should not occur, guaranteeing of access to the protected area, etc.
- **Non-Interference:** In the case of partial or phased redevelopment, the owner and tenant may wish to include a provision regarding the obligation of both parties to not materially interfere with the tenant's operation, the planned redevelopment, or the operation of the shopping center.
- **No Additional Costs:** In the case of partial or phased redevelopment, the owner and tenant may wish to include a provision specifying what responsibilities each party has to incur costs as a result of new construction/facility improvements.
- **Utilities:** In the case of partial or phased redevelopment, the owner and tenant may wish to include a provision regarding heating, air conditioning, and ventilation during operating hours while redevelopment work is being performed.
- **Visibility and Signage:** In the case of partial or phased redevelopment, the owner and tenant may want to discuss issues of visibility, signage, and replacement in the event signage must be removed during construction.
- **Parking and Access:** In the case of partial or phased redevelopment, the owner and tenant may wish to clarify issues of access, number of spaces, or maintenance of a parking ratio.

- **Holiday Season:** Because certain times of the year are especially important when it comes to operating hours, as well as parking availability, the owner and tenant may wish to include a provision regarding construction during certain seasonal sales periods in the case of partial or phased redevelopment.
- **Safety and Security:** Because partial or phased redevelopment can sometimes result in removal of lighting fixtures the owner and tenant may wish to address the issue of lighting and adequate security measures during redevelopment and construction.

### Relocation Notification

If a business is moving within the City of Falls Church, it will need to complete a business closure or moving letter which can be found online at: [www.fallschurchva.gov/DocumentCenter/View/751](http://www.fallschurchva.gov/DocumentCenter/View/751). The form will assist the City update the business' records, and should be completed and returned to the Office of the Commissioner of Revenue located in City Hall. For businesses relocating outside of the City, the business should send a copy of the new business license from the new jurisdiction.

### Get To Know: The Falls Church Economic Development Office

The Falls Church Economic Development Office (EDO) is committed to making local businesses thrive, and it serves as the catalyst for public and private initiatives to create, diversify, and enhance job growth and provide a vibrant and sustainable economy. The City offers a broad range of business incentives to encourage relocation of new businesses and expansion of existing businesses. The EDO is charged with many tasks, and reports to the City Manager. EDO staff bring years of hands-on development experience to identify solutions to business expansion and relocation needs. Specific initiatives include:

- **Local business Assistance:** EDO has compiled a list of helpful links for local businesses, which may be accessed at [www.choosefallschurch.org/DocumentCenter/View/79](http://www.choosefallschurch.org/DocumentCenter/View/79).
- **Business Information:** EDO staff can provide the economic, demographic and market information businesses need to thrive, including identifying potential buildings, market research, and providing information on tax and incentive programs.
- **Business Site or Building Location Assistance:** EDO staff provides a list of available commercial space and can run a free customized Co-Star real estate database search for businesses. The commercial space list may be found at [www.choosefallschurch.org/DocumentCenter/View/78](http://www.choosefallschurch.org/DocumentCenter/View/78).
- **Project Development:** EDO staff can provide information on tenant recruitment, bond financing, and public initiatives.
- **Assistance With Economic Development Authority (EDA):** EDO staff is responsible for preparing the Economic Development Authority's agendas and follows up with EDA initiatives.

The EDO is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, and can be reached at (703) 248-5491, or online at [www.choosefallschurch.org](http://www.choosefallschurch.org).

### **Get To Know: The Falls Church Economic Development Authority**

The EDA advises City Council on economic development issues and proposals, and performs a wide range of functions authorized by Virginia statute. The EDA provides community education programs, conducts research, purchases, leases and sells property, provides tax exempt financing, and supports projects and programs that promote business and investment in the city.

The EDA has provided City Council with recommendations on each major new development proposal in Falls Church with a special focus on fiscal impact. One recent goal of the Economic Development Authority was to develop a "brand" for the City of Falls Church to make it easier for people and businesses who want the Falls Church community-based lifestyle to find it. "The Little City" branding project was presented in early December 2009.

Meetings of the EDA are held on the first Tuesday of each month at 7:00 p.m. at City Hall. More information can be found on the EDA's website, located at [www.fallschurchva.gov/164/Economic-Development-Authority](http://www.fallschurchva.gov/164/Economic-Development-Authority).