Overview of the Leasing Process – United States

Regulated by state law and sometimes local laws. No regulatory agency.

- Landlords search for concepts in malls with highest volume (turnover) per square foot/sqm
- Retail lease – 5 years, perhaps 10 years (with renewal). Most common is 5 year lease, with 1 or 2 5-year options. Rent is set in 1st option, floating to "market" in 2nd option.
- Security deposit – 1 months rent, plus prepay first month's rent and sometimes last month.
- Space conveyed often is a "shell", and must be built out to meet franchisor's specifications and specifications acceptable to lessor
- Sometimes landlord will pay all or part of the build-out – which on the tenant's balance sheet is capitalized over lease term and built into rent (because costs must be reimbursed in case of early termination)
- Rents are expressed in lease as an annual total, e.g. if monthly rent is $1,000, lease would state that the rent is $12,000 per year, payable in $1,000 monthly installments. If lease terminates before end of term, present value of balance of rent is due.
- Landlords may have no duty to mitigate damages by finding a new tenant, unless the duty to mitigate is negotiated into the lease.
- Rent may be expressed as a base amount, plus a percentage of the tenant's gross revenues which exceed a base amount, e.g. $1,000 per month plus 5% of all revenue exceeding $20,000 per month.
- Rent is often described as "triple net." In addition to paying base rent, the tenant must pay insurance, property taxes and common area maintenance charges applicable to the space (as well as all utilities).
- Tenants in malls often must pay marketing fees to the landlord to be used to promote shopping at the mall
- Some landlords or their tenants will negotiate "non-compete" clauses which prohibit tenants from selling products or services which compete with tenants, either at the mall, or sometimes, nearby.
- Some tenants are able to negotiate "exclusives," which prohibit the landlord from leasing to a competing brand in the mall or in any shopping centers controlled by the same landlord within a certain radius.
- Some landlords will insist on a noncompete that will prevent the tenant from opening another outlet nearby, in an effort to support the landlord's percentage rent clause in this lease.
- Broker or "finder" fees typically paid by landlord, unless tenant hires broker to act as tenant's agent to negotiate terms of lease.
- Landlords may or may not require financial statement reporting. They typically will require reporting of gross sales and insist upon audit rights.

- Landlords will often require guarantees if tenant is not strong financially and for most franchise leases.
- Landlords may require lien on fixtures and personal property in space, but can typically be negotiated away.
- Typically there will be restrictions on exterior signage.
- Leases generally prohibit assignments or subleases without landlord approval.
- Upon an assignment, lessors often reserve the right to enter into a new lease with the assignee at market rents.
- Leases often limit use of the space to the business carried on by tenant when lease is signed ("use clause").
- Leases sometimes require the premises to be operated under a specified brand name ("name clause").

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