

Small Lease Riders and Other Practical Tools for Small Tenant Leases

Yigal Saghian
ysaghian@winstead.com
(713) 650-2645

1

Disclaimers

- These materials should not be considered as, or as a substitute for, legal advice; and they are not intended to nor do they create an attorney-client relationship
- Since the materials included here are general, they may not apply to your individual legal or factual circumstances
- You should not take (or refrain from taking) any action based on the information you obtain from these materials without first obtaining professional counsel
- The views expressed in this presentation do not necessarily reflect those of the firm, its lawyers, or clients

2

Small Tenant Economics

	Office	Retail
<u>Size</u>	1,500 – 5,000 SF	1,500 – 5,000 SF
<u>Rental Rate</u>	\$35/sf (full service gross)	\$25 - \$45/sf (NNN)
<u>Annual Rent</u>	\$50,000 - \$175,000/year	\$37,500 – \$225,000/year
<u>Monthly Rent</u>	\$4,000 - \$15,000/month	\$3,000 - \$19,000/month

* values approximated for purposes of demonstration

3

Small Tenant Realities

Small tenants are similar to medium/large tenants in many ways, but with one MAJOR difference.

- **Same Lease Form**: Landlord's lease form is nearly always the same, regardless of the size of the tenant.
- **Same Lease Issues**: Most of the fundamental business and legal issues faced by small tenants are similar to those faced by medium and large tenants.
- **Different Resources**: Small tenants have fewer resources to use in lease negotiations and addressing issues that arise during the term of the lease.

As a result, the reality for most small tenants is that they must accept a one-sided lease with little room for negotiation. The small tenant and its counsel typically focus their efforts on a handful of issues and strategies where they can maximize the value of the lease and address any issues that are of special importance to the tenant.

4

Small Tenant Toolbox

- The Client Interview
- The Checklists (before, during and after lease review and negotiation)
- The Letter of Intent
- The Small Tenant Lease Rider

- Bonus Tools:
 - The Broker
 - Telephone

5

Small Tenant Lease Rider

<p style="text-align: center;">LEASE ADDENDUM</p> <p>This Addendum is incorporated by reference into and is a part of that certain Lease Agreement (the "Lease") between _____ as Landlord, and _____ as Tenant. The term "Premises" as used in this addendum shall mean the Leased Premises described in Section of the Lease, and the term "Building" as used herein shall mean the building described in the Lease and of which the Premises are a part. Except as otherwise indicated herein, all defined terms in the Lease shall have the same meaning in this Addendum.</p> <p>1. Completion of Construction. The Lease shall, at Tenant's option, be terminated in the event Landlord has not commenced construction of the Premises within _____ days after the date of the Lease, or if the Premises are not completed by Landlord and ready for occupancy within days after the date of the Lease. If the Premises are not completed by such date but Tenant does not elect to cancel the Lease, the Landlord shall reimburse Tenant on demand for all additional or "holdover" rent incurred by Tenant after such date for Tenant's current leased space to the extent such rent exceeds the rent Tenant would have paid during such period of time under this Lease. Notwithstanding anything contained in Section _____ of the Lease, taking of possession of the Premises by Tenant shall not be deemed an acceptance by Tenant of any latent defects or matters of which Tenant notifies Landlord in writing within 30 days after occupancy, which latent defects and other matters Landlord agrees to correct within a reasonable time after notification thereof.</p> <p>2. Operating Expenses Exclusions. Notwithstanding anything contained in Section _____ of the Lease to the contrary, the following shall be excluded from operating Expenses for the purposes of the Lease:</p> <ul style="list-style-type: none">a. The cost of repairs or other work occasioned by fire, windstorm or other casualty.b. Leasing commissions, attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations for leases with tenants, other occupants of the building and similar costs incurred in connection with disputes between Landlord and tenants of the Building.c. Costs incurred in renovating or otherwise improving or decorating or redecorating space for tenants or other occupants in the Building or vacant leasable space in the Building.d. Costs of correcting defects (including latent defects) in the construction of the Building, parking areas or other improvements, or in the equipment used therein, except that, for the purposes of this subparagraph, conditions resulting from ordinary wear and tear and use, vandalism, and other matters not occasioned by construction defects shall not be deemed defects.e. Landlord's costs of electricity and other services sold to tenants and which are not standard for the Building, or for which Landlord is reimbursed by tenants as an additional charge or rental. <p style="text-align: center;">Page 1</p>	<ul style="list-style-type: none">f. The cost of any improvements, repairs, alterations, additions, changes, replacements, equipment, tools and other items which under generally accepted accounting principles are required to be classified as capital expenditures (whether incurred directly or through a lease or service contract or otherwise).g. Depreciation of the Building and all equipment, fixtures, improvements and facilities used in connection therewith.h. Material expenses in connection with services or other benefits of a type which are not standard for the Building and which are not available to Tenant without specific charge therefor, but which are provided to another tenant or occupant.i. Costs (including penalties, fines and associated legal expenses) incurred due to the violation by Landlord of the terms and conditions of the Lease, or any applicable federal, state, and local governmental laws, ordinances, orders, rules and regulations, which costs would not have been incurred but for such violation by Landlord.j. Overhead and profit increments paid to subsidiaries, partners or other affiliates of Landlord for services on or to the Building, any apartment garage or the property on which the Premises are located, to the extent that the costs of such services exceed competitive costs for such services rendered by persons or entities of similar skill, competence and experience, other than a subsidiary of Landlord. Management fees charged to operating Expenses shall not exceed similar fees charged in connection with the operation of projects of like location, size, character and quality.k. Interest on debt or amortization payments on any mortgage or mortgages, and rental under any ground or underlying leases or lease (except to the extent the same may be made to pay or reimburse, or may be measured by, ad valorem taxes).l. Costs of Landlord's general corporate overhead and general administrative expenses, which would not be chargeable to Operating Expenses of the Building, determined in accordance with generally accepted accounting principles, consistently applied, and all costs related to maintaining Landlord's existence as a corporation, partnership or other entity.m. Any compensation paid to clerks, attendants or other persons in commercial concessions, if any, operated by Landlord.n. All services for which Tenant (or any other tenant of the Building) specifically reimburses Landlord or for which Tenant pays directly to third persons.o. Costs incurred in installing, operating and maintaining any specialty not normally installed, operated, and maintained in buildings comparable to the Building, and not necessary, at Landlord's reasonable discretion, for the operation, repair, maintenance, and providing of required services for the Building, such as an antenna, broadcasting facilities (other than any and life support and security systems), luncheon club, athletic or recreational club, and costs incurred for sculpture, paintings or other art. <p style="text-align: center;">Page 2</p>
---	---

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Small Lease Riders and Other Practical Tools for Small Tenant Leases

Also available as part of the eCourse

[2021 Bernard O. Dow Leasing Institute eConference](#)

First appeared as part of the conference materials for the 2021 Bernard O. Dow Leasing Institute session

"Small Lease Riders and Other Practical Tools for Small Tenant Leases"