

A Current Perspective on Unique New York City Tenant Market Conditions

Today offers a unique time for tenants in New York City, with a tenant market not seen in decades, for finding and negotiating preferential terms for the long term home for your commercial business operations. Whether new space is required for office, medical, industrial or various hospitality and retail uses, or the extension of your existing space home, there are pockets of favorable market conditions that exist today that, with careful and experienced searches and negotiations, can benefit many years of future operations and balance sheets. To fully appreciate the current market forces at play for tenants, the below brief history of New York City leasing and contracting conventions, as well as the unregulated legal environment of *caveat emptor*, will help to highlight the various subtle dimensions of these unusual market opportunities that now exist which result not from obvious material reductions in face or market rent rates but rather from easing or reductions in the hidden costs of additional rentals and easing of restrictions and regulations of tenants businesses. The overview will also help to underscore Akerman's unique New York City experience and commercial facilities support capabilities available to assist Akerman's family of clients conducting operations in New York.

For many years, commercial leases consisted mostly of standard clauses and were generally no longer than 20 pages. That is no longer the case. In the early 1980s, in response to dramatic shifts in the economic environment, commercial leases rapidly morphed into huge and sophisticated multi-dimensional financial and operational documents which quickly became known as "killer leases." Many extend to more than two hundred pages. For a more exhaustive reference and treatment of the killer lease contents and history, as well as formulaic financial impacts, please see the firm educational page - www.leasingnyc.com .

While these "killer leases" still cover the subject matter included in the older forms, they do so with a depth, subtlety and craftiness not seen before and with embedded additional rentals and unexpected hidden charges. They now include new and complex concepts and come with long exhibits, schedules and appendices, such as work letter agreements, regulations of tenant entity ownership, occupancy and evolution, as well as control and alterations and renovation limitations.

"Killer lease" documents are usually drafted to shift the landlord's typical ownership costs and risks onto the tenant, while at the same time extracting profits (often subtly hidden) for the landlord. They are dynamic instruments which cross many business dimensions and incorporate multiple business and professional disciplines. Commercial leases can profoundly affect both daily and long-term business operations, and they can, if not managed by facilities programs, determine the ultimate financial fate and evolution of entire business entities.

A key to benefiting from the current tenant market favorable conditions, is obtaining unbiased and ethically balanced market data and economic advice from the most experienced professionals that not only know the market conditions but also have representation level knowledge of the behavioral attitudes and reputations of the City's various landlords - coupled with the existing capabilities, knowledge and loyalties of its commercial brokerage houses. Whether international or U.S. based, the textbook publication on obtaining commercial brokers and space may be of interest and is downloadable at the firm educational website at - <http://leasingnyc.com/downloads/CrossBorderTFMcomplete.pdf> .

In New York, as in most money-center cities, there are no shortages of licensed brokers who deal in the leasing of commercial space. To fully benefit from this current favorable market, the trick is to find the broker who will be right for your needs, and to retain that broker by means of a written agreement that clearly and definitively sets forth the scope of the employment, ethics and loyalties of the representation and protects the interests of a tenant fully. While interviewing brokers, you should be aware that in New York a broker may be employed orally and accidentally. Additionally, when employing brokers and agents in New York, there are few standards or regulations which mandate the full and various range of available duties of the commercial broker and benefits to its clients. Employment of commercial brokers should be done by a formal written agreement/document which deals, at the very least, with important issues such as broker loyalty, confidentiality, fidelity and conflicts of interest, and which carefully specifies compensation, how and under what conditions the broker is paid, so that the control, independence and integrity of the search for commercial property stay where they belong -- with the tenant. The foregoing rights and benefits

are not automatic in New York and to obtain the protections, a tenant must ask for the protections and reflect them in the brokerage employment agreement. Knowledge of the prevalence of various behavioral types of landlords and owners also is of considerable importance in evaluating long term impacts on the existing market preferential conditions realization and maximizations as well as selection of the loyal brokerage relationship. Finally, broker transactional knowledge and experience across many properties/markets and uses is essential for mining the benefits of this tenant market, since much of the cost relief is not reduction in advertised asking rentals but hidden in delayed rentals, easing of rentable calculations/loss factors, escalation calculation suppression/relief, work and delivery condition costs being defrayed by landlords either in the square footage rental or by way of extended free base or additional rent periods and more subtly, and by considerable relief in the regulation and limits placed on tenants when attempting to expand, move, assign or sublet their spaces.

So with this history and unregulated market and contracting environment in mind, it is with much pleasure that Akerman can offer internationally recognized and highly respected assistance in the commercial leasing environment and facilities support in New York City to help the Akerman family of clients with their operational leased and owned space needs. Initial consultations to explore the current unique New York City market conditions without cost can be obtained through referral by your existing partner relationship and by contacting John B. Wood, in the New York City office via email at jbwood@akerman.com .