

Silver Advantage **Consulting Alert**

Negotiating Commercial Leases – A Lessee’s Perspective

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July 2013 – Negotiation is the mutual discussion and arrangement of the terms of a transaction or agreement. There is an art to the negotiation that cannot be reduced to a recipe or a formula. You can benefit from the expertise and experience of a skilled business lease negotiator when it’s time to:

- Find new business facilities to lease
- Renegotiate an expiring lease
- Modify a lease to add additional space

Michael Silver & Company CPAs has helped numerous clients successfully negotiate their leases. While every deal calls upon similar principles, each one is unique. The first step, which sounds deceptively simple but is often the most difficult, is to find the ideal space to lease. There are many important factors to consider in finding the perfect space. Listed below are a few of the many factors to consider:

- Location – The three principles of real estate are location, location, location.
- Visibility – It doesn’t matter how beautiful your space is if nobody sees it.
- Access and parking – It should be easy for your customers to get to you. Is it too difficult for customers and employees to find parking?
- Size and layout – Make sure your space is big enough to meet your needs, both now and in the future. Some spaces are too narrow, too twisty, have too many columns in the way, etc.
- Trends for the area – Is the area’s population growing or shrinking? Is it being improved?
- Demographics – Does the area complement or conflict with your customer base?
- Image of area and nearby businesses – What is the reputation of the area? Are there undesirable businesses nearby? Will the physical facilities fit with your company’s image? Consider variables like noise, congestion, pollution, etc.
- Availability – Can the space be ready when you need it? For example, a retailer would lose money by not having the space ready for the Christmas shopping season.
- Improvement costs – Will they be affordable? Allow for a 10% contingency. Will the landlord pay for some or all of the improvements? How will they fit your business plan in both the short- and long-term?
- Zoning – Is the space zoned for your business or will you need to obtain a zoning variance? Find out what other businesses are allowed to do in accordance with the current zoning.
- Reputation of the landlord – What do the other tenants have to say about the landlord?

Prioritize the factors most important to your specific situation. Once the priorities have been established, decide on the ideal location. Next, determine your second and third choices for a possible space. The biggest mistake to make is to limit yourself to one choice. Without a plan B and C, negotiations become much more difficult.

Now it's time to determine whether it's a lessee's market or a lessor's market. In a lessee's market, you can request more concessions. In a lessor's market, you must determine what are the most important factors to insist on (e.g., are there any deal-breakers?). Many other factors must also be considered in lease negotiations:

- Rent per square foot
- Pass-through items, such as real estate taxes and common area maintenance
- Length of the lease term and cancellation terms
- Options to renew and terms of such options
- Options to add additional space or to purchase
- Tenant improvement allowances
- When the space will be available and when rent will commence
- Signage, now and in the future
- Parking and storage availability, and exclusive use of the space
- Condition of HVAC systems and access to restrooms
- ADA (Americans with Disabilities) and EPA issues
- Income tax and legal matters

Have some throw-away items on your list of needs. You won't get everything you request, so be prepared to make concessions on lower priority matters.

Don't fall in love with the selection. If the price is too high or the landlord becomes too inflexible, be prepared to walk away from the space and proceed to your second choice. Have a budget for the occupancy costs as well as for the construction and improvement costs. Don't overburden the business in order to rent the space. Kenny Rogers put it very well: "You have to know when to hold 'em and know when to fold 'em."

Hire the right professional. Your negotiator should deal with the landlord and be involved in the planning process. Ideally, you'll let your negotiator meet with the landlord directly, while you stay informed but in the background. Let your negotiator be the "bad guy" in the negotiations. After the lease is executed, you still need to have a good relationship with the landlord.

Be Patient. If you are too anxious, it may result in a less attractive lease, and you won't get enough of what you want. Allow plenty of lead time for the process.

Significant savings can result from understanding the mechanics or various lease arrangements. Escalation clauses, tax stops, and pass-through provisions can all be manipulated to the benefit of the landlord or the tenant.

Michael Silver & Company CPAs can provide the expertise needed to help you lease the right space under terms that meet your company's needs. If you would like to learn more about how to benefit from our expertise, as soon as you're ready to lease new facilities or renegotiate the lease on your existing facilities, please contact me at 847.213.2107 to arrange a complimentary consultation.

Steve has been a Partner with Michael Silver & Company CPAs since 1997. His prior experience includes 15 years as a Partner in another CPA firm, and over a decade of management experience as an industry executive. Steve is a Certified Management Consultant with expertise in mergers & acquisitions, long-range planning for closely-held businesses, compensation planning, and database programming. He specializes in the real estate industry and in assisting international companies with their U.S. operations.