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Real Estate: An Introduction to Leasing For Start-Ups

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Now that you have decided to rent “real” space and pay rent to a landlord in an office building, what are the basic terms you need to know about? Whether you are doing “desk sharing” or a more formal lease, focus on five things.

- (1) Letter of intent. This document is exchanged up front, and sets out the general terms to be contained in the formal lease to make sure everyone is on the same page before the lease gets drafted. It is usually prepared by a broker and it should say that is a non-binding expression of interest, and not a binding contract. Bottom line, make sure what is in there is what you want from a business perspective (like rent, build-out, security deposit, access, voice data needs, kitchen, and pets/bicycles).
- (2) Leases are based on allocating the risk that something may occur in the leased space or the building to one party (usually the tenant), and insurance backs up your ability to respond to that risk. Get an insurance agent to review the insurance requirements quickly. Landlords usually require between \$3MM and \$5MM in insurance coverage. Leases have a long provision where the Tenant indemnifies the Landlord (in essence assumes the risk of something occurring whether or not caused by the Tenant). As you grow, that provision may be negotiated—but for a start-up “it is what it is”—so insurance is critical.
- (3) If you are sharing space or intend to share space with others, discuss that up front with the landlord (the legal term is “assignment and subletting”). Landlords get very particular about that. If you are expecting to raise new rounds of financings and the board of directors is going

to change control from founders to outsiders, discuss that as well.

- (4) Avoid personal guaranties. Obviously, you can only avoid putting your on credit on the line if you sign the lease in the name of an entity, so get the entity formed. Review it with your lawyer.
- (5) Understand how the space will be built out, including electrical and HVAC. Whatever the build out, have the landlord do the work (at Landlord’s cost). As a start-up it is better to have the Landlord take on the risk of construction delays and compliance with laws—you are not in the business of construction and don’t need to pay people to be your advisors—landlords have that expertise.

Rent in commercial leases usually has three components, and you should get familiar with these as they go directly to the bottom line (get a pro forma from the Landlord):

- (a) Base rent—this is what you would think, the base rent for occupying the leased space.
- (b) Additional rent that is based on a share of expenses incurred by Landlord in owning and managing the building. There is often a “base year” for these expenses, and you pay your share of increases the expenses over the base year.
- (c) Additional rent that the Tenant pays for in its entirety. For example, this can be separately metered electrical, separate janitorial, certain excess utility charges, and certain taxes on your personal property.



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Bottom line, keep the term short, have the lease reviewed by a lawyer, and, for start-ups, see if you can get a sublease to limit up-front costs. To paraphrase the song—you can't always get what you want, but sometimes you can get what you need—if you plan.



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