

**The Secrets That Landlords
DON'T
Want You to Know
About Operating Expense
and Real Estate Tax Clauses**

Paul Stevens

paulstevens1@comcast.net

- 20 years with Equitable Real Estate/Lend Lease
- Asset managed the following properties - Rowes Wharf, One PO Square, 100 Federal Street, 75 State Street, One Boston Place, 50 Milk Street, 745 Atlantic Avenue, One Liberty Square, 855 Boylston Street, 5 Burlington Woods Road, 400 Fifth Avenue, One Newton Place, 500 Park Avenue - NYC, 9 Penn Center - Philadelphia, 17 suburban office buildings in King of Prussia, Pa.
- CPA, RPA, Massachusetts Licensed Salesperson
- In Five Years My Audits Have Saved Tenants **\$10.6 Million**

Rating the Clauses

- Clauses are rated from
 - ◆ **** Highest potential for savings. Landlords will argue vigorously on these.
- To
 - ◆ * Relatively small individual savings, but they can add to an appreciable total.
- Remember what Senator Everett Dirksen said.
- Tenant's ability to obtain these clauses will depend on the size of tenant, owner's desire to lease space, market conditions and other factors.
- Items highlighted in **RED** – opportunity for broker to stay in contact with tenant

Expense Clauses

- Gross Lease Versus Net Lease - HUGE difference
- Management fees***
 - ◆ Cap based on CPI or tenant revenues
 - ◆ No greater than paid to a third party
- Controllable vs Non-controllable**
- Gross-up/gross down of expenses**
 - ◆ Gross Leases-YES Net Leases-NO
 - ◆ 100% occupancy levels
- Reserves*
- Real Estate Taxes
 - ◆ Sale of property*****
 - ◆ Fully assessed property basis*****
 - ◆ Garages**
- Cash/Accrual**

Base Years

- Actual base years vs. STOPS****
 - ◆ STOP STOP STOP STOP STOP STOP
- **Base Year Audit Is The Most Important Audit*****
- Base year expense detail is **MANDATORY******
 - ◆ Compare apples to apples
 - ★ Staffing levels
 - ★ Services provided
 - ★ Gross up calculations
 - ★ Amortization of capital
 - ★ Management Fees
- New/Redeveloped Buildings***
 - ◆ Warranties
 - ◆ Gross-up calculations
 - ◆ Real estate taxes
- PSA base year audits have saved tenants \$4.6 million

Tenant Audits

- “Trust, but verify”
 - ◆ - Ronald Reagan
- Landlords want to limit breath of audit clause***
 - ◆ Audit for only one past year
 - ◆ Audit must be initiated within a limited time period
 - ◆ Must be done by national CPA or landlord must approve auditor
 - ◆ Fee must not be based on % of savings
 - ◆ Landlord does not pay for audit, in spite of findings
- Arbitration***
- Look back provision**
- Interest*
- Annual True-up Statement Date*
 - ◆ Review annual statement from owner

Space Measurement

- Premises Measurement Methods
 - ◆ Is space actually measured or “agreed upon”
 - ◆ BOMA Method***
- All pro-ratas are not created equal
 - ◆ 100% method versus 95% method*
- Buildings grow
 - ◆ Pro-rata should decrease as building size increases**
 - ◆ Increase in Real Estate Taxes**

Capital Improvements

- Amortization clauses
 - ◆ If capital **saves** operating costs-**BEST******
 - ★ Amortize only to the extent of the savings
 - ◆ If capital is **intended to save** operating costs - **OK**
 - ◆ **All capital**, even structural-**WORST**
- Don't permit amortization of capital related to leasing
 - ◆ Lobby renovations
 - ◆ Elevator upgrades
 - ◆ Plazas

Other

- Estoppels – pre-approved in lease
 - ◆ Have tenant contact you before signing
- Security Deposit expiration
- Tenant Improvement expiration****

High Risk Properties

- New or redeveloped
 - ◆ Warranties
 - ◆ Gross-ups
 - ◆ Real Estate taxes
- Mixed use
 - ◆ Allocations
- Owner Self Manages
 - ◆ Management fees
- New owner
 - ◆ New perspective equals higher escalations
 - ◆ REITS
 - ★ Management fees 3 to 4 times higher than third party

Conclusion

- Understanding concepts helps to
 - ◆ Save tenant occupancy costs
 - ◆ Create leverage for tenant
 - ◆ Provide a product that exceeds the competition
 - ◆ Keeps broker's name in front of tenant in a meaningful way
 - ◆ **BUILDS FUTURE BUSINESS WITH TENANT**