

Confidential

# FROM TERM SHEET TO TERM:

## COMMERCIAL LEASING BASICS FOR THE IN-HOUSE LAWYER

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## Roadmap

- Welcome and Introduction
- What We'll Cover
  - The term sheet
  - Assembling your team
  - Deep dive on select lease terms

## The Term Sheet/Letter of Intent (LOI)



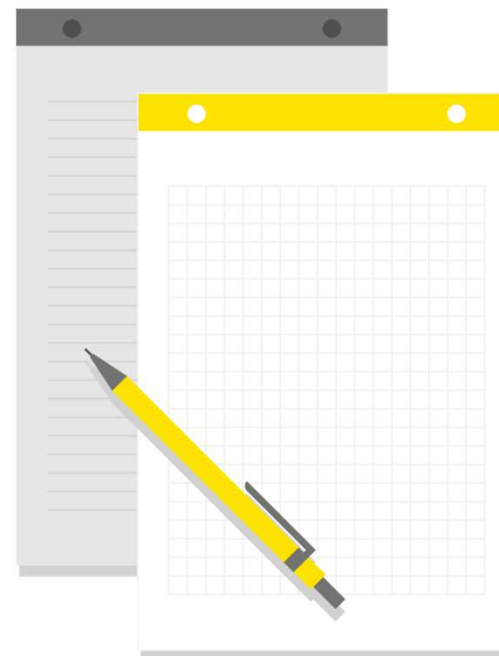
- Why is legal review of the Term Sheet/LOI so important?
- “But we agreed in the LOI!”
  - While the LOI is generally “non-binding”, the agreed to terms in the LOI will serve as the blueprint for the Lease document.
  - Beware of unintended consequences of not clearly defining key terms in the LOI.



# Term Sheet Basics

## Key Terms

- Parties
- Premises
- Lease Term, Renewal and Termination
- Commencement and Rent Commencement
- Base Rent and Additional Rent
- Preparing the Premises
- Permitted Use
- Transfers
- Expansion, Contraction
- Alterations
- Utilities
- Signage Rights
- Subordination, Non-Disturbance and Attornment (SNDAs)



# Assembling Your Team

To conduct an efficient and thorough review of a sophisticated commercial lease, you will need to assemble the right team of subject matter experts to assist in the review:

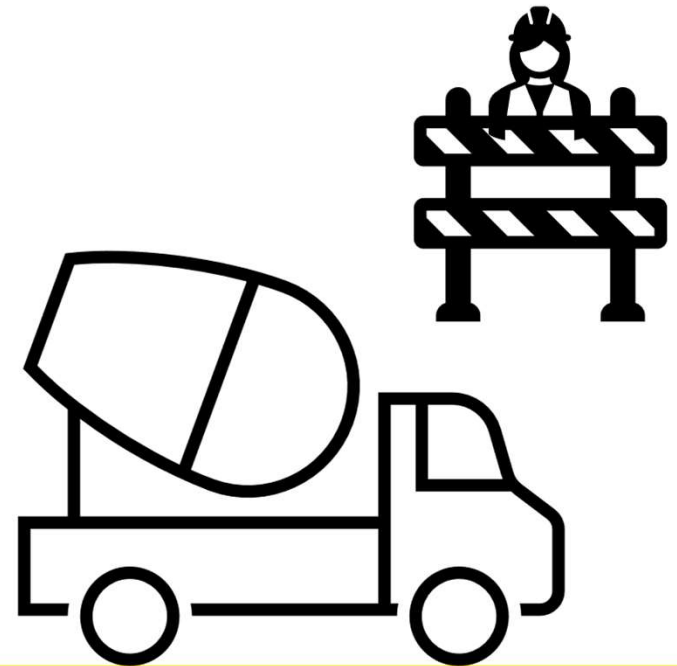
- Legal
- Brokerage
- Project Management
- Facilities/Operations
- Insurance
- Taxes



# Deep Dive on Key Provisions

## Preparing the Premises: Initial Alterations and Subsequent Improvements

- Landlord's Work
- Turnkey Builds
  - Landlord's doing everything– what could go wrong??
- Tenant's Initial Improvements
- Late Delivery
  - What happens when things don't go according to plan?
- Tenant Improvement Allowances
  - What types of expenses can be included?
  - Sunset provisions
  - Conversion to free rent
- General Alterations Provisions
  - Standards for consent
  - Review periods and deemed consent
  - Decorative alterations
  - Specialty alterations



# Deep Dive on Key Provisions

## Additional Rent, Operating Expenses and Real Estate Taxes

- Inclusions
  - What types of expenses can Landlord include in the OpEx bucket?
- Exclusions
  - What types of expenses should the Lease prohibit Landlord from including in the OpEx bucket?
- Audit Rights
  - What rights do Tenants have if the OpEx bill seems “too high”?
- Base Years
  - Why it matters and what can go wrong



# Deep Dive on Key Provisions

## Subordination, Non-Disturbance and Attornment Agreements

- Why are these agreements important?
- Key Terms
  - Repair obligations
  - Obligations to fund improvement allowances
  - Obligations to restore after a casualty

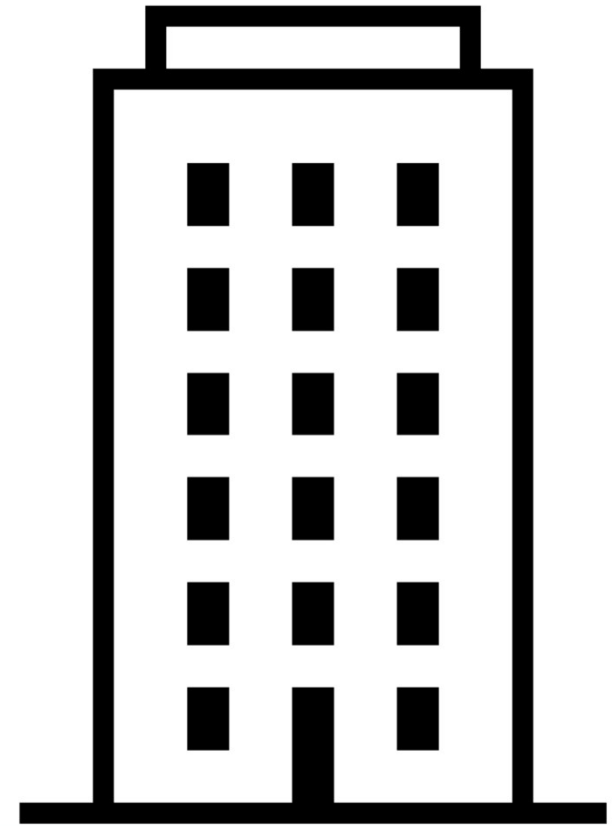




# Deep Dive on Key Provisions

## Assignment and Subletting

- Why are these rights important?
- Standards for Consent
  - Reasonable criteria
  - Timing considerations
- Recapture
  - What is it and when should I care?
- Permitted Transfers
  - Negotiate types of transfers that Tenant can effectuate without Landlord consent
    - M&A
    - Affiliate Transfers
    - Sale of Business
  - Profit Share
  - Desk Shares



# Deep Dive on Key Provisions

## Indemnity

- Tenant Indemnity
  - What should (and should NOT) be included?
  - Limit to third party claims
- Landlord Indemnity
  - Tenant should have this protection, even on smaller leases
- Waiver of Subrogation
  - What is it and why does it matter?
  - Should be limited to property coverage if possible
- Landlord Exculpation

## Surrender/Restoration/Holding Over

- Surrender Condition
- Restoration
  - What!? I have to remove my Alterations?
- Holdover
  - Because sometimes things happen!



## Conclusion and Q&A

Thank You!



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**Meredith Clair** is the head of the Real Estate Group at BLG, and is a seasoned real estate and commercial contracts lawyer with a proven track record of implementing practical solutions for clients that affect daily business operations.

Before starting the Real Estate Group at BLG, Meredith held in-house counsel positions at both Barclays Capital and Lehman Brothers, and prior to that was an associate at Proskauer Rose LLP. As both in-house and external counsel, Meredith has negotiated hundreds of corporate real estate, corporate services and other commercial contracts against some of the largest providers of corporate real estate services throughout the Americas. Her practice includes retail/showroom and office leasing, pop-up stores and experiential retail leasing, cannabis leasing, data center and co-location agreements, design and construction, as well as property management and corporate services/facilities vendor contracts.

Meredith represents a broad range of office and retail clients, including financial services companies, major international retailers, REITS, insurance companies, internet start-ups, shopping mall owners and developers, and various foundations. She works very closely with clients to ensure that she is delivering legal services of the highest caliber in a way that best supplements existing in-house resources.

Meredith received her law degree from the University of Pennsylvania Law School, and a BA in history from Hamilton College, summa cum laude.

**Elissa Feit** is a senior commercial real estate attorney in the Real Estate Group at BLG. She has extensive knowledge and experience in a wide variety of commercial real estate matters, with a specific expertise in complex leasing and subleasing transactions. Her practice includes representing both landlords and tenants in office and retail leases, including representing financial services companies, insurance companies, national retailers, owners and developers.

Before joining the Real Estate Group at BLG, Elissa has worked as in-house counsel to a publicly traded telecommunications company, where she represented the company in a variety of leasing and other premises related matters, and as an in-house attorney at a major bank, where she represented their interests in all premises related agreements, including leases, subleases, licenses, vendor contracts, and retail branch leases. Prior to that, Elissa was a real estate associate at Schulte Roth and Zable, and Pryor Cashman.

Elissa received her law degree from Columbia Law School, where she was a Harlan Fiske Stone Scholar, and received her B.A. in economics from Brooklyn College, summa cum laude.