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2024 Real Property Law Retreat

Weathering the Looming Office Storm: Strategies to Navigate the Rough Waters Ahead

Saturday, March 9, 2024
2:15pm - 3:15pm

Speakers: Alison Geddes and Nancy Park

Conference Reference Materials

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Weathering the Looming Office Storm

*Strategies to Navigate the Rough
Waters Ahead*

Real Property Law Retreat 2024

March 9, 2024

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Presented By



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Overview

- Case Example: Lease Amendment transaction.
- Discussion of the tools and concepts available to Landlords and Tenants.
- Discussion of potential lease provisions.



Office Storm

Complex lease negotiations ***will*** become a substantial part of your practice in the coming year.

- Amendments
- Terminations
- Relocations
- Assignments
- Subleases

Case Example

Lease Amendment (June 2023)

- Original Lease was signed in 2011 for a term of 12 years.
- Set to expire at the end of 2023.
- By June 2023, Base Rent was nearly \$64K per month (at a rate of \$3.58 per RSF).
- Original Premises consisted of 60 workspaces in Class A Office Tower.
- By 2023, Tenant needed much less space.
- Landlord was willing to negotiate in order to keep Tenant in the Building.

Deal Highlights

- **Term Extension with Early Termination Right and Option to Extend**
- **Reduction in Rent without a Reduction in PSF Rate**
- **Flexible Footprint**
- **Marketing Agreement**
- **Relocation of Tenant**

Toolkit for Renegotiating Office Leases in this Market

Landlords	Tenants
<ul style="list-style-type: none">• Additional space in the same building or complex; relocation• Changing load factor• Rental rates/concessions• Updating building amenities – e.g., conference centers• Moving/Tenant Improvement allowances• Future expansion capacities (granting tenants right of first refusal or right of first offer for adjacent spaces)• Termination rights• Marketing agreements	<ul style="list-style-type: none">• Flexibility on occupancy timing and space size• Flexibility on exclusive occupation of certain amenities (willingness to use shared building amenities, e.g., conference centers)• Willingness to cooperate with Landlord's marketing and reletting efforts• Flexibility on parking rights and exclusive spaces

Toolkit: Potential Lease Provisions

- Extension of Term
- Expansion/Contraction of Premises
- Relocation
- Future Early Termination Right (with or without termination fee or concessions)
- Future Expansion Right – Right of First Refusal or Right of First Offer
- Marketing Agreement (Permitting Landlord to market space and terminate lease if replacement tenant secured)
- Option to Extend Term
- Increased amenities or rights to amenities
- Rent rate adjustments
- Rent reduction
- Rent abatement (conditional or unconditional)
- Base Year adjustment
- Load Factor adjustment
- Allowances – Tenant Improvement or Moving
- Improvement of Premises



Thank you

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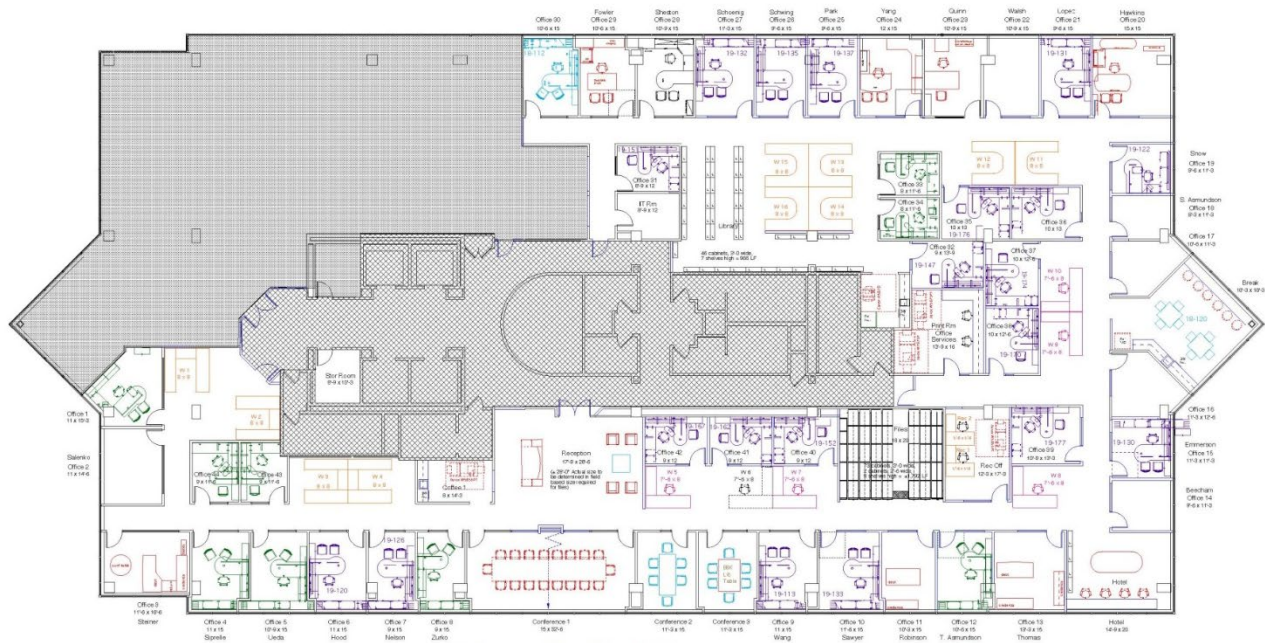
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Case Example

Background

- The Building is a Class A office tower on highly coveted block of downtown Sacramento.
- Tenant leased 17,840 RSF on the 17th Floor.
 - Breakdown: Original Premises consisted of 60 workspaces
 - 30 Exterior Offices
 - 14 Interior Offices
 - 16 Open Office Work Areas
 - 3 Private Conference Rooms
- Original Lease was signed in 2011 for a term of 12 years. It was set to expire at the end of 2023.
- By 2023, Base Rent was nearly \$64K per month (at a rate of \$3.58 per RSF).



Economy Shifted: New Economic Realities

- Major changes in the workplace between 2011 and 2023. 2011 was marked by recovery from recession: slow growth and slow office absorption. More recently, the pandemic introduced and normalized remote/hybrid work and employees have come to expect and demand greater WFH flexibility.

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- Here, Tenant's need for large and expansive office space diminished:
 - o Most of its employees worked remotely several days of the week
 - o Many assigned office spaces converted to hotel offices
 - o Conference areas, kitchens, and breakrooms were oversized for the reduced number of people who regularly came into the office

The Opportunity: June 2023

Tenant could have sought out a smaller space elsewhere and planned to move out by the year end.

- This would have meant undertaking a time-consuming search process, developing and executing a moving plan, risking internal destabilization, etc.

Landlord did not want to lose a trustworthy, 12-year tenant.

- If Tenant decided to leave at the end of the term, Landlord would have had to undertake a costly search process for a new tenant, make promises for expensive tenant improvements to induce a new tenant, and meanwhile address other consequences flowing from the vacancy.

Landlord and Tenant opted instead to collaborate on crafting a creative solution that resulted in significant benefits to each.

Lease Amendment & Extension

This deal was structured as a simple amendment, thereby obviating the need to negotiate a new lease.

Highlights of the Deal

- **Extension of Term**
- **Early Termination Right**
- **Option to Extend**

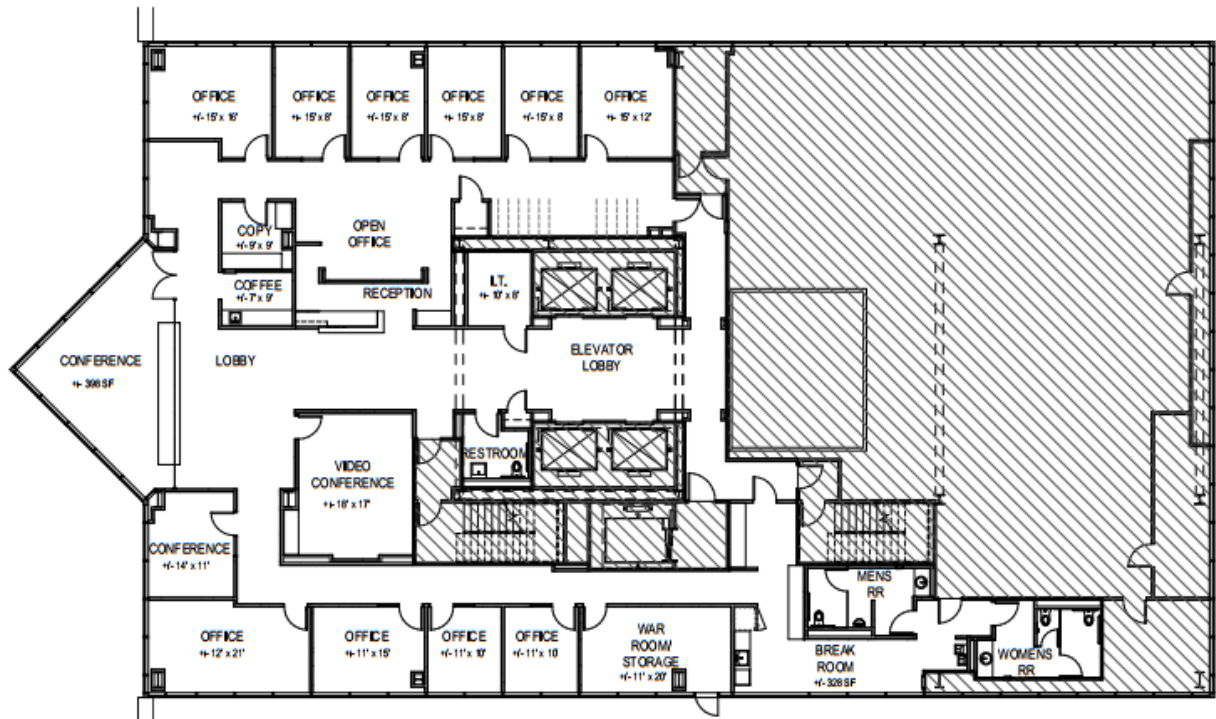
As an inducement to Tenant's agreement to (i) extend its presence in the building, (ii) consolidate its footprint if and when a new tenant for their original space was found, and (iii) to relocate to a new space in the same building, Landlord gave Tenant flexibility on the duration of the amended/extended lease term—through an early termination option and two options to extend.

Note: both the early termination option and the option to extend are tied to Tenant's staying in the building past the original expiration and relocating to new premises.

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➤ **Additional benefits to Tenant:**

Moving Allowance

Abated Rent following the Relocation

Turn Key Tenant Improvements

Security Deposit Reduction

Additional Amenities to Compensate for Reduced Size (conference center)

Base Year Reset

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Toolkit for Negotiating Office Leases in this Market

Tools and concepts Landlords and Tenants can offer or request to move negotiations along.

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Marketing Agreement (Permitting Landlord to market space and terminate lease if replacement tenant secured)

Option to Extend Term

Increased amenities or rights to amenities

Rent rate adjustments

Rent reduction

Rent abatement (conditional or unconditional)

Base Year adjustment

Load Factor adjustment

Allowances – Tenant Improvement or Moving

Improvement of Premises