



Boston + Providence + New York

Negotiating Facility Leases for Charter Schools

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ROAD MAP

- Overview of Types of Charter School Leases
- Term Sheet Review
- Negotiation of Lease Agreement
- Questions

Charter School Leases

- **Gross Lease** (full service lease)
- **Net Lease**
 - Single Net Lease (N Lease)
 - Double Net Lease (NN Lease)
 - Triple Net Lease (NNN Lease)
- **Ground Lease**

Negotiating the Term Sheet and Lease Agreement

- **Parties**

- Landlord

- Do they have experience working with charter schools?
 - Has the landlord formed a single purpose entity to hold the property?

- Tenant

- Who is going to hold the lease?
 - Charter School
 - Charter management organization
 - “Friends Of” entity
 - Single purpose limited liability company
 - Other

Negotiating the Term Sheet and Lease Agreement

- **Premises**
 - Defining the Premises
 - Use descriptive language and site plans/diagrams
 - Entire building versus only a portion of a building
 - Parking lots, playgrounds, exterior areas
 - Shared use of certain areas
 - Expansion of space over time

Negotiating the Term Sheet and Lease Agreement

- **Use**

- Broad versus specific use
 - Educational use
 - Public charter school/grade span
- Related uses
 - After-school programming
 - Adult education programs or workshops
 - Staff programming
 - Enrichment programming
 - Community programming
 - Affiliate and charter management organization use
- Navigating certificate of occupancy and zoning Issues – “school use”

Negotiating the Term Sheet and Lease Agreement

- **Term and Extension Options**

- Commencement Date

- Lease Commencement Date versus Rent Commencement Date
- Consider potential real property tax and/or transfer tax implications

- Extension Options

- Exercisable at sole discretion of school

- Termination Date

- Definitive date unless earlier terminated or extended pursuant to the terms of the Lease

Negotiating the Term Sheet and Lease Agreement

- **Rent**
 - Base rent
 - Square footage measurements/rent schedule
 - Escalations (Beware of rent escalations tied to fair market value!)
 - Additional rent/ operating costs
 - Taxes, utilities, repairs, insurance, maintenance, etc.
 - Require a detailed invoice and negotiate for ability to challenge amounts due
 - A not-for-profit public charter school exempt from taxation under 501(c)(3) of the Internal Revenue Code is not automatically exempt from real property tax in all jurisdictions.
 - Rent abatement/free rent
 - Let's make a deal!
 - Delays in delivery of premises

Negotiating the Term Sheet and Lease Agreement

- **Maintenance, Repairs and Replacements**
 - Depends on type of lease
 - Base Building components, equipment and systems
 - Consider annual or monthly cap on liability
 - Negligence/willful misconduct of School
 - Interior vs. Exterior
 - Non-structural vs. Structural
 - Who is responsible for custodial services, pest control, garbage/recycling?

Negotiating the Term Sheet and Lease Agreement

- **Investigations and Available Information**

- Contract for access prior to signing the Lease to conduct due diligence investigations, including, without limitation, environmental testing, architectural/engineering evaluation, etc.
- Consider conducting title search
- Request materials from the Landlord
 - Environmental studies
 - Surveys
 - Property tax information
 - Utility information
 - Certificate of occupancy
 - Zoning information, including variances
 - Existing leases for property

Negotiating the Term Sheet and Lease Agreement

- **Environmental**

- Review state specific laws regarding school siting
- Ideal: Premises is free of hazardous materials and in compliance with environmental laws
- Reality: Some remediation/abatement or other action may be needed
 - Define responsible party
 - Define timeline
 - Remedy
 - Consider contingency/termination language.

Negotiating the Term Sheet and Lease Agreement

- **Building Access**

- Tenant
 - 24/7, 365 days a year
 - Be wary of limitations based on presence of security personnel provided by Landlord
- Landlord
 - Does Landlord have any retained use?
 - Outside of regular school hours/must not be disruptive
 - Must comply with school's security protocols
 - Exception for emergencies
 - Remedies

Negotiating the Term Sheet and Lease Agreement

- **Landlord's Work**

- Landlord's work could be anything from building a new school to fixing a window in a classroom. Use exhibits or work letter to provide sufficient detail.
- Compliance with laws
- Warranty period
- Timeline, restrictions and remedies for failure to perform
- Overlap of Tenant's Work and Landlord's Work

Negotiating the Term Sheet and Lease Agreement

- **Tenant's Work**
 - Consent/Approval Issues
 - Decorative alterations vs. non-structural alterations vs. structural alterations
 - Permits and approvals
 - Insurance
 - Restoration

Negotiating the Term Sheet and Lease Agreement

- **Subleasing, Assignment**
 - Subletting vs. Assignment
 - Permitted Assignees and Subtenants
 - Affiliates or CMO
 - Other Charter Schools
 - Not-for-profits
 - Consent not to be unreasonably withheld, conditioned or delayed
 - Creditworthiness of assignee/subtenant
 - Use restrictions
 - Recapture Right
 - Continuing Liability

Negotiating the Term Sheet and Lease Agreement

- **Leasehold Financing Considerations**
 - Expressly permit leasehold financing (even if you don't think you need it!)
 - Allow for subletting or assignment of lease to affiliate
 - Assignment of lease and/or leasehold mortgage
 - Include leasehold mortgagee provisions
 - Require SNDA by Landlord and Landlord's Lenders
 - Review casualty and condemnation provisions (will a lender accept?)

Negotiating the Term Sheet and Lease Agreement

- **Termination Option**
 - Failure to satisfy contingencies
 - Charter revocation
 - Charter non-renewal
 - Loss or reduction of funding
 - Payment of termination fee

Negotiating the Term Sheet and Lease Agreement

- **Adjacent Property**
 - Prohibit certain uses
 - Liquor store
 - Pawn shop
 - Strip club
 - Expansion Option
 - Purchase Option/ROFR/ROFO

Negotiating the Term Sheet and Lease Agreement

- **Other Issues**
 - Security deposit
 - Broker
 - Event of Default (don't forget to increase the time period to vacate upon default!)
 - Confidentiality
 - Indemnification
 - Condemnation/Casualty
 - Signage
 - Insurance

Questions?

Thank You!

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