

CONCURRENT SESSION I: A

Reader's Digest of Lease Digests

Why Are Lease Digests Important, What Should They Include and How Can They Inform Lease Drafting?

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Key Terms: Lease Effective Date, Landlord, Tenant

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Lease Effective Date	Insert the date the Lease is signed by all parties	The date should be filled in and not left blank.	The date should be filled in and not left blank.
Landlord	Insert name and state of organization	Lease documents should include the correct legal name of current Landlord/owner and state of organization.	Lease documents should include the correct legal name of current Landlord/owner and state of organization.
Tenant	Insert name and state of organization	Lease documents should include the correct legal name of current Tenant and state of organization.	Lease documents should include the correct legal name of current Tenant and state of organization.

Key Terms: Guarantor, Security Deposit

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Guarantor	<p>Insert name, individual or organization, state of residence or organization</p> <p>Insert limit of liability or cap</p>	Any limit or cap or release language should be clear and unambiguous.	<p>* Guaranty should clearly identify Guarantor with contact information.</p> <p>* Guaranty should not terminate on any assignment of the Lease.</p>
Security Deposit	Insert amount and form of deposit	Lease documents should reflect correct amount.	Irrevocable Letter of Credit (LOC) is preferred, and Lease Documents should include copy of the LOC.

Key Terms: Premises, Term, Rent

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Premises	Insert space #, area, and premises address	Lease documents should correctly identify the Premises with site plan attached to the Lease.	Relocation clause is preferred for small shop tenants.
Term	Insert Rent Commencement Date, Term of Lease, Expiration Date Insert Renewal Term(s), if any, and exercise period	Should be confirmed in commencement date agreement or other written document.	Should be confirmed in commencement date agreement or other written document.
Rent	Insert Minimum Rent Insert Percentage Rent, if any Insert current CAM, and is it pro rata or fixed, and cap or fixed increase Insert current RET Insert current LL Insurance Insert Other Charges	* Need increases and formulas to be clear. * Tenant audit right if CAM is not fixed. * Limit on time LL can audit percentage rent and can bill for unpaid additional rent.	* Audit right for Tenant's gross sales. * Gross Sales reports even if no percentage rent. * Reset to actual costs on renewal if CAM is capped. * Limit on time Tenant can audit or claim overpayment.

Key Terms: Permitted Use, Operating Covenant

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Permitted Use	Insert Permitted Use and Exclusive and Prohibited Uses to which Tenant is subject	<p>* Permitted Use should encompass actual use.</p> <p>* Lease should include warranties regarding exclusive and prohibited uses.</p>	<p>* Lease should include narrowly focused permitted use.</p> <p>* Permitted use must be subject to exclusive and prohibited uses.</p>
Operating Covenant	<p>Insert if full, limited or none</p> <p>Insert Minimum Hours</p> <p>Insert Excused Closures</p> <p>Insert Recapture terms if less than full operating covenant</p>	Lease should include excused closures and no obligation to be open unlimited hours.	<p>* Preferred that Tenant be open for such hours as Landlord designates to be the Center's hours from time to time.</p> <p>* Stated penalties or remedies if Tenant fails to be open as required.</p>

Key Terms: Exclusive Rights, Radius

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Exclusive	<p>Insert Tenant's Exclusive Rights, if any</p> <p>Insert Remedy</p>	<p>* Lease should include liquidated damages.</p> <p>* Incidental exception should be defined by area or menu items, but NOT a percentage of gross sales.</p> <p>* Damages should not sunset if there is a rogue tenant exception.</p>	<p>* Lease must include rogue tenant exception.</p> <p>* Exclusive should be narrowly focused with incidental exception.</p> <p>* Sunset clause strongly preferred.</p>
Radius	<p>Insert Radius Area, if any</p> <p>Insert Remedy</p>	<p>*Gross sales from competing store should be sole remedy.</p> <p>* Violation limited to same permitted use and trade name.</p> <p>*Exception for chain acquisition or sale.</p>	<p>* Radius defined in miles as the crow flies.</p>

Key Terms: Casualty, Tenant Insurance

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Casualty	Insert LL and Tenant Termination Rights Insert LL Restoration Obligations Insert Rent Abatement, if any	*Tenant retains insurance proceeds for items Tenant is required to repair. *Mutual waiver of subrogation. *Rent abatement if Tenant reimburses Landlord for loss of rent insurance.	* Landlord should have termination right based on cost to repair. * General format of casualty provisions should be the same across the Center.
Tenant Insurance	Insert Liability, Property, BI, Umbrella and any other Insurance requirements	Limits are market. *Ability to self-insure or avoid BI.	* Liquor liability insurance should be included for restaurants. * The Lease should include ability to increase limits in accordance with the market.

Key Term: Assignment

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Assignment	<p>Is LL Consent Required? Is there a reasonableness standard?</p> <p>Insert Permitted Assignments without LL consent</p>	<p>*Reasonable Standard.</p> <p>*Sale transaction and equity investment must be permitted (language differs if Tenant is an SPE).</p>	<p>* The Lease should prohibit change in control if Tenant is single purpose entity (or tenant with very few locations).</p>

Key Term: SNDA

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
SNDA	<p>Is there an existing Mortgage or Ground Lease?</p> <p>Is there an existing SNDA?</p>	<p>*Identify fee ownership and any existing mortgage.</p> <p>*Non-disturbance for ground lease.</p> <p>*SNDA is case by case.</p>	<p>* The Lease should include automatic subordination for small shops.</p> <p>* The Lease should require Tenant to execute SNDA.</p> <p>* The Lease should include attornment regardless of subordination or SNDA.</p> <p>* The Lease should require Tenant to execute estoppel.</p>

Key Terms: Co-Tenancy, Tenant Termination Rights

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Co-Tenancy	<p>Is there Co-Tenancy provision?</p> <p>Is there a current violation?</p>	*The Lease should include liquidated damages.	<p>* The Lease should include sunset.</p> <p>* The Lease should include replacement language for named tenants.</p> <p>* Co-tenancy violation should exclude temporary closures due to casualty, repairs, etc.</p>
Tenant Termination Rights	Insert any Tenant termination rights	<ul style="list-style-type: none"> * Co-Tenancy * Breach of exclusive * Casualty * Eminent Domain 	* Lease should include prohibition of termination by the Tenant except for expressly stated provisions.

Key Terms: Hazardous Materials, Landlord-Tenant Work

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
Hazardous Materials	Who is responsible for clean-up and indemnity and under what circumstances, including the Midnight Dumper	Tenant should only be responsible for Hazardous Materials Tenant introduces.	<ul style="list-style-type: none"> * Depending on geographic location, Tenant should be responsible for any mold during the Term. * Landlord should not indemnify for third party violator.
Landlord-Tenant Work	<p>Was there LL Work or AS IS?</p> <p>Was there an Allowance? Has it been fully paid?</p>	<ul style="list-style-type: none"> * Chargebacks should be clearly identified. * There should be offset right for allowance. * The allowance should not be withheld for failure to deliver lien waivers if lien period has expired and there are no liens. 	<ul style="list-style-type: none"> * Allowance should be for leasehold improvements only. * The Lease should include drop dead date after which any unused allowance is cancelled.

Key Terms: REA, Other

[SHOPPING CENTER/TENANT] LEASE DIGEST		Tenant Preferred Provisions	Landlord Preferred Provisions
REA	Is there an REA?	The Lease should clearly identify all REA requirements and costs.	The Lease should be subject to the REA and Tenant must comply with REA.
OTHER		* The Lease should limit changes to the Center that materially adversely affect access or visibility, or increase costs.	<p>* Landlord's liability should be limited to its interest in the Center.</p> <p>* The Lease should include state requirements (e.g., radon in Florida, California remedy provisions, execution requirement of the state).</p> <p>* Any restrictions on redevelopment or changes to the Center should be confined to limited identified area.</p>