



CONCURRENT SESSION III: B

Getting the Lease to Final and Beyond – Lease Exhibits and All the “Other” Lease Documents

SPEAKERS

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So you think you're ready to sign the lease.....

- Legal Descriptions
- Site Plans
- Exclusive, Prohibited and Restricted Uses
- Signage
- Possession and Commencement Date Letters
- Work Letters
- Estoppel Certificate Forms
- Memos of Lease
- Guaranties
- Landlord Lien Waivers
- SNDAs
- Franchise Addenda

Practice Tips

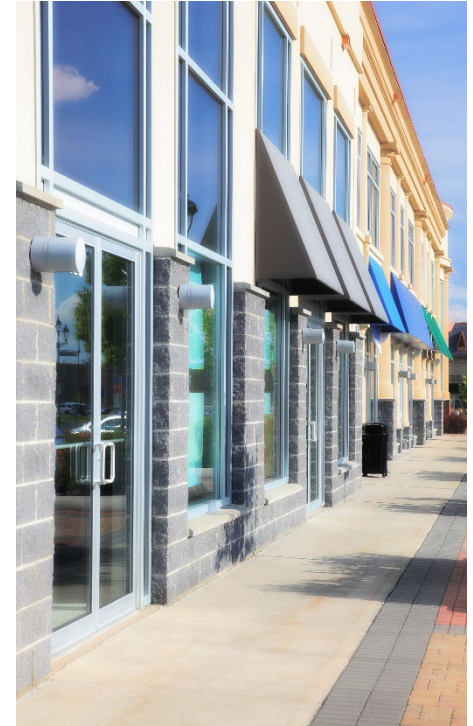
Timing of
Negotiation

Execution
In-Line vs.
Standalone
Documents

Execution
Formalities and
Logistics

Franchise Addendum: What It Is and Why It Matters

- Agreement addressing the relationship among landlord, tenant and franchisor in connection with the lease
- Purpose is to accommodate franchise model in the lease context
- Franchisor may be a direct party or a third-party beneficiary
- ***Practice Tip:*** Request a copy during LOI negotiations to avoid delays in lease signing



Franchise Addendum: Assignment, Rebranding and Center Compatibility

Assignment and Change of Control

- Landlord wants to retain consent rights
- Tenant and franchisor want streamlined transfers within the franchise model (no consent for assignment to franchisor or franchisor-approved replacement franchisee)

Use and Rebranding Risk

- Franchise rebrands can violate existing shopping center exclusives or use restrictions
- Franchise approval should never override use provisions, shopping center criteria or exclusives set forth in the lease

Franchise Addendum: Priority, Defaults and Cure Rights

- Priority and Conflict Management
- Defaults, Notice, and Cure Rights
 - Landlords want to avoid additional cure parties or extended cure periods
 - Franchisors typically seek notice copies and a limited opportunity to cure or facilitate a transfer
 - Common Compromise: Notice to franchisor with a short, non-extending cure window



Landlord Lien Waivers

Contractual
and Statutory
Lien Rights

When are Lien
Waivers
Applicable?

Why would
Landlord
Agree?

Landlord Lien Waivers: Common Elements

Scope of
Waiver

Lender
Access
Rights

Notice to
Lender

Rent/Fees for
Access

Repair
Obligation

Estoppel
Provisions

Guaranties: Objectives

Landlord

- credit enhancement and streamlined enforcement

Tenant

- limitation of scope, duration and overall exposure

Guaranties: Scope

Full Guaranty
(payment and
performance)

Payment
Guaranty

Joint and
Several
Liability

Letters of
Credit

“Good Guy”
Guaranty

Guaranties: Common Limitations

Cap on Total Liability

Rolling Guaranties

“Burn Off”

“Sunset”

Release of Guarantor at certain Milestones

Beware of subsequent amendments!

