

Wednesday, October 23, 2019
3:30 PM – 4:45 PM

Seminar 3

LEASING LOIs – Love ‘em or Leave ‘em

Amanda T. Links, Esq.
Senior Leasing Counsel
Unibail-Rodamco-Westfield
One World Trade Center
Suite 46E
New York, NY 10007
amanda.links@urw.com

Karim A. Ali, Esq.
Partner
Porter Wright Morris & Arthur LLP
41 South High Street
Suite 3100
Columbus, OH 43215
kali@porterwright.com

I. Introductions

II. Why Use a Letter of Intent (“LOI”)?

Advantages

- Restrict the other party’s ability to negotiate
- Prevent the other party from negotiating with other potential parties
- Provide a firm show of interest between parties and are often the first step in proceeding with a full lease negotiation
- Secure a space for a lease in a competitive leasing market while obtaining financing, negotiating terms
- Simplifies some of the negotiations during document drafting phase
- Summarizes the key business points agreed to by the parties, which are to be included in the lease
- Simplifies negotiations during document drafting phase
- Potentially reduce cost and expenses to negotiating a retail lease
- Identify “deal breakers” early

Disadvantages

- Possibility of being interpreted as a final, binding contract.
- Restrict your own ability to negotiate
- Unintentionally place obligations and liability outside of the four corners of a binding lease agreement
- Can be a source of ambiguity if the terms are not clear
- Can provide for terms that are contrary to a negotiated lease form between parties
- An additional agreement to be negotiated might add additional time and cost to the process
- Could serve as the basis for expectation damages if a deal is not ultimately consummated
- Requires the parties to negotiate in good faith to reach a deal even when one or both parties are actively pursuing other deals.

A. Landlord’s Perspective

B. Tenant’s Perspective

C. When to Use an LOI

D. Key Terms to Include in an LOI

- E. Pitfalls to Using an LOI
- III. Interpreting an LOI
 - A. Creating a Binding and Enforceable Contract
 - B. Creating a Duty to Negotiate in Good Faith Towards a Definitive Agreement
 - C. Creating a Non-Binding Term Sheet
- IV. Drafting a Letter of Intent
 - A. Use Express Language
 - B. Clearly Indicate Which Provisions are Binding and Which are Non-Binding
 - C. Expressly Create or Disclaim a Duty to Negotiate in Good Faith
- V. Avoid Consideration of Extrinsic Evidence
 - A. Terms to Avoid
 - B. Press Releases
- VI. Parol Evidence
 - A. The Admissibility of LOIs under Parol Evidence
 - B. Application on LOIs and Contracts