

Legal Considerations for Warehouse Leases in the Transportation and Shipping Industries

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Warehouse leases are integral to the operations of businesses within the transportation and shipping industries, providing essential storage hubs for goods in transit. Navigating the legal landscape surrounding warehouse leases requires careful consideration of various factors to protect the interests of both landlords and tenants. From mitigating liability concerns to ensuring regulatory compliance, here are essential legal considerations to address when entering into warehouse lease agreements.

1. Lease Terms and Conditions

Warehouse leases should comprehensively outline the terms and conditions of occupancy to ensure clarity and protect the interests of all parties involved. These terms should include, but not be limited to, the duration of the lease, permitted use of the space, rental rates, payment terms, options for renewal, restrictions on alterations, obligations regarding maintenance and repairs, termination rights, and provisions for parking arrangements.

When evaluating your space requirements, consider factors like storage capacity, loading and unloading requirements, and any unique features needed for your operations. Make sure that the lease contains an adequate and clear description and depiction of the space. This becomes especially critical for new construction leases when the square footage of the space can only be estimated at the time of lease signing. In such cases, the lease should reserve a right for you to measure and confirm the square footage upon delivery of possession by the landlord and should define the method of measurement to be used.

2. Build-Out / Tenant Improvements

It is imperative at the outset to have clear guidance for the initial build-out of your space, including who is responsible for what, who pays for what, and the sequence in which the build-out must occur to ensure timely delivery of the space. The governmental approvals required for such build-out and determining the parties' obligations to secure such approvals are of significant importance. The timeframe to obtain any necessary approvals will factor into negotiating the rent commencement date. Moreover, make sure to negotiate and have the lease explicitly state who shall own such alterations and any requirements for restoring the space to its original condition at the expiration of the lease.

3. Liability and Insurance

Determining liability for loss, damage, or theft of goods stored in the warehouse is crucial. The lease should outline insurance requirements for both parties, including general liability insurance and property insurance. Provisions should also address indemnification obligations to protect against legal claims arising from warehouse operations or landlord negligence.

4. Casualty and Condemnation

Accidents and other forces of nature happen, and when they do, both parties generally want the space to be restored as soon as possible. You should consider rent abatement and termination rights dependent upon the timeframe for restoration. Events

of condemnation (eminent domain), while not terribly common, do happen, and the lease should not be silent about what happens when they do.

5. Maintenance and Repairs

Establishing clear maintenance and repair responsibilities guidelines is crucial for preventing disputes between landlords and tenants. The lease should specify which party is responsible for maintaining the warehouse's structural integrity, along with overseeing essential systems such as HVAC, plumbing, and electrical. Additionally, it should outline provisions for emergency repairs and articulate the process for addressing maintenance concerns. By defining these responsibilities upfront, both parties can mitigate potential conflicts and ensure the smooth operation of the leased premises.

The lease structure will determine whether you are required to pay additional rent for property taxes, insurance, and maintenance expenses. Under a triple net lease, the costs of owning and operating the building are passed through to you. To safeguard your interests, limits should be imposed on potential increases in the amounts of operating expenses over the term of the lease, certain costs should be excluded from being passed through to you, and you should have audit rights. These measures ensure transparency and protect you from unforeseen financial burdens, enhancing the overall fairness and sustainability of the lease agreement.

6. Compliance with Regulations

Warehouse operations are subject to various regulations at the local, state, and federal levels, including zoning laws, building codes, and environmental regulations. Not only should the lease require compliance with applicable laws and regulations, with provisions for audits, permits, and certifications as necessary, but you should also perform due diligence prior to lease execution to ensure you do not inherit landlord's or a prior tenant's liability.

7. Security Measures

Security plays a paramount role in warehouse operations to protect valuable inventory from potential theft or damage. A comprehensive lease agreement should address security measures such as surveillance systems, access controls, and fencing. Landlords may also have obligations to provide adequate lighting and secure entry points to the premises.

8. Subleasing and Assignment

You should seek flexibility to sublease or assign your lease rights to third parties. The lease should outline the process for obtaining landlord consent for subleasing or assignment, including any conditions and restrictions to such consent and any exceptions from requiring such consent. At the lease negotiation stage, you should consider the potential for a future sale or merger of your business, in which case flexibility of assignment of your lease rights is particularly important.

9. Termination and Default

The lease should include provisions for termination and default, specifying circumstances under which either party can terminate the lease. This may consist of failure to pay rent, breach of lease terms, or insolvency. In addition, the lease should include clear guidelines for notice periods, cure periods, and remedies in the case of default to protect the interests of both parties.

From your perspective, you will want to ensure you receive notice of any alleged event of default and an adequate opportunity to cure before the landlord can exercise remedies. Conversely, the landlord will want to ensure that it has events of default that can be triggered automatically or quickly, as well as enforceable remedies.

10. Dispute Resolution Mechanisms

Despite efforts to prevent conflicts, disputes may arise between landlords and tenants during the lease term. The lease should include mechanisms for resolving disputes, such as mediation, arbitration, or litigation. Clear procedures for dispute resolution help expedite resolution and minimize disruptions to warehouse operations.

Addressing these legal considerations in warehouse leases is essential for protecting the interests of landlords and tenants in the transportation and shipping industries. By clearly defining rights, responsibilities, and obligations upfront, you can minimize legal risks and disruptions in the operation of your business, ensure compliance with regulations, and maintain a positive

landlord-tenant relationship throughout the lease term.

For personalized assistance in tailoring your warehouse lease to suit your specific needs and circumstances, please feel free to contact [Faith Miros](#) or [Mark Wendaur](#). We are here to help you navigate the complexities of warehouse leasing with expertise and care.