Preface

Have you ever wondered what is holding up the signing of what seems to be a very straightforward lease transaction? Or maybe you have asked yourself, “Is there something I am missing in negotiating this lease?” Or perhaps you don’t quite understand the particular importance of a lease paragraph and why one party is so insistent on not altering that paragraph. Are there times during lease negotiations when you wish you had an alternative or compromise that would be acceptable to all parties? The Lease Manual answers all of these questions and more. It is intended to assist lawyers, landlords, tenants, lenders, brokers, asset managers, property managers, and others involved in a commercial real estate lease transaction in the negotiation, preparation, and execution of office, retail, and industrial leases of commercial real estate.

Understanding the needs and concerns of all interested parties is the only way to effectively facilitate and complete lease negotiations. Key to this understanding is knowing who are the “interested parties.” The landlord and tenant are the obvious interested parties, but that is only the beginning of the story. In the background there often is a lender whose approval is required in order to complete the lease transaction, and sometimes there may be more than one lender if the landlord has placed subordinate or mezzanine financing on the property. There may also be a ground lessor, master lessor, or sublandlord of the building if the landlord does not own the fee interest in the land and the building. There may even be other tenants in the building or retail mall whose approval is required.

In addition, the needs and concerns of these interested parties may differ depending upon the structure of their organizations. A landlord that is a publicly traded REIT (Real Estate Investment Trust) may have a different frame of reference than a landlord who is an individual. In that same vein, a landlord that is a joint venture, limited partnership, or limited liability company (LLC) may have an insurance company, pension fund, or other institutional investor as a partner, and thus may have lease requirements that differ from a landlord whose partners are local investors.

The needs and concerns of lenders may also differ depending upon their type. A local bank likely will have different lease approval parameters than those of an investment fund or the primary servicer of a Commercial
Mortgaged Backed Security (CMBS) conduit (a lender that takes pools of commercial mortgage loans, securitizes them, and sell tranches to institutional investors). Similarly, an insurance company lender may have a set of lease approval standards that differ significantly from those of a credit company or mezzanine lender.

Tenants, too, have their own needs and concerns. A tenant that has an S&P AAA credit rating and leases space for regional offices throughout the United States likely will have its own lease form and will attempt to use that form whenever and wherever market conditions permit, regardless of the amount of space leased. Similarly, big block retail stores and anchor tenants of retail malls will be able to dictate lease terms that will not be available to local tenants.

The Lease Manual examines and explores the concerns, needs, and desires of landlords, tenants, and lenders by analyzing typical lease paragraphs from each point of view. Compromises and alternatives are offered and evaluated to enable the reader to effectively negotiate a commercial lease for his or her client. In addition, forms of ancillary lease documents, such as SNDAs (Subordination, Nondisturbance, and Attornment Agreements) and Tenant Estoppel Certificates that satisfy the requirements of landlords, tenants, and lenders are provided. This Manual is reproduced on the accompanying fully searchable CD-ROM, and all sample lease paragraphs and forms are available in an easily customizable format.