

TOP TIPS FOR HEADS OF TERMS FOR A LEASE

Heads of terms (“HoTs”) are used to outline the main commercial aspects of a proposed transaction. Whilst not binding until incorporated into the lease, clarifying the following ten aspects from the outset can save both time and money by avoiding the need for their negotiation down the line:

Demised Property

HoTs should clearly describe the extent of the property (ideally by reference to a plan). If the tenant is to be given a right to park vehicles, the number of parking spaces should be stated.

Use

Does the intended use of the property match the property’s existing use? If not, the HoTs should mention that the transaction is to be conditional on satisfactory planning permission being obtained for the tenant’s proposed use of the property.

Repair

The parties must decide whether they are happy to have a full repairing and insuring lease (where the tenant will have to put and keep the property in full repair regardless of whether it is in repair at the beginning of the lease) or whether the obligation should be limited by reference to a schedule of condition.

Alienation

The HoTs should set out whether there are to be any restrictions on the tenant’s ability to dispose of the lease. A tenant will endeavour to maintain flexibility; a landlord will want to set out conditions that it may impose in exchange for its consent to any disposal.

Alterations

The landlord will want to protect the value of the premises by drafting the HoTs to prevent any alterations that would make the premises difficult to let again after the end of the term. A tenant will generally prefer the HoTs to allow minor works without consent which would avoid the cost and delay of obtaining the landlord’s consent.

Service Charge

The HoTs should set out the broad terms of the service charge arrangements, including any cap on the amount of service charge or a sinking fund. In an attempt to achieve “clear rent”, a landlord will want as many expenses as possible to be paid by the tenant.

Rent Review

The HoTs should set out whether there is going to be a fixed rent, a stepped rent or a review by reference to RPI or market value. When agreeing these provisions it must be kept in mind that there may be adverse Stamp Duty Land Tax (SDLT) consequences if there are any rent reviews in the first five years of the term.

Rent Deposit

Landlords will usually request a rent deposit as it is an immediately accessible source of money that can be withdrawn as soon as the tenant is in breach of the relevant covenants in the lease. Tenants might try to resist this depending on their covenant strength.

Break Clause

A break clause will allow the parties the ability to bring the lease to an early end. If there will be a break clause, the HoTs should set out the break dates and any preconditions to exercise such break.

Security of Tenure

Leases for business purposes generally attract “security of tenure” which means that the tenant will have a statutory right to renew the lease at the end of the term. The HoTs should consider whether the lease is going to be excluded from these provisions.

LAST TIP

Prior to agreeing any HoTs and for further information, please contact Marcus Carter whose details are listed below.



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