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CRE Involved with Corenet Harvard Symposium

August 13, 2009 - Appraisal & Consulting

Corenet held its Regional Symposium at Harvard University on June 16th with a number of CREs as guest panelists. Peter Holland, CRE moderated a program entitled Owners on the Ropes: The Need for Due Diligence by Tenants that included Barbara Hampton, MCR; David Glissman Esq and myself. Over 50 corporate executives and brokers attended this program.

Holland set the stage for the audience with a description of the program. The presentation was focused on office corporate tenants negotiating a commercial lease in these times of financial turmoil. Holland stated that the turmoil was staged within the context of an increasing load of commercial loans and CMBS loans coming to maturity in 2009, 2010 and 2011. With shrinking appraised values, decreasing loan to value ratios, increased interest rates and a resistance of banks to renew loans, more landlords may be faced with foreclosures and bankruptcies (i.e. General Growth, Blackstone). The tenant may find itself with a lender as a landlord that may nullify its lease and evict the tenant. The issue is a disruptive tenant operation or an eviction or lack of property management that can affect the profitable operations of any company. There is a crisis that is about to unfold in the next 12 months. And in the midst of the crisis is the opportunity for proactive tenants with credit ratings to add value to their longer term real estate portfolio. Tenants must mitigate risk and seize the opportunity. The panelists addressed these issues with myself speaking on the landlord's perspective of 6 key clauses negotiating a lease. Hampton spoke on behalf of the corporate position and then Glissman addressed recently observed clauses of contention as a lawyer. I selected 9 clauses after conducting a field survey and interviews of approximately 12 entrepreneur and institutional landlords as well as a diverse survey of retail, office and industrial landlords. Answers and importance shifted depending on the category of the landlord.

However, there was some commonality with the following 9 clauses that are of more importance in these recessionary times and include:

- 1.Base Rent/Additional Rent/Reimbursements/Operating Expense Reimbursements
- 2.Signatures and Guarantors
- 3.Subordination/Attornment
- 4.Tenant Improvement Costs/Workletter/Space to be Delivered/Restoration
5. The Term
- 6.Landlord's Services/Maintenance/Repairs
- 7.Assignment and Subletting
- 8.Insurance and Indemnity/Indemnification/Liability Insurance/Exculpation
- 9.Tenant Default and Remedies/Cure/Acceleration of Rent.

Part two will appear in the September 11th edition of the New England Real Estate Journal in the Appraisal & Consulting section.

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