

Facilities Contract Auditing

Objectives. A major Tenant in a Colorado facility was concerned with the complex formulas utilized to determine the allocation of certain revenue streams between themselves and the facility owner(s). The original terms of the tenant's Lease were amended several times over a period of 5 years, at which point the facility was sold. The Tenant wanted to clarify certain discrepancies and ambiguities in the lease terms and to ensure that the amendments did not unfavorably impact them.

Challenges & Methodologies. In this particular case, each amendment designated different "break points" and rent increases, which would be determined by market conditions. Whenever rent increases or revenue allocations are structured this way, factors such as rent abatements or rent increases must be considered inasmuch as the breakpoint should be appropriately adjusted so as to prevent one party from getting hurt.

An Estoppel Certificate was used as the mechanism with which to verify compliance with the provisions of the Lease and to assure the Landlord and/or Lender that the lease is in full force and effect and that the current factual information in the Lease was true and that neither party was in default. However, the Certificate and Agreement issued by the Lender and executed by the new Landlord had questionable terms as well as considerable discrepancies. Implementing this agreement would affect the Tenant's rights to review and challenge various tax and rent payments, and would make the Lender's security interest superior to all other liens and interests in the property. The Tenant needed to ensure that its rights would not be impaired as a result of its subordination to the Lender under the new agreement.

Outcomes. By resolving a dispute and correcting an accounting discrepancy which was detrimental to the Tenant, the Tenant was advised to amend and draft a new agreement. Under the previous system, the Tenant had been overpaying rent by more than 12% of what was originally allocated. The Lender issued revised versions of the Estoppel Certificate and Agreement and made adjustments to reflect the negotiated terms agreed to in the Amendments. Following such revisions, both parties reached an agreement.

Moreover, after presenting the findings to the Landlord and Property Management Organization, and by negotiating the terms of the recovery, the Tenant received a large cash settlement as a direct result of our efforts. The changes implemented in the revenue structure not only recovered all overcharged amounts, but also reduced the amounts the Tenant would have to pay in future years.