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Charter Schools: Leasing a Surplus School Building from the District of Columbia



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Introduction. Once the Chancellor of the District of Columbia Public Schools determines that a school building is no longer needed for the operation of a public school, jurisdiction of the building will be transferred to the Department of General Services (“DGS”). DGS is obligated to offer the building to charter schools for lease. Subject to obtaining the DC Council’s authorization, DGS will negotiate the terms of a lease on behalf of the District of Columbia (the “*District*”), including a rent that is the appraised value of the property, based on the use of the property as a school for an initial term of not less than 25 years (which is renewable for one additional 25 year term so long as the school or its board of trustees maintains its charter). The other terms of the lease are negotiable. This is often a lengthy process so it helps to know the “ground rules” before the negotiation begins.

- **Delivery and Improvement of the Premises.** The leased premises will be delivered to Tenant in “as is” condition. The lease should allow Tenant to make improvements to the leased premises in accordance with plans and specifications approved by the District. Tenant should insist that this approval not be unreasonably withheld, conditioned or delayed. To assure that Tenant’s construction schedule is not delayed by waiting for the District’s approval, it is important to obtain a “*deemed approval*” provision whereby the District is deemed to have approved Tenant’s submission or request if the District fails to respond to the first request within a specified number of days (e.g., 10 to 15 business days) and further fails to respond to a second request within a specified number of days (e.g., 10 business days).
- **Rent.** Although the District must charge rent based on the appraised value of the leased premises used as a school, it can reduce and/or abate the rent to take into account the value of the capital improvements that Tenant intends to make. Tenant may be required to provide proof of the cost of such improvements.



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- **Rent.** *(continued)* Tenant should also seek a dollar-for-dollar rent credit for the cost of capital improvements made later in the lease term. If Tenant is opening a new school or adding new grade levels, Tenant should seek rent abatement for one to three years so it has time to build full enrollment before full rent is payable.
- **Operating Expenses.** Leases of school buildings are always “triple net” so that the rent is net to the District. Accordingly, Tenant will be required to pay all costs of operating the leased premises.
- **Insurance.** Tenant will be required to maintain general liability and property damage insurance naming the District as an additional insured. The amounts, limits, and issuers of the required insurance should be negotiated only after consulting with Tenant’s insurance broker to make sure coverage is available at a reasonable cost.
- **Assignment & Subletting.** Tenant cannot transfer its interest in the lease without the District’s prior consent, other than to a leasehold mortgagee previously approved by the District. The District’s consent should be subject to a reasonableness standard if the proposed transferee is a District of Columbia Public School, another public charter school, an independent school, a subsidiary or parent of Tenant, or a purchaser of all or substantially all of Tenant’s assets.
- **Green Building Requirements.** All improvements to the leased premises will be required to comply with the Green Building Requirements set forth in Title 6, Chapter 14A of the District of Columbia Code. If (i) Tenant is improving at least 30,000 square feet of gross floor area, and (ii) if Tenant’s improvements involve a comprehensive construction or alteration of partitions, electrical systems, mechanical and passive heating, ventilation, air-conditioning and refrigeration systems and (iii) if the building has a certificate of occupancy for a commercial use, the improved space must fulfill or exceed the Leadership in Energy and Environmental Design (better known as “LEED”) standard for commercial and institutional buildings.



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