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Tax-Deferred 1031 Exchanges

The 1031 exchange, or tax-deferred exchange, is a method of avoiding the tax on the sale of an income property by reinvesting the proceeds from the sale into a new investment or business property. This tool can be used by property owners who find that a once lucrative asset has become a vacant liability. Sellers can often avoid the management headaches and expense of finding a new tenant, perhaps with a costly retrofit. Once the property is under agreement, the owner can locate a net leased property that

meets their criteria and, because of the like kind exchange laws, put off paying the tax on the gain. 1031 exchanges are also an appealing avenue to look at when a building owner/occupant retires. The riskier asset may be traded for one easier to manage and more attractive for an arms-length or absentee investor to own.

VC Funding in The Boroughs

A recent article in the April 16, 2007, *Worcester Business Journal* detailed a report from the Federal Reserve Bank of Boston that listed both Westborough (third) and Southborough (seventh) in the top 10 of all U.S. secondary cities for attracting venture capital. In the article, Peter Shannon of Atlas Venture in Boston characterized Westborough and Southborough as being "very fertile recruiting ground for the type of talent" that companies are looking for in "precision manufacturing, life sciences and IT", and offering a more experienced talent pool in these areas than even downtown Boston or Cambridge. Although not yet back to the high flying .com days, the disbursement of VC dollars demonstrates that companies in towns like Westborough and Southborough are still regarded as best-in-class by those willing to put more than their opinions on the line.



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Landlord Concessions in Lease Negotiations

For skillful brokers, commercial lease negotiations are often a time for give and take. Commercial lease agreements range anywhere from 4 to 50 pages and often include an additional 1 to 20 pages of exhibits describing anything from the actual premises to secondary contracts, operating budgets, and rules and regulations. The broker verifies that the business terms on the lease match those on the tenant's letter of intent/term sheet. Tenants should then focus on the monetary items including what the landlord is using for its base year for both real estate taxes and operating expenses. Options to renew are often free for the taking, however if they are not asked for, they will not be considered. Always be specific regarding notification to exercise term, rental rate, and rent escalations. If there is an option to purchase, there should

be a draft purchase contract attached, or risk being left with a host of mystery terms and conditions when the option is exercised. An experienced broker can give valuable guidance in this area. Ways to save tenants' upfront costs include various forms of graduated leases, free rent and/or landlord contribution to tenant improvements. Tenants and landlords should carefully define terms and conditions in order to eliminate contradictions and ambiguities wherever possible. And, of course, all terms and conditions should be fair market and reviewed by an experienced attorney. Properly executed lease negotiations minimize and often eliminate the potential for costly disputes arising from differing expectations.

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O'Brien Commercial Properties would like to thank the many clients and industry colleagues who have given us feedback on the company's new website. Most compliments have focused on the site as an easy-to-use and efficient resource. One of the most notable efficiencies that the new site affords is the ability to quickly and accurately update listing information. Again, we thank everyone for their generous and thoughtful comments and welcome your continued visits and feedback.



Environmental Conformance

When purchasing a commercial property, a sometimes daunting and largely unfamiliar territory is environmental compliance. Environmental compliance refers to a property's conformity to standards as set forth by Chapter 21E of the Massachusetts General Law. If financing is being used for the purchase, lenders require a property to be in compliance with these laws. If financing is private or the purchase is a cash transaction, the buyer should evaluate liability with abutters and future tenants and responsibilities with the Mass Department of Environmental Protection (DEP) to clean or close the site. The process can be time consuming and costly. By engaging a Licensed Site Professional (LSP), the property can be tested and reports can be provided to lenders, buyers and the DEP if contamination is found. While a LSP will determine the conformity of a property, a buyer should, at the minimum, have general knowledge of the process and

terms used. Some of the basic terms to be familiar with are Phase I Site Assessment, Phase II, and so on. Phase I Site Assessment is a preliminary review and examination of present and past uses and the general vicinity of the property. Phase II is conducted if Phase I is positive or not clearly negative and involves more in depth field investigation to determine the contamination. A recently cleaned site may have RAO status (Response Action Outcome), which varies in classifications and risk levels. There are extremely important implications when buying contaminated sites and several policies and procedures, such as time tables and indemnifications, that come into play. A qualified attorney and environmental consultant should be involved when purchasing commercial and industrial property.




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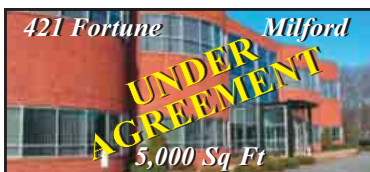
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