

# POLLINA CORPORATE REPORT

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## LETTERS OF INTENT: The Real Estate Prenuptial Agreement

### Part 2

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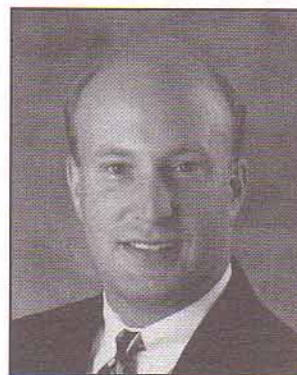
The first part of this two-part series explored the reasons for using Letters of Intent. It also relayed strategies for tenants to employ in today's tight real estate market to preserve flexibility while using a Letter of Intent. Since most tenants rarely enter Letters of Intent in soft markets, many are unaware of liabilities associated with them. Part two examines the critical elements of Letters of Intent and helps answer the question "How binding is a Letter of Intent?"

You are the real estate vice president for XYZ Corporation, a rapidly growing software company charged with establishing a 20,000 square foot regional office in Silicon Valley. With options quickly evaporating in this very tight market, you sign a Letter of Intent with a landlord to lease 20,000 square feet in your only viable option. Negotiating the primary business and legal issues before drafting a final lease, you sign a very detailed 20-page Letter of Intent. The President of XYZ then decides to locate this regional office in Denver, Colorado. While the Letter of Intent addresses all major issues, it contains the boilerplate disclaimer, "This Letter is not contractually binding; rather its purpose is to outline the basic terms from which the parties may prepare a Lease. This Letter is subject to approval by XYZ's Board of Directors."



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Mr. Wenig represents companies nationally as a tenant's advocate. He has handled projects of up to 650,000 square feet for clients such as Citizens Insurance, Executone Information Systems, General Accident Insurance, Octel Communications, PRC Inc. and State Farm Insurance. He has authored articles and lectured to numerous professional groups on lease negotiating. Prior to joining Pollina Corporate, Mr. Wenig practiced law for one of Chicago's leading law firms. Mr. Wenig graduated from DePaul University and obtained his Juris Doctorate from John Marshall Law School.



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Robert J. Downs, Jr. is an Associate in the Real Estate Department at the Philadelphia law firm of Klehr, Harrison, Harvey, Branzburg & Ellers, LLP. He devotes a substantial portion of his practice to the representation of landlords and tenants in commercial real estate transactions throughout the United States. Mr. Downs received his undergraduate degree from Villanova University, his MBA from the University of North Carolina and his law degree from Temple University, *cum laude*.