

Diane Foskey

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Sent: Thursday, January 20, 2005 10:00 AM
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Subject: Top Ten List

Jack, Gene, Pat, Alex:

My Top Ten list of "Pet Peeve" or annoying issues when negotiating an office lease:

1. The definition of "ready for commencement of tenant work." The attorney has to understand the construction terminology involved in defining a level of base building completion that is reasonably advanced to allow tenant work to proceed.
2. Responsibility for delays. The lease has to clearly define the different circumstances leading to delay, and differentiate causes that are the landlord's fault, the tenant's fault, no one's fault, or force majeure.
3. Subletting and assignment rights of the tenant. This is always a thorny issue, involving negotiation of landlord consent, sharing of profits, and substitution of financial responsibility.
4. If the landlord constructs the tenant improvements, the lease has to define the conditions of tenant acceptance of the space. Is it substantial completion as defined by the AIA, or is it sufficiently complete to allow move-in of FF&E?
5. The definition of "base building." Does the landlord provide a "cold dark shell," or a "warm lit shell," and how much of the HVAC or lighting system is implied by either term?
6. Expansion options, contraction options, and ROFO's. The where, when and duration of each. These can be costly constraints on the landlord.
7. The damages payable by landlord for landlord delays. Do they include holdover rent to another landlord, cost of double moves, and are they capped?
8. The tenant's right to approve co-tenants, especially retail tenants in an office building.
9. Calculation of OE and RE Tax pass-thrus. How is base year defined, and how does the landlord "gross up" expenses in a partially vacant building?
10. Signage rights and rooftop use. Everyone wants other tenants to be "no more prominent than" they are. And everyone wants to control to rooftop.

I hope this is helpful. Let me know if you want me to expand on any of this for the written materials.

Bob