Commercial Leases: Structuring Tenant Build-Out, Improvement, Maintenance and Repair Provisions

THURSDAY, APRIL 9, 2015

1pm Eastern    |    12pm Central   |   11am Mountain    |    10am Pacific

Today’s faculty features:

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COMMERCIAL LEASES: AVOIDING COSTLY MISTAKES IN DRAFTING BUILD-OUT, REPAIR, CASUALTY AND INSURANCE PROVISIONS

Strafford CLE Webinar
Thursday, April 9, 2015
1:00 pm – 2:30 pm (EDT)

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THRESHOLD ISSUE:

RESPONSIBILITY FOR THE BUILD OUT

• Address issues early – the letter of intent stage
• Don’t leave work letter to the end of negotiations
• Lease and work letter need to be consistent
• Landlord or Tenant?
• Does other party have approval over hiring of contractor?
• What is the Cost of Work?
• How is it paid?
• Who obtains permits?
• Who obtains a certificate of occupancy?
Tenant Considerations

• Timing for completion
  ➢ What happens if time line not met?
  ➢ If Landlord performs the Work, does Tenant have a drop dead date to terminate or is payment of rent tied to completion date, or both?

• Condition of delivery

• Cost of completion

• Tenant’s role in construction process

• Plan review process

• Penalties for late delivery
PRE-COMMENCEMENT BUILD-OUT CONSIDERATIONS

Landlord Considerations

- Bidding process
- Defining “substantial completion”
- Compliance with laws
- Disruption of other tenants
- Overtime
- Coordinating landlord’s work and tenant’s work
- Tenant cooperation
APPROVAL OF PLANS

- Who pays for plans?
- Will both parties will have input and rights of approval?
- Time frame for comments and approval
- The larger the project, the more likely Tenant will want competitive bids
- Will Landlord be reimbursed for its review of Tenant’s plans?
Change Orders

- Negotiate threshold amount
- Detail process for submissions of change orders
- How much notice?
- When is payment required from Tenant if cost of change order increases cost of construction?
Cooperation Of Parties

- For larger projects consider regularly scheduled project meetings and progress reports
- Coordination of Landlord and Tenant Work
- Tenant cannot interfere with Landlord’s contractors
- Parties need to work in harmony
- Insurance issues
Punch Lists

- How far in advance to require?
- Who gets to participate in completion of punch list?
- What is considered “substantial completion”?
- How long does Landlord have to correct punch list items?
- How are disputes resolved?
- Parties should sign the final punch list
Delivery Of Premises

• Premises to be delivered in broom clean condition, free of all occupants and “in compliance with law”
• How might “compliance with law’ be impacted by a tenant’s particular manner of use
• HVAC system, plumbing, electrical, mechanical systems
• Delivery in compliance with building codes and plans
• Who determines whether substantial completion has occurred?
Representations And Warranties

- Landlord or contractor representations and warranties?
  - Roof and structure
  - HVAC, plumbing and all other systems
  - Electrical capacity
- How long do warranties and occupancy representations survive? (1-2 years)
- Latent defect exclusion
- How much time does Tenant have to deliver notice of a problem to Landlord?
SAMPLE CONSTRUCTION PROVISIONS

Some basic clauses for discussion....
LANDLORD’S WORK

- Landlord shall, at Landlord’s sole cost and expense (except as otherwise provided herein), furnish all of the design, material, labor and equipment required to construct the Improvements in accordance with the Plans and Specifications (the “Plans”) as modified by any Change Order. Landlord shall construct the Improvements in a good and workmanlike manner, and in accordance with all applicable statutes, ordinances and building codes, governmental rules, regulations and orders relating to construction of the Improvements (but not matters arising because of Tenant Work or specific to the particular business Tenant seeks to engage in the Premises). Landlord shall diligently proceed with the construction of the Improvements and use reasonable speed, diligence and good faith efforts to Substantially Complete the Improvements to the Premises on or prior to the Projected Substantial Completion Date; provided, however, if Landlord fails to so Substantially Complete the Improvements and deliver possession of the Premises on or prior to the Projected Substantial Completion Date, then (a) the validity of this Lease and the obligations of Tenant under this Lease shall not be affected, and except as set forth herein, Tenant shall have no claim against Landlord (and Landlord shall have no liability) hereunder, at law or in equity, arising from Landlord’s failure to Substantially Complete the Improvements and deliver possession of the Premises by such date; and (b) subject to the provisions hereof, the Commencement Date shall be postponed to the extent of such delays.

1. Capitalized terms not defined in the sample clauses are defined elsewhere in the document from which the sample clauses have been taken, and will need to be defined as appropriate for the specific transaction.
The final plans for the Improvements shall be subject to the approval of both Landlord and Tenant. The Improvements to be effected pursuant to the Plans and Specifications are sometimes referred to herein as the “Work.”

The parties agree that the cost of the Work will be $____ (“Total Costs”) subject to Change Orders approved by both parties. The Total Costs include the sum of $_____ to ______________, $_____ for an __________ and $_____ for __________. Landlord and Tenant agree that the general contractor for the Improvements shall be __________ Construction Company.

Landlord shall solicit competitive bids from at least three (3) subcontractors for each major trade required to complete the Work. Each such bidder shall be qualified to do its portion of the Work. Neither Landlord nor the general contractor shall have a direct or indirect ownership interest or familial relationship with any bidding subcontractor except as disclosed in writing to Tenant, in which event such bid shall be subject to the written consent of Tenant.

Tenant shall have the right to offer comments to the Landlord regarding the selection of bidders and require Landlord to include certain bidders, provided such bidders meet Landlord’s reasonable approval, including without limitation, all insurance requirements.
COSTS AND CHANGE ORDERS

- Landlord will not charge a supervisory, construction management or other fee with respect to the Work or Improvements, or otherwise be reimbursed or paid for costs of expenses incurred in connection with the Work or Improvements, provided however, a fee equal to ____ percent (___%) of the Work, shall be paid to ______________, which fee shall be included in the Total Costs.

- If the final cost of the Work is less than the Total Costs, the difference between the final cost of the Work and the Total Costs will be credited against Base Rent due from Tenant after expiration of the Base Rent Abatement Period.

- The Plans and Specifications shall not be changed by Landlord without the prior written approval of the Tenant. Tenant shall promptly receive a copy of each change order and an explanation in reasonable detail for each change. Tenant shall have the right to request in writing that Landlord make changes from time to time in the Work. Upon such request by Tenant, Landlord shall expeditiously prepare a detailed change order with plans and costs for such change and which shall set forth (i) any increase or decrease in the Total Costs, and (ii) any extension or shortening of the completion date of the Work (and the corresponding dates in this Lease), and receive Tenant's written approval of such change order prior to the commencement of the Work that is the subject thereof.
• Landlord shall apply for and obtain, all permits, licenses and certificates (including zoning approvals) necessary for the construction of the Work and for the occupancy thereof by Tenant. The fees for applying for, and the issuance and expediting of such permits, licenses and certificates shall be included in the Total Costs. Landlord shall be obligated to obtain a permanent certificate of occupancy regardless of whether a temporary certificate shall have first been issued.

• Landlord covenants, represents and warrants that: (i) the Improvements shall, upon the Commencement Date, be in compliance with all Laws; (ii) no Hazardous Substances, as set forth in Section ___ hereof, shall be incorporated into the Premises by or on behalf of Landlord; and (iii) utilities and drainage structures extended to or on the site shall be properly sized for the use of the Premises for the Permitted Use.

• Note: consider any other factors relevant to the design and use of the Premises by Tenant.
TENANT ACCESS DURING CONSTRUCTION

• During construction of the Work, Tenant and its representatives shall at times have access to the Work for the purpose of making inspections of the Work in progress. Nothing herein contained shall be construed as creating an obligation upon Tenant to make such inspections, and it is Landlord's obligation to insure that Work is completed in compliance with the Plans and Specifications. If during construction, Tenant reasonably determines that construction is not proceeding in accordance with the Plans and Specifications, Tenant shall give notice to Landlord specifying the particular deviation, deficiency or omission and Landlord shall promptly take such steps as shall be necessary to correct such deviation, deficiency or omission. Tenant and Tenant's representative shall be given reasonable notice of and may attend all project meetings, including all design review meetings and construction meetings. Landlord shall meet with Tenant monthly (or more frequently if reasonably required by Tenant) to provide detailed progress reports and to permit Tenant review Work in progress.
CONSTRUCTION DELAYS

• In the event that construction of the Work is more than thirty (30) days delayed behind the Project Schedule, attached hereto as part of Exhibit __ for reason other than an event of force majeure, Landlord shall promptly undertake, at its sole cost and expense, appropriate actions to bring construction back on schedule. During any such delay, Landlord shall provide Tenant with a weekly report that identifies the cause of such delay and the actions being taken to cure the delay.

• Note: Landlords often seek to carve-out Tenant delays, particularly in the plan review process.

• For purposes of this Article ___ only, Tenant has appointed ______________ to assist and consult with Landlord concerning the Work. Tenant's representative may not bind Tenant. Tenant shall have the right to appoint or replace a successor representative at any time upon written notice to Landlord.
TENANT’S ACCESS TO PERFORM WORK

• From and after the Early Access Date, Landlord shall provide Tenant with access to the Premises for purposes of performing the Tenant Work. Notwithstanding the foregoing, Tenant shall not be entitled to use and/or occupy the Premises other than for the performance of the Tenant Work until the Commencement Date has occurred. Tenant shall perform any Tenant Work in the Premises in accordance with, and subject to the limitations contained in this Section ___.

• Prior to commencing any Tenant Work, Tenant shall provide Landlord with: (i) copies of all plans and specifications pertaining to the Tenant Work for which such access is being requested; (ii) copies of all licenses and permits required in connection with the performance of the work for which such access is being requested; and (iii) certificates of insurance naming Landlord as additional insured/loss payee as reasonably applicable.

• Such entry into the Premises shall also be subject to the requirements that (1) prior to Tenant or any of the Tenant Parties (as hereinafter defined) obtaining access or entry to the Premises, Tenant must first satisfy the Access Conditions, and (2) Tenant and all Tenant Parties shall work in harmony and not interfere with Landlord and its agents and contractors in doing Landlord’s work in, to, or on the Improvements. If at any time such entry or occupancy shall cause or create an imminent likelihood of disharmony or interference, Landlord, in Landlord’s reasonable discretion, shall have the right to suspend such access upon twenty-four (24) hours’ written notice to Tenant until such time as Tenant, at Tenant’s sole cost, has remedied the causes of such disharmony or interference. Tenant agrees that any such entry into and occupancy of the Premises shall be deemed to be made under all of the terms, covenants, conditions and provisions of the Lease, except as to the covenant to pay Rent.
**DELIVERY OF POSSESSION NOTICE AND PUNCH LIST**

- Landlord shall notify Tenant approximately _____ (__) days prior to the date on which Landlord estimates that the Improvements will be Substantially Completed. Within ____ (__) days of receipt of such notice, Landlord and Tenant shall together walk through the Premises and inspect all Improvements, using reasonable efforts to discover all uncompleted or defective construction in the Improvements. After such inspection has been completed, each party shall sign an acceptance agreement in a reasonably agreed upon form (the “Acceptance Agreement”), which shall include, by attachment, a list of all “punch list” items which the parties agree are to be corrected by Landlord in connection with the Premises.

- Landlord shall use reasonable efforts to complete and/or repair such “punch list” items within ____ (__) days after executing the applicable Acceptance Agreement. ____ (__) days prior to the projected Substantial Completion Date, Landlord and Tenant again shall walk through the Premises and determine all Punch List items from the Acceptance Agreement that remain uncorrected. Tenant’s commencement of business operations from and in any part of the Premises shall be deemed to be an acceptance by Tenant of the Improvements, except for the agreed upon punch list items.
LATE COMMENCEMENT OR LATE COMPLETION

- Subject only to force majeure and Tenant Delays, if Landlord shall fail to achieve Substantial Completion on or before _______, then Tenant shall receive, as of the Rent Commencement Date one (1) additional day of abatement of Base Rent for each day of such delay for the initial thirty (30) days of delay and two (2) days of Base Rent for each day of delay beyond the thirtieth (30th) day of delay. In the event construction of the Improvements has not commenced by _______, with the Landlord's intention to proceed diligently to complete the same by _______, Tenant may terminate this Lease upon written notice to Landlord. In the event Landlord shall fail to achieve Substantial Completion on or before _______, Tenant, at its sole option, may terminate this Lease upon ______ (__) days' notice to Landlord. Upon receipt of either such termination notice, Landlord shall refund to Tenant any sums paid by Tenant hereunder to Landlord, the general contractor, the architect or any other person or entity, whereupon the parties shall have no further obligations hereunder.

- Consider the following proviso: “provided, however, if Substantial Completion occurs prior to the date set forth in Tenant’s notice, then Tenant’s notice shall be deemed null and void and of no force and effect and this Lease shall remain in full force and effect.”
DELIVERY OF POSSESSION

• Landlord agrees that it shall deliver the Premises to Tenant on the Commencement Date with (i) the heating, ventilation and air conditioning systems ("HVAC Systems"), plumbing, electrical, loading doors and all other Building Systems in good working order, condition and repair, and (ii) the roof and structure of the ________ in good condition and repair, except for any deficiencies as a result of the negligence or misconduct of Tenant or any Tenant Parties or the misuse of the Premises or the Property by Tenant or the Tenant Parties.

• Landlord represents that the electrical capacity of the Building after completion of the Improvements shall be sufficient for the Permitted Use.

• Landlord shall not be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease, except (a) as set forth herein and (b) with respect to the Improvements.
WARRANTIES

• For a period of two (2) years from Substantial Completion, the Improvements shall be warranted by Landlord against defects in design, materials and workmanship. Without limiting Landlord’s repair obligations to the extent expressly set forth in the Lease, Landlord shall, at Landlord’s expense, promptly repair or replace any such defective Work evidenced by written notice from Tenant to Landlord within such two (2) year period, except to the extent that any such defects are attributable to the misuse or neglect of Tenant or its agents, employees or contractors.

• During the entire Lease Term, Landlord warrants the Improvements against all latent defects and the failure of the Improvements to be completed in accordance with the Plans and Specifications. The warranties set forth above in this Section ___ cover all design, labor, materials and equipment required to perform any required repairs or other remediation resulting from the breach of any such warranty. Upon and following Substantial Completion, Landlord shall enforce for the benefit of Tenant all such warranties and guarantees relating to the Work and all equipment and building systems comprising a portion of the Work. Landlord’s failure to honor any such warranty made by Landlord shall be a Default by Landlord subject to Landlord’s and Tenant’s right to cure provided in this Lease. [Note: this will require negotiation of a self-help provision for Tenant]
COOPERATION OF THE PARTIES

• The parties agree to use commercially reasonable efforts and shall cooperate in good faith with each other so that the various tasks and obligations of the parties reflected in the Project Schedule or provided for in this Article may be performed and completed within the time periods provided in the Project Schedule or this Article including, but not limited to, responding within reasonable time periods to requests of the other party taking into account the dates set forth in the Project Schedule to which such requests relate.
REPAIR AND REPLACEMENT

General Principles

• The longer the lease, the more the “burden of repair” shifts to Tenant
• Most leases are not true “triple net leases” where Tenant is responsible for all maintenance and repair
• Most leases divide the responsibility for specific repair items one way or the other
Typical Division of Responsibility in an Industrial Lease

- Landlord: Roof, HVAC, electrical and plumbing systems, structure of the building, exterior walls
- Tenant: Interior non-structural components, light fixtures, interior plumbing, HVAC system, electrical and mechanical system serving the Premises, extermination
HVAC Systems

- Often a negotiated provision
- In short term lease, Tenant should try to place responsibility for repair and replacement on Landlord
- Often, a hybrid provision provides that Landlord is responsible for major repair and maintenance of HVAC; Tenant for ordinary maintenance and repair
- Solution as to Tenant’s obligation of ordinary repair and maintenance is purchase of a HVAC maintenance contract
Watch-Out Provisions

- Repairs required by law or by governmental authority – focus on what is meant. Landlord provisions are broadly drafted and impose expensive repairs upon Tenant.
- Sprinkler systems (area where laws often change).
- Parking lot – if you have a term of 5 years or less, address whether Tenant is responsible for, repaving, re-striping, repairing of curbs and/or replacement of parking area(s). Actual life of parking lot area is 7 years.
- Sewer line between Premises and street: can be big issue or problem: most leases are silent. (Bigger issue in single-use buildings).
SAMPLE MAINTENANCE AND REPAIR PROVISIONS
TENANT’S OBLIGATIONS

• Tenant shall maintain the Premises in good, clean and sanitary order and condition, including without limiting the generality of the foregoing, all plumbing, heating, air conditioning, ventilating, electrical, lighting facilities and equipment within the Premises, fixtures, interior walls, ceilings, decking, floors, windows, doors, plate glass and skylights located within the Premises, and signs (except Landlord’s signs, if any) located on the Premises. Tenant shall be responsible for snow removal, and Tenant shall enter into a preventative maintenance contract for the HVAC Systems on terms and with a provider reasonably acceptable to Landlord, which contract shall call for bi-annual maintenance, inspection and repair of such HVAC Systems. Tenant shall also enter into and maintain a security contract for the Premises.
• Tenant will not overload the electrical wiring serving the Premises or within the Premises, and will install at its expense, subject to the provisions of this Lease, any additional electrical wiring which may be required in connection with Tenant’s apparatus.

• Tenant will repair, at its expense, any damage to the Premises, arising out of Tenant’s use or occupancy thereof, including damage caused by bringing into the Premises any property for Tenant’s use or by the installation or removal of such property, all regardless of fault, or by whom such damage shall be caused, unless caused by Landlord, its agents, employees, or contractors; and in default of such repairs by Tenant, Landlord may make the same and Tenant agrees to pay to Landlord, upon Landlord’s demand, as Additional Rent, the reasonable cost thereof.
CONDITIONS APPLICABLE TO REPAIRS AND OTHER WORK

- All repairs, replacements and reconstruction (including, without limitation, all Alterations) made by or on behalf of Tenant shall be made and performed:
  - (a) at Tenant’s cost and expense,
  - (b) by contractors or mechanics reasonably approved by Landlord,
  - (c) at least equal in quality of materials and workmanship to the original work or installation,
  - (d) in accordance with such reasonable requirements as Landlord may impose with respect to insurance to be obtained by Tenant in connection with the proposed work,
  - (e) in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the Premises, and
  - (f) Tenant shall provide Landlord with as built drawings of such Alterations.
LANDLORD’S OBLIGATIONS

- Landlord shall be responsible for the performance of all repair, maintenance and replacement of (i) all structural elements, roof and exterior walls of the Building including all such repairs and maintenance, (ii) pipes, conduits, wiring and plumbing system outside of but serving the Premises and (iii) fire protection systems (the “Landlord Repairs”), except to the extent such is part of any Alterations. In addition, Landlord, at the expense of Landlord, shall be responsible for any major repair or replacement to the HVAC system such as replacement of a compressor or replacement of a unit. Provided, however, if any such work, maintenance, repairs or replacements are required as a result of the negligence or misconduct of Tenant or any Tenant Parties, Tenant’s failure to repair and maintain the Premises or the misuse of the Premises by Tenant or the Tenant Parties (any of the foregoing, a “Tenant Necessitated Repair”), Tenant shall reimburse Landlord for all reasonable costs paid or incurred by Landlord for such work upon demand as Additional Rent. Landlord shall also be responsible for the performance of landscaping (excluding snow removal) and repairs and maintenance of the exterior parking areas, sidewalks and truck courts provided that the cost of such activities shall be reimbursable as Operating Expense.

- Note: what should be at Landlord’s sole cost and expense versus reimbursable as an operating expense?
INSURANCE

Primary Types of Insurance

• Comprehensive General Liability

  Provides coverage for bodily injury & property damage due to alleged negligence of the insured and includes the following elements:

  A. General Aggregate
  B. Products/Completed Operations Aggregate
  C. Personal & Advertising Injury
  D. Occurrence Limit (includes premises/operations)

  No longer referred to as “public liability insurance”.

• Automobile

  Provides coverage for bodily injury & property damage resulting from operation of a motor vehicle and includes the following elements:

  A. Liability
  B. Physical Damage
  C. Hired/Non-Owned – Excluded in the General Liability Policy
• **Worker’s Compensation**

Provides medical & disability coverage to employees injured in the course of employment. Limits are typically governed by local statute.

• **Professional Liability**

Provides coverage when the insured causes another party a financial loss due to professional services rendered.

• **Excess Liability/Umbrella**

Provides additional liability coverage excess of primary general liability, auto, and worker’s compensation.
CERTIFICATE OF INSURANCE

- Form used as evidence of insurance in compliance with the lease. Typically includes the following type of information:
  
  A. Name of Insured
  B. Name of Insurance Agency
  C. Name of Insurance Company
  D. Types of Coverage Carried
  E. Limits of Insurance
  F. Effective Date of Policies
  G. Policy Numbers
  H. Verification of Requested Endorsements

- Does not contain: confirmation that the premium has been paid
BASIC TERMINOLOGY

• **Binder** - provides a more detailed account of insurance coverage and is considered a “temporary policy” until the original is received.

• **Policy** - the actual contract between the insurance company and the insured detailing exactly what is, and what is not, covered.

• **Endorsement** - a modification to the original policy.

• **Additional Insured** - an endorsement which extends the rights of the policy to the person named as additional insured.

• **Indemnification** - contractual transfer of liability from one party to another.

• **Waiver of Subrogation** – a provision that waives the right of the insurance company to recover claims paid from a specific party.
TENANT INDEMNIFICATION

• Tenant will defend and will indemnify Landlord and Agent and save them harmless from and against any and all claims, actions, damages, liability and expense (including, but not limited to, reasonable attorneys’ fees and disbursements) connected with the loss of life, personal injury or damage to property or business arising from, related to, or in connection with the performance of Tenant’s Work, the occupancy or use of the Premises (including, without limitation, the presence of mold or bacteria in the Premises and claims from employees for “sick-building” illnesses, whether or not related to Tenant’s failure to maintain its HVAC system properly) or occasioned wholly or in part by act or omission of Tenant, its contractors, subcontractors, subtenants, licensees or concessionaires, or its or their respective agents, servants or employees on any part of Landlord’s property or the Shopping Center or by reason of Tenant’s breach of any of the provisions of this Lease. Tenant shall not, however, be liable for damages or injury occasioned by the gross negligence or willful misconduct of Landlord, Agent or their agents, employees, contractors or servants, unless such damage or injury arises from perils against which Tenant is required by this Lease to insure.
TENANT INDEMNIFICATION

- Unless and then solely to the extent such damage is caused by the gross negligence or willful misconduct of Landlord, Agent, or their respective agents, servants, and employees, neither Landlord, Agent nor their respective agents, servants, employees or contractors (collectively, the “Released Parties”) shall be liable for, and Tenant, in consideration of Landlord’s execution of this Lease, hereby releases all claims for loss of life, personal injury or business sustained by Tenant or any person claiming through Tenant, and Tenant releases the Released Parties from all claims for damage to property of Tenant and any person claiming by, through or under Tenant even if caused by the gross negligence or misconduct of the Released Parties, resulting from any fire, accident, occurrence or condition in or upon the Shopping Center or any part thereof (including, without limitation, the Premises and the building of which the same is a part), including, but not limited to, such claims for loss of life, personal injury or damage resulting from (1) any defect in or failure of plumbing, heating or air-conditioning equipment, electrical wiring or installation thereof, water pipes, stairs, railings or walks; (2) any equipment or appurtenances being out of repair; (3) the bursting, leaking or running of any tank, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Shopping Center; (4) the backing up of any sewer pipe; (5) the escape of steam or hot water; (6) water, snow or ice being upon or coming through the roof or any other place upon or near the Premises or the building of which the same is a part or otherwise; (7) the falling of any fixture, plaster, ceiling tile or stucco; (8) broken glass; (9) any act or omission of other tenants or other occupants of the Shopping Center. The foregoing waiver and release is intended by Landlord and Tenant to be absolute, unconditional and without exception and to supersede any specific repair obligation imposed upon Landlord hereunder.
LANDLORD INDEMNIFICATION

• Landlord will defend and indemnify Tenant and save Tenant harmless from and against any and all claims, actions, damages, liability and expense (including, but not limited to, reasonable attorneys’ fees and disbursements) in connection with the loss of life or personal injury arising from, related to, or in connection with Landlord’s willful misconduct or grossly negligent acts or omissions in the Common Areas of the Shopping Center. Landlord shall not be liable for damages or injury occasioned by the negligence or willful misconduct of Tenant, its agents, employees, contractors or servants.

• Indemnification Considerations:
  
  ➢ Scope of indemnification
  ➢ Parties covered by indemnification
  ➢ Insurance coverage vs. scope if indemnification
  ➢ Gross negligence and willful misconduct