

THE TENANT'S ULTIMATE COMMERCIAL LEASE CHECKLIST

The checklist divides a lease into eight basic categories. Each category contains a number of topics that are covered in most standard form leases. Lease forms differ from landlord to landlord, and the listed topics may stand alone or be



combined with others. This CHECKLIST highlights issues to be considered on fifty-five different substantive topics, many of which contain numerous issues. Some topics, such as options and different types of rent adjustments, are optional and may not be applicable to a particular lease. On the other hand, some leases may omit important topics or cover them in an incomplete manner. The CHECKLIST is designed to assist the reviewing party in identifying the missing or incomplete topics as well as evaluating the topics included.

Since no list is ever complete, leases may contain substantive issues in addition to those discussed in the CHECKLIST. Most traditional items will relate to one of the eight broad categories and it is suggested that such issues be reviewed to determine their consistency with the related issues within that basic category.

The CHECKLIST is a tool to be used to generate thoughts and dialogue concerning basic rights and duties so that the parties can understand the impact of a particular right or duty and make an informed decision on its acceptability or modification.

THE TENANT'S ULTIMATE COMMERCIAL LEASE CHECKLIST

THE PARTIES AND THE PROPERTY

1. PARTIES

LANDLORD IDENTIFICATION

- Corporation
- Individual
- Trust or land trust
- Government
- Partnership or limited partnership
- Is full legal name set out with full description of entity (state of incorporation or partnership, married or single, governmental agency, etc.)
- Does entity have assets (if subsidiary, will parent company sign; if closely held, have principals agreed to sign; if limited partnership, does general partner have assets, etc.)
- Does entity have legal authority to enter into lease
- Does Landlord hold legal title to property

TENANT IDENTIFICATION

- Corporation
- Individual
- Trust or land trust
- Government
- Partnership or limited partnership
- Does Tenant have legal authority to enter into lease

LEASE DATE

- Is date relevant to commencement of any legal obligations
 - Commencement date
 - Rent
 - Insurance obligations
 - Construction obligations

2. DEMISING PROVISIONS – PROPERTY DEFINITIONS

DEFINITION OF “BUILDING/PROPERTY”

- Full descriptive definition in lease
- Site plan or survey showing building footprint and property boundary
- Is legal description attached as exhibit
- Is property larger than necessary to support building

DEFINITION OF “PREMISES”

- Full description definition in lease (suite, street address, zip code)
- Is floor plan of premises attached as exhibit
- Is area above suspended ceiling excluded
- Are utility lines in floor and walls excluded

REFERENCE TO APPURTENANT RIGHTS

- Elevators (minimum number)
- Storage (floor plan)
- Parking (specific stalls identified)
- Directory (number of strips or entries specified)
- Signage (size, locations, design)
- Public lobby (floor plan)
- Are important common areas identified
- Any other special rights for Tenant
- Are any of foregoing exclusive to Tenant
- Can any of foregoing be altered or eliminated without Tenant's consent
 - If so, has Tenant protected any special rights and generally protected reasonable access to premises

MEASUREMENT OF BUILDING AND PREMISES

- Is rentable or usable measurement specified
- Is formula stated in lease
- If rentable formula, is "load" factor identified
- Who measured building
- If building is under construction, are there provisions for measurement on completion and is Tenant protected against increase in its %
- Are there provisions for certification of measurement or warranty by Landlord
- Can Tenant verify measurement provided by Landlord
- If multi-use building, have measurements been done correctly for each use
- If multi-use, have common areas and cost of services been allocated fairly according to stated formula
- If multi-building project, have measurements been done correctly
- Is T's share based on a fair denominator
 - Is it clear that denominator is all rentable area in the project and not the 'rented' or "leased" area.
- Are defined "building" or "property" subject to change during lease term
 - Affect on Tenant's share of building expenses
 - Affect on Tenant's use of appurtenant rights and amenities
 - Is Tenant entitled to advance notice
- What is excluded from leasable area of building:
 - Storage
 - Parking
 - Office of building
 - Roof
 - Public areas
 - Flues, shafts, etc.
 - Public auditorium
 - Other
- If any excluded areas are income generating for Landlord or for the exclusive use of another Tenant, why are they excluded
 - See section 15 of this checklist concerning income and expenses
- If any of above are not excluded, are they part of the "load" factor
- Is amount of property excessive for size of building and are expenses associated with excess size being charged to tenants

3. OPTION TO EXPAND PREMISES

NOTICE REQUIREMENTS

- Are dates for notice of exercise absolutely clear
- Are notice periods reasonable to Tenant
- Are parties to get notice clearly identified
- If notice dates are tied to commencement date anniversary, is commencement date clear
- Is Landlord required to give Tenant advance notice of option expiration date
- Is Landlord required to provide Tenant with adequate information concerning option spaces including existing improvements etc.

CONDITIONS FOR NOTICE

- Can option be exercised if Tenant is in default
- If not, must default be substantial
- Is default determined at time of exercise or effective date of expansion
- Can option be exercised by subtenant or assignee of Tenant
- If same space is subject to firm option, first refusal or first offer are Tenant's rights independent of each other.

FIRM OPTIONS

- Are option spaces clearly identified by floor plan exhibit
- Is rentable area of option space contained in option provisions
- If Tenant can take less than entire option area, does Tenant have right to select space
 - Subject to Landlord approval on size and configuration
 - Are standards for approval included in lease
- If Tenant has multiple options, are they sequenced in preferred order
- If a sequence option is passed, is it available for next option
- If an option area is passed:
 - Are Tenant's rights to remaining options terminated
 - Is Tenant's ability to access option area affected by passed option

FIRST REFUSAL

- Are specific floors or space clearly identified by floor plan exhibit
- Is Tenant's right applicable to all space becoming available in designated areas
- Are existing tenants permitted to extend or renew their leases
- Are rights in existing tenant extended to subtenants or assignees
- Is Tenant's right of first refusal continuous for all designated space over term
- Are there provisions requiring Landlord to substantiate the terms of the first refusal transaction
- Are there limitations on Landlord entering into lease on substantially different terms than offered to Tenant; or
- Is Landlord required to re-offer lease to Tenant if original terms materially change

FIRST OFFER

- Are specific floors or space clearly identified by floor plan exhibit
- Is Tenant's right applicable to all space becoming available in designated areas
- Are existing tenants permitted to extend or renew their leases
- Are rights in existing tenant extended to subtenants or assignees
- Is Tenant's right of first refusal continuous for all designated space over term
- Does lease require Landlord's offer to Tenant to be in good faith
- Is Landlord's offer required to meet any "market" conditions

- Are there limitations on Landlord entering into lease on substantially different terms than offered to Tenant; or
 - Is Landlord required to re-offer lease to Tenant if original terms materially change
- CONDITIONS OF EXPANSION SPACE**
- If expansion space is unimproved and added at current base rent:
 - Does Tenant get same allowance per square foot as original; and adjusted by index or % if base rent adjusted by index or %
 - Is substantial completion or buildout of TI's required before expansion space is added to lease
 - See Section 8 of this checklist for related issues on construction
 - If expansion space is improved and added at current base rent:
 - Is expansion space delivered in "as is" condition, except for latent defects
 - Does Landlord pay Tenant difference between cost of existing TI's and Tenant's original allowance
 - Is "as is" condition as of date lease signed and not commencement date
 - Is "as is" condition subject to any minimum building standards or compliance with codes and laws
 - Has Tenant inspected and acknowledged "as is" condition
 - If expansion space is either improved or unimproved but added to lease at negotiated or "market" rent
 - Is TI allowance consistent with negotiated or "market" deal
- RENT FOR EXPANSION SPACE**
- Added at the then current base rent and rent adjustments; or
 - Added at negotiated or "market rent"
 - See Section 5 of this checklist for issues related to "market rent"
 - If rent is to be negotiated, does Landlord have to provide "market rent" calculation or other information to Tenant sufficiently in advance of notice dates so Tenant can verify and evaluate Landlord assumptions
 - Is Tenant protected if rent formulas produce rent in excess of the then fair market rental for the premises.

4. TERM

FIXED TERM

- Commencement and expiration dates clearly set out
- If term also expressed in years and months, does it fit dates

FLOATING TERM

- Is there a readily identifiable event for commencement date
- If commencement date tied to completion of TI's, see section 8 of this checklist
- Is expiration date fixed or does it "float" with commencement date
- Is it clear that commencement date cannot be earlier than a specified date even if premises are substantially complete
- Who determines commencement date
- Who resolves dispute
 - Landlord
 - Landlord's architect
 - Landlord, Tenant and architect
- Is Landlord required to give advance written notice of commencement date to Tenant
- Is notice given after substantial completion or is notice given of when space will be

- substantially complete
- Is advance notice adequate for Tenant to prepare for occupancy
- Does Tenant have right to terminate if not achieved by specified date
- Mechanics to memorialize final commencement and expiration dates
 - Formal lease amendment recommended
 - Form of amendment attached as exhibit
- TENANT LICENSE TO ENTER PREMISES PRIOR TO COMMENCEMENT DATE
 - Scope of license
 - Tenant construction work
 - Tenant finishing work
 - Tenant doing business
 - Is license revocable by Landlord
 - Are standards for revocation identified
 - Does Tenant get notice of revocation
 - Does Tenant have opportunity to cure
 - Does Tenant have any occupancy obligations under license
 - Property insurance
 - Liability insurance
 - Rent obligations
 - Terms of lease applicable

5. OPTION TO EXTEND OR RENEW TERM

EXTENSION OR RENEWAL

- Does jurisdiction distinguish between extension and renewal
- If renewal, how will base year or stop be handled
- If extension, is lease amendment required or will notice suffice

DOES TENANT HAVE MORE THAN ONE OPTION

- Are notices and conditions clear for each option
- If an option is passed, do all subsequent options fall

NOTICE REQUIREMENTS

- Are dates for notice of exercise absolutely clear
- Are parties to get notice clearly identified
- Is Landlord required to give Tenant advance notice of option expiration date
- Are notice periods reasonable or do they require Tenant to decide too far in advance
- If notice dates are tied to commencement date anniversary, is commencement date clear

CONDITIONS FOR NOTICE

- Can option be exercised if Tenant is in default
- If not, must default be substantial
 - Is default determined at time of exercise or on effective date of extension or renewal
- Can option be exercised by subtenant or assignee of Tenant

RENT DURING EXTENSION OR RENEWAL

- Agreed rent figure; or
- Rent to be negotiated by:
- Specific formula; or
- "Market" rent
 - who determines
 - who decides if disrupted

- are specific criteria set out
- are criteria clear and relevant to tenant's lease
- is agreement enforceable or too vague
- Are there provisions to give Tenant discount off "market" because of Landlord savings from commissions, improvements, concession package, legal fees, "down time" between leases, etc.
- If rent is to be negotiated, does Landlord have to provide "market rent" calculation or other information to Tenant sufficiently in advance of notice dates so Tenant can verify and evaluate Landlord assumptions
- If rent is determined by formula, is Tenant protected if formula produces rent in excess of the then fair market rental for the premises

CAN OPTION BE EXERCISED FOR LESS THAN ENTIRE PREMISES OR ENTIRE FLOOR

- Does Tenant have right to select space
- Does Landlord have approval of size and configuration
- Are standards for approval set out

6. OPTION TO CANCEL

NOTICE REQUIREMENTS

- Are dates for notice of exercise absolutely clear
- Are cancellation dates specific or any time after a specific date
- Are parties to get notice clearly identified
- Is Landlord required to give Tenant advance notice of option expiration date, if any
- If notice dates are tied to commencement date anniversary, is commencement date clear
- Are notice periods reasonable or do they require Tenant to decide too far in advance

CONDITIONS FOR NOTICE

- If payment to Landlord are payments specified, or
- If option includes formula for determining payment:
 - If payment tied to unamortized value of Tenant concession package, are terms of amortization including amount and interest factor clear
 - If payment based on estimated lease up period, must Tenant surrender occupancy during such period
 - Does any penalty payment formula decrease over term
- Can option be exercised by subtenant or assignees of Tenant

BASIS FOR CANCELLATION

- Unilateral decision by Tenant for any reason
- Unilateral decision by Tenant for specific reason such as move to another city or state
- Unilateral decision by Tenant based on Landlord failure to perform lease obligations
 - Are standards clear
 - Is Tenant required to give Landlord notice of default and right to cure
 - Are time periods reasonable
 - See Section 7 for default examples
- Does cancellation apply to all or any part of premises
 - If Tenant may cancel for part of space, is space selected by Tenant or Landlord
 - Are there guidelines for size and configuration

7. POSSESSION AND CONDITIONS OF PREMISES

DELIVERY OF POSSESSION

- Does Landlord have a clearly expressed obligation to deliver possession
- If Landlord's failure to deliver is result of holdover, is Landlord or Tenant required to bring forcible entry action to terminate holdover
- Does Tenant have remedies for Landlord failure or delay in delivery of premises
 - Tenant right to terminate
 - Tenant right to damages
- Are Tenant's damages limited
 - Cost of moving Tenant
 - Temporary space rental for Tenant
 - Damages to Tenant from Tenant's prior Landlord because of holdover by Tenant
 - Damages caused to Tenant by suit from subtenants or assignees of Tenant's former space
 - Difference between Landlord rent and Tenant rent in new location
- Does Landlord have right to provide temporary space
 - Standards for temporary space including location, contiguity of spaces, basic equipment, etc.
 - Outside dates for Tenant stay in temporary space
 - Reduced rent for temporary space
 - Landlord to pay all costs of move to temporary space including change of address notices, phone and equipment installation, etc.
- Landlord failure to pursue construction of new building or renovation
 - Tenant right to cancel if:
 - Landlord financing not confirmed by specific date
 - Landlord has not obtained required construction permits
 - Landlord construction has not commenced by specific date
 - Landlord construction is not substantially on schedule
 - Tenant premises not delivered by specific date
- Tenant right to damages
 - Tenant expenses to date of termination including costs of negotiating, architectural plans, space plans, consultants, etc.
 - Difference between Landlord rent and Tenant rent in new location
- Is substantial completion required for both premises and building
 - Are conditions for building completion specified including:
 - Construction barricades down
 - Entrance, lobby, elevator completed
 - Exterior of building completed
 - Parking completed
 - Outside hoist removed
 - Landscaping completed
- CONDITIONS OF PREMISES – "AS IS"
 - Has Tenant excluded latent defects from its acceptance of space
 - Has Tenant examined and accepted the "as is" condition
 - Is "as is" condition as of date lease signed and not commencement date
 - Is "as is" condition subject to any minimum building standards or compliance with codes and laws

- Are premises to be delivered “broom clean”
- If premises is subject to work by Landlord, see section 8 of this checklist
- HAS LANDLORD AGREED TO CLEAN, REPAINT, RECARPET, ETC. ANY PORTION OF PREMISES DURING TERM
 - Must Tenant give notice or request work
 - Is Landlord responsible for any furniture or equipment moves
 - Is Landlord required to perform all work at one time to minimize interference with Tenant’s business

8. CONSTRUCTION OF TENANT IMPROVEMENTS (TI’S)

WHO PERFORMS WORK

- Landlord, Tenant or both
- Are Tenant’s contractors subject to Landlord approval
- Are standards for approval stated in lease
- If Tenant’s to be done by both Tenant and Landlord, does agreement provide for scheduling and require cooperation
 - Do Tenant’s contractors have license to enter premises to do Tenant construction or finishing work prior to commencement date
 - Are time periods adequate
 - See section 4 of this checklist concerning license to enter
 - Do agreements clearly allocate responsibility for designated work

DESCRIPTION OF WORK

- Contained in lease, or
- Work letter incorporated in lease, or
- Contract with third party incorporated in lease
- Is Landlord responsible for all permits and licenses

WHO PAYS FOR WORK

- Landlord, Tenant or both
- If Landlord to do all work including Tenant extras, is it turnkey job with Tenant’s obligation limited to pay fixed amount except for Tenant initiated change orders:
 - Cost overruns to be paid by Landlord
 - Compliance with laws and codes to be paid by Landlord
 - Costs arising from errors in plans and errors in bids to be paid by Landlord
- If Landlord provides Tenant with construction allowance, is Tenant contracting party with architect and contractors
 - Is Tenant responsible for all permits and licenses
 - Is Tenant responsible for all cost overruns, errors, etc.
 - Is Tenant responsible for failure to complete on time
- If Tenant is to pay portion of TI’s, does Tenant have option to have Landlord pay and amortize costs over term with rent payment
 - Is there any limit on additional costs that Tenant can incur
 - Is there a responsible time period for Tenant to exercise rights
 - Are terms of amortization, including interest rate, clearly set out
- If Tenant pays for portions of work, are times for payments and amounts of % clearly identified
 - Must Landlord first provide Tenant both statements and evidence of completion
 - Is Landlord required to pay 100% of its share before Tenant pays

- PLANS AND SPECIFICATIONS
 - If no plans and specifications, is description thorough and complete
 - If plans and specifications required, who is responsible for preparation
 - Is there a firm date for completion of plans and specifications
 - ◆ Who is responsible for cost of delay if not met
 - Who pays for preparation of plans and specifications
 - ◆ Are they prepared before lease is signed
 - ◆ If plans completed after lease is signed:
 - Are they to be based on “building standard” qualities and quantities specified in lease or workletter
 - Are quantities sufficient
 - Is quality acceptable
 - Are plans subject to Landlord’s consent and approval
 - ◆ Are criteria specified
 - ◆ Is approval limited to code compliance
 - ◆ Is any portion of work subject to Landlord aesthetic judgment
 - ◆ Are there penalties for delay in completing plans
 - ◆ Are time periods for revisions specified
 - ◆ Does delay impact commencement date provisions
 - Are plans and specifications incorporated in lease

COST OF WORK

- Negotiated sum
 - Not subject to change except for Tenant initiated change orders
- Cost plus or cost plus not to exceed a fixed amount
 - Is Landlord required to bid contract
 - Does Tenant have right to approve bids on contract price
 - Is definition of cost of work clear
 - Are profit, overhead and fees fully disclosed and fair
 - Does Tenant get advantage of unit prices or “attic stock”

CHANGES IN WORK

- Is Landlord responsible for all changes and costs necessary for code compliance
- Is Tenant responsible only for Tenant initiated change orders
 - Is change order formula for calculating costs clear
 - Must Landlord work with Tenant on change order requests and provide cost and delay information before change order signed
- Is credit and substitution policy clearly stated

DELAYS IN COMPLETING WORK

- Is completion date for all work performed by Landlord clearly stated
- Does Tenant have right to inspect progress of work from time to time
- If delay in work is Landlord’s fault, what are Tenant’s rights
 - Tenant rent abatement or agreed change in commencement date
 - Tenant self help
 - Tenant termination rights if outside date not met
 - Is Tenant required to give Landlord notice to protect remedy
- If delay in work is Tenant’s fault, what are Landlord’s rights
 - Tenant rent commences
 - Is Tenant entitled to notice and chance to cure
 - If delay is based on special order fixtures does Landlord have burden of giving Tenant advance notice of delays

- ◆ Does Tenant have right to substitute to avoid delay
- If both Tenant and Landlord have caused delays, is Landlord's delay to be considered primary
- Do delays by either Landlord or Tenant change the commencement or expiration dates of lease
 - Are there mechanics to determine extent of delays and memorialize date changes

SUBSTANTIAL COMPLETION

- Is definition contained in lease or work letter:
 - Tenant can use all of premises for uses intended; and only minor and insubstantial details of construction, decoration and mechanical adjustment remain (i.e. "punchlist" items)
 - Is Landlord required to give advance notice to Tenant of substantial completion
 - Is advance notice reasonable to give Tenant time to prepare for move and occupancy
 - Who determines substantial completion and what if disagreement
 - If new construction, must the building also be substantially complete
 - Are conditions for building completion specified including:
 - ◆ Construction barricades down
 - ◆ Entrance, lobby, elevator completion
 - ◆ Exterior of building completed
 - ◆ Parking completed
 - ◆ Outside hoist removed
 - ◆ Landscaping completed
 - Certificate of Occupancy required
 - ◆ Who is responsible to obtain
 - ◆ Are temporary certificates of occupancy required for partial occupancy

PUNCHLIST ITEMS

- Who prepares punchlist
- Is it prepared after move in by Tenant
- Are time limits for Landlord completion specified
- Does Tenant have right to complete and set off costs against rent

GUARANTY OF WORK

- Minimum 1 year for workmanship and materials specified
 - If construction in phases, does warranty date from completion of entire job or from completion of a phase
- Are all special and extended warranties available to Tenant
- Is it clear that Landlord is responsible for repair and replacement and not Tenant

9. RELOCATION OF PREMISES BY LANDLORD

NOTICE TO TENANT

- Is notice period reasonable
- Is notice period different if Tenant has taken possession

STANDARDS FOR NEW SPACE

- Size and layout
- View
- Location in building
- Quality of TI's
- Decoration

- Mechanics to adjust any difference in rent and other payments

RELOCATION OF ALL OR PART

- If partial relocation, will it effect Tenant's use of balance of space
- #### PAYMENT OF ALL MOVING AND RELOCATION COSTS BY LANDLORD

- Moving costs
- Install all office equipment including computers, voice mail, music, intercom, work stations, etc.
- Phones
- New stationary and advertising material
- Notice to customer/clients
- All costs and expenses associated with move

CONDITIONS FOR LANDLORD'S RIGHT TO RELOCATE TENANT

- Is Landlord's right to relocate if Landlord cannot meet occupancy dates
- Conditioned on Landlord's need for space for full floor or evenings at Tenant request
- Does Tenant have right to terminate if relocation unacceptable to Tenant
 - Does Tenant have any rights to recapture costs, expenses and damages
- Are there limits on how many times Landlord can relocate Tenant
- Is there a limit on relocation once Tenant has reached a certain size (e.g. 3000 square feet)

10. SURRENDER OF PREMISES

ON OR BEFORE EXPIRATION DATE TENANT'S DUTIES ON SURRENDER

- Tenant to restore premises to same condition as received
 - Except wear and tear
 - Except fire and casualty
 - Except for damages caused by Landlord
 - Except for damages caused by condemnation
 - Except for any damages covered by Landlord's insurance
- Tenant to remove all personality from premises
- Tenant to surrender premises and keys
- Tenant not liable for any demolition costs at end of term

LANDLORD REMEDIES FOR DEFAULT

- Repair and restore damage and charge Tenant
- Does Tenant get advance notice of required repairs with right to cure
- Does Landlord have right to take custody of any personality on premises and sell, store, destroy, etc.
- Does Tenant get advance notice of storage, intended sales, etc.

TENANT ISSUES

- Can Tenant take attached specialty items if Tenant repairs damage cause by removal (see section 24 of this checklist)
- Can Landlord make Tenant remove alterations if they were approved by Landlord. (see section 24 of this checklist)
 - Are there any exceptions for improvements that are building standard type
 - Are all TI's installed by Landlord excluded from any removal duty

THE MONEY PROVISIONS

11. BASE RENT

- DO ANY PROVISIONS OF LEASE DEFINE RENT AS AN INDEPENDENT COVENANT
- HAVE ANY SUCH PROVISIONS BEEN DELETED
- COMMENCEMENT DATE FOR RENT VS. COMMENCEMENT DATE FOR TERM
- IS BASE RENT AMOUNT ACCURATELY STATED
- ANNUAL RENT PAYABLE MONTHLY IN ADVANCE
- ADDRESS FOR PAYMENT
- PRORATION FOR PARTIAL MONTHS
- IS PREPAYMENT OF FIRST MONTH'S RENT REQUIRED
 - Waive if security deposit
 - Interest provision for Tenant

ARE THERE PROHIBITIONS ON SET OFF AND DEDUCTION

- Delete; or
- Exclude all areas of abatement, set-off or self-help in lease and by law

IS THERE A LATE FEE CHARGE AND INTEREST ON LATE PAYMENTS

- Are charges excessive
 - Is interest rate specified and not "maximum allowed by law"
 - If interest rate floats with prime rate, it is enforceable in applicable jurisdiction
- RENT NOT LATE UNTIL REASONABLE WRITTEN NOTICE (10 DAYS) OR BY SPECIFIC DATE (10TH OF THE MONTH)
- Is rent payment determined by date of Tenant mailing or Landlord receipt
 - Are any limits on number of grace periods per year deleted

12. RENT ABATEMENTS

FREE RENT PERIOD

- Does it include base rent and additional rent
- Are start and stop dates clearly defined
- Is it pro-rated for partial months
- Is free rent period affected by delays in construction

RENT ABATEMENTS FOR DEFAULT

- Do abatements include base rent and additional rent
- Is there abatement if delay or interruption of services
- Is there abatement if interference with use and enjoyment of premises
- As offset for costs and expenses from self help

13. BASE RENT ESCALATIONS (INDEX)

NON CONSUMER PRICE INDEX

- Does it have reliable history
- Is it accurate compared to inflation indices
- Is it relevant to commercial lease market
- Is there a backup index if current index discontinued
- Are there provisions for adjustment if substantial change index of method

CONSUMER PRICE INDEX (CPI)

- CPI (u) or CPI (w)
- Has T verified whether the (u) or (w) index is more favorable in applicable area

- Is regional or metropolitan area selected
- Is there a backup index if current index discontinued
- Are there provisions for adjustment if substantial change in index or method
- CALCULATIONS
 - What portion of base rent is index applied to
 - Is it limited to equity dollars (exclude portion of rent to pay long term financing)
 - Does it exclude any component of base rent to amortize cost of TI's or attributable to any part of concession package
 - Does it exclude all portions of rent previously escalated or adjusted by other escalations
 - Does it exclude all additional rent including operating expenses and taxes
 - Base Index
 - Average year vs. average year
 - Specified month vs. specified month
 - Payment
 - Is escalation based on calendar year or lease year
 - Is escalation calculated annually with annual payment, or
 - Is escalation payable monthly in advance
 - Is it limited to 1/12 of prior year's escalation
 - Are estimated increases excluded from Tenant's estimated monthly payment
 - Do billing statements include full explanation of calculation and do they certify correctness by Landlord

IS THERE A CAP ON ESCALATION

- Is annual escalation capped by % or dollars
- If cap is based on a percentage of increase is it increase over base index and not over prior year as escalated
- Does cap accumulate over term
- Are any items excluded from cap because they are beyond Landlord's control such as taxes and are exclusions reasonable

IS TENANT PROTECTED IF BASE RENT ESCALATIONS EXCEED THE THEN FAIR MARKET RENT FOR SPACE

BASE RENT ADJUSTMENT

- Is base rent adjusted by index each year
 - Adjusted down as well as up
 - Does formula result in escalated base rent being escalated (compounding escalations)
 - Has Tenant limited adjustment by limiting index increases to original base rent and not prior year's base rent

14. BASE RENT ESCALATIONS (NON-INDEX)

PERCENTAGE PER YEAR

- Limited to % of original base rent and not % of prior year base rent
- Can % be easily converted to square foot rate to track with expansions and contractions
- Does % make economic sense from both a historical and current point of view

INCREASE PER SQUARE FOOT

- Are scheduled increases attached as exhibit
- Is increase based on "market rent" (See section 5 of this checklist)

RENT DETERMINED BY APPRAISAL

- Number of appraisers specified
- Standards for appraisers set out
- Qualifications for appraisers
- Time limits for performance
- Who pays fees and expenses
- Can either Landlord or Tenant rescind if rent unacceptable

15. ADDITIONAL RENT (OPERATING COSTS)

TENANT'S SHARE OF OPERATING COSTS

- Verify measurements of building and premises
- Can rentable area of building be changed by Landlord
 - Are there provisions to adjust base year or stop if changed
- In multi-use or multi-building project, does lease allocate costs between uses and buildings by reasonable formula set out in lease
- Does measurement of building exclude from leasable area portions of building used to generate income:
 - Roof
 - Parking
 - Lobby
 - Semi-permanent tenants (flower stands, news stands, express mail boxes in lobby, etc.)
- Is income used to reduce operating costs
- If any of the above are not excluded, are they part of the "load" factor

DATE FOR FIRST INCREASE

- Are adjustments based on calendar year or lease year
- Are there any estimated payments payable prior to first adjustment
- Is basis for estimate provided to Tenant annually

BOOKS AND RECORDS

- Does lease contain affirmative duty for Landlord to keep and make available for Tenant for term of lease
- Are books and records available at office of building
- Does Tenant have right to inspect and audit at any time
 - Can Tenant's audit be conducted by its accountant or other personnel
 - Are Tenant's audit costs paid if discrepancy of more than 2%
 - Are Tenant's audit costs to include time for its own personnel as well as outside accountants, attorneys, etc.
- Is Landlord required to follow generally accepted accounting principles (GAAP)
- Does lease require books and records to be consistent year-to-year

BILLINGS AND STATEMENTS

- Are calculations fully explained
- Is itemization of expenses provided
- Does billing include certification of correctness by Landlord
- Does billing include certification by outside auditor
 - Is it general audit letter or does it apply to Tenant's lease as amended
- Does statement specifically include details of any applicable gross up of operating expenses of taxes
- If there are any disputes in amount of operating expenses:
 - Can Tenant suspend payment on amount in dispute; or
 - Can Tenant make payment of disputed amount into escrow during dispute; or

- If payment required, will Tenant receive interest from date of payment on amounts refunded
- Does lease require Landlord to provide statement and certification within 90 days after end of calendar year or lease year
- Is any operating expense overpayment returned to Tenant or credited as determined by Tenant
- Does Landlord have to pay Tenant interest on any overpayment

ESTIMATED PAYMENTS

- Do they include both taxes and operating expenses
- Is basis for Landlord's estimate for coming year explained in detail
 - Based on prior year and limited 1/12 per month
 - Based on anticipated increases in prior year expenses
 - Is estimated payment limited to % or specific dollar amount
- Can Landlord revise estimate during year to reflect actuals

BASE YEAR

- Is base year clearly defined
- Is base year gross up for 100% occupancy
 - Is basis for gross up clearly defined
 - Does Tenant have right to see Landlord's gross up calculations
 - Is gross up limited to only the variable expenses affected by occupancy such as electricity, cleaning, management fees based on rents collected, etc.
 - Does gross up reflect any price reductions to Landlord based on bulk purchases or other economies of scale
- Does Tenant have right to review actual base year income and expenses
- Has Tenant reviewed prior years income and expenses to determine average annual increase
- Has Tenant compared performance to comparable buildings
- Does lease provide for adjustments to base year such as:
 - Add in repairs covered by warranties
 - Add in any items permitted to be passed through but not included in base year
 - Add in any expenses which represent a substantial increase over quality or scope of service in subsequent years (increase in types of insurance coverage, change in landscaping, etc.)
- Does base year include both operating expenses and taxes as part of one base year amount so that savings in one will be a credit against the other

"STOP"

- Are tax and expense "stops" aggregated
- Has Tenant been given the "stop" proforma for review
- Is "stop" based on proforma which reflects only expenses permitted under definition of operating expenses
- Is proforma similar to comparable buildings in the area
- Is "stop" based on 100% occupancy
- Are there mechanics to adjust "stop" if:
 - Rentable area of building changed
 - Scope of quality of permitted expenses changes

COMPARISON YEARS

- Are expenses in comparison years subject to gross up to 100%
- See issues for gross up of base year above

OPERATING EXPENSES – INCLUSIONS

- Are expenses limited to expenses actual and necessary for operation or maintenance of

project

- Are any services provided by affiliate of Landlord limited to competitive costs
- Are expenses limited to expenses deductible on federal tax return unless specifically provided
- Is cash or accrual method of accounting specified
- If Landlord's lease lists a number of permitted inclusions, do the items relate solely to operating and maintaining project and are they limited to expense items

OPERATING EXPENSES-EXCLUSIONS

- Ownership costs
- Marketing and advertising expenses
- Lease commissions
- Legal fees
- Expense of services provided to some but not all tenants of building. If electricity is operating expense, are there mechanics to adjust for tenants who operate 24 hours or otherwise have disproportionate use
- Expenses to prepare any tenant spaces for occupancy
- Salaries, wages and fringe benefits for employees above the level of building manager
- Consulting fees
- All costs and expenses relating to Landlord's financing
- Ground rents and related costs under ground lease
- Any amounts paid by Landlord as late fees, interest or penalties because of defaults under agreements relating to maintenance and operation
- Above market or non-competitive payments to vendors
- Depreciation and amortization
- All costs and expenses to cure original construction defects in project
- Any costs and expenses attributable to an office of the building
- Landlord's general corporate overhead
- Contributions to employee pension plans
- Contributions to charitable, political or civic organizations
- Any amounts which Landlord is required to insure against (including deductible amounts) under lease
- Any expenses reimbursed from any source
- All costs and expenses to operate and maintain parking garage or other income producing area of project not included within leasable area of building (or see operating costs-deductions below)
- Utility hook-up and account transfer charges
- Any costs, fines, penalties and expenses required to keep building or property in compliance with building, zoning, fire or other applicable codes
- Any costs and expenses associated with inspections, abatement or cleanup of hazardous or toxic substances on building or property
- Capital costs
 - Exclude all capital costs; or
 - Permit amortization of specific capital costs if:
 - Capital item reduces an operating expense; and
 - Capital cost amortization does not exceed amount of demonstrated savings in any year; and
 - Terms of amortization and interest factor are clear
- Expenses scheduled less often than annually
 - Major expenses (painting, tuckpainting, marble bleaching, sandblasting, etc.) to be amortized (straight line) over useful life of expense

- Management fees in excess of a set % of rent actually collected
- Is scope of management fee defined so that expenses to be covered by management fees are otherwise excluded from operating expenses
 - Accounting fees
 - Computer fees
 - Preparation of tax and expense reports
 - Normal office supplies and expenses
 - Other

OPERATING EXPENSE-DEDUCTIONS

- Operating expenses shall be reduced by:
 - Any expenses reimbursed to or recovered by Landlord from any source
 - All income from portions of the building or project which are excluded from the leasable area of the building, including
 - ◆ Parking revenues
 - ◆ Fees and rent for use of roof (antennas, microwave dishes, etc.); and
 - ◆ All fees and rents from parties using any part of public areas of building or project (food carts, public auditoriums, semi-permanent tenants, drop boxes, etc.)
 - Income from resale of electricity where metered by Landlord
 - If landlord sells labor and bulbs, ballasts and tubes to tenants, is income from job order applied to expenses

16. ADDITIONAL RENT (TAXES)

TENANT'S SHARE OF TAXES

- See Tenant's verification in section 15

BASE TAX AMOUNT

- If base year, do taxes reflect building fully occupied and fully assessed for an entire year
- If "stop", does amount reflect building fully occupied and fully assessed for an entire year
- If building is getting tax break because its new or not at full occupancy, does Tenant get credit for assessment under "stop"
- If building is getting tax break because it is new or not at full occupancy, has base year been adjusted upward
- Are tax and operating stops or base year amounts combined so savings in one will be credited against the other
- If taxes increase because of new construction, is the base tax amount to be adjusted upward; or
 - If taxes increase because of new construction for a particular tenant, are those taxes the responsibility of that tenant
- If building taxes are determined in applicable jurisdiction based on its stream of income do the provisions for adjusting the "stop" or base year tax components take into consideration that many tenants in new construction will pay less than normal rent because of rent concessions.

TAXES INCLUDE

- Real property taxes
 - Do tax parcels fit definition of building and property
- Personal property taxes
 - Are they limited to equipment and furniture necessary to operate building

- Rent taxes
- Taxes “in lieu of or substitution for” real property taxes
 - Are there standards to determine when applicable
 - Is Landlord required to substantiate
- Special assessments
 - Are they bonded and paid over longest period possible
- Reasonable attorney and professional fees for Landlord to contest taxes
 - Is there an affirmation covenant of Landlord to minimize taxes annually

TAXES EXCLUDE

- Net income
- Gross receipts
- Capital stock
- Excess profits
- Franchise
- Gift, estate and inheritance
- Transfer taxes on sale or other conveyance
- Any amounts paid by Landlord as late fees, interest or penalties
- Any amounts paid in excess of minimum payments required by law

TAX BILLINGS

- Are they based on most recent tax bills
- Are copies of tax bills given to Tenant
- Are taxes based on cash or accrual method
 - Is method set out in lease
 - If accrual, are estimates reasonable
- Are tax refunds deducted from taxes in year received
- Are tax overpayments returned to T or credited as determined by Tenant

17. SECURITY DEPOSIT

- IS TENANT’S CREDIT SUFFICIENT TO HAVE REQUIREMENT WAIVED
- CAN’T EARN GOOD CREDIT AND PROVIDE FOR RETURN TO TENANT IF PROMPT PAYMENT AND NO DEFAULTS FOR FIRST YEAR OR CREDIT TOWARD 13TH MONTHS RENT
- IS DEPOSIT LIMITED TO ONE MONTH’S RENT OR LESS
- DOES TENANT GET NOTICE AND RIGHT TO CURE BEFORE LANDLORD CAN USE
- CAN DEPOSIT COVER COSTS OF NON-MONETARY DEFAULTS AS WELL AS MONETARY DEFAULTS
- IS PROVISION “EVERGREEN” REQUIRING CASH REPLACEMENT IF USED BY LANDLORD
- DOES DEPOSIT EARN INTEREST FOR TENANT
- CAN LANDLORD COMMINGLE DEPOSIT OR IS TRUST FOR TENANT SET UP
- ARE THERE MECHANICS FOR TRANSFER TO NEW OWNER
- CAN TENANT DEPOSIT SECURITY OTHER THAN CASH SUCH AS LETTER OF CREDIT, STOCKS, ETC.
- PROTECTIONS IF SECURITY DEPOSITED OTHER THAN CASH
 - Stock trades permitted by Tenant
 - Commercial paper instructions
 - Can Landlord require additional security if investment value drops
 - If earnings accrue to security deposit account, are earnings in excess of security deposit promptly out to Tenant

- CAN SECURITY DEPOSIT BE CREDITED AGAINST LAST MONTHS RENT, OR ARE TIME PERIODS SET OUT FOR REFUNDS (30 DAYS OR LESS).

USE AND RESTRICTIONS

18. PERMITTED USE

- IS USE FOR GENERAL OFFICE PURPOSES OR ANY LAWFUL PURPOSE
- HAS ANY BUSINESS DESCRIPTION LIMITATION, I.E. "A LAW OFFICE" OR "AN INSURANCE OFFICE" BEEN DELETED
 - If not, consider impact on assignment and sublease rights
- DOES USE INCLUDE INCIDENTAL RIGHTS ASSOCIATED WITH GENERAL PURPOSE (KITCHEN, PRINTING, STORAGE, ETC.)
- IS USE LIMITED BY HOURS OR OTHERWISE

19. PROHIBITIONS ON USE

- DO ANY STATED PROHIBITIONS CONFLICT WITH INTENDED USE
- DOES PROHIBITION ON TOXIC SUBSTANCE HAVE EXCEPTIONS FOR NORMAL CLEANING FLUIDS
- DO "NO COOKING" PROVISIONS PROVIDE FOR COFFEE ROOM EXCEPTION
- DO "NO LIQUOR" PROVISIONS PROVIDE FOR HOST LIQUOR EXCEPTION

20. SERVICES

DOES LEASE PROVIDE THAT LANDLORD HAS AFFIRMATION OBLIGATION TO DELIVER SERVICES DURING ENTIRE TERM

- Are all services available 24 hours a day, 7 days a week unless otherwise specifically provided
- Landlord has no right to suspend any service because Tenant in default
- If Landlord delays or fails to provide services, does Tenant have right to:
 - Rent abatement
 - Self-help by Tenant and set off against rent
 - Termination rights if not repaired or restored within specified time period
 - Damages resulting from termination

HVAC

- Has typical standard of "Landlord's reasonable judgement" been replaced with specific range of wet and dry bulb requirements
- Is Landlord required to have building at required temperature by 7:30 a.m. daily (Sundays and holidays excluded)
- Is Landlord required to keep building at required temperature until at least 6:00 p.m. M-F and 3:00 p.m. Saturdays (Sundays and holidays excluded)
 - Is a list of recognized holidays attached as exhibit to lease
- If Tenant requires HVAC at any other hours is it available
 - Is it within Tenant's control; or
 - Must Tenant schedule with Landlord
 - How far in advance must request be made
 - Is there a charge for after hours HVAC
 - How is charge calculated
 - Is charge limited to Landlord's actual costs without overhead and profit

- If HVAC is zoned to benefit other tenants, is charge to Tenant prorated
- Has Landlord provided initial hourly cost rates to Tenant
- Are increases in rates over term limited to actual increases in Landlord's costs without overhead and profit
- Tenant's heat generating machines
 - Is Landlord excused from meeting HVAC temperature ranges if Tenant installs heat generating machines beyond limits
 - ◆ Are standards set out for connected electrical load and occupancy density
 - ◆ Has Landlord warranted the portion of connected electrical load attributable to Landlord's standard lighting plan
 - Can Landlord install supplementary systems at Tenant's cost if electrical load or occupancy standards are exceeded
 - Can Landlord require Tenant to lower occupancy standards or electrical load
 - Has Landlord warranted T's initial use of premises from plans and specifications to be within applicable HVAC capability
 - Does Tenant have some cushion on density and connected electrical load to allow for growth and update of equipment from time-to-time
- Change in standards required by government
 - Mandatory changes only
- WATER
 - Is water for drinking and lavatory purposes supplied by Landlord at no charge
 - Does Landlord supply hot and cold water for lavatory purposes
 - Is additional water to be supplied at Landlord's cost
 - ◆ Is rate sheet attached
 - ◆ Are rates calculated at Landlord's actual cost without overhead and profit
- CLEANING SERVICES
 - Provided Monday-Friday
 - Detailed cleaning specifications attached as exhibit to lease
 - Additional charges
 - ◆ Are additional charge rates identified
 - ◆ Is Tenant notified of additional charge situation in advance
 - ◆ Has initial rate sheet been given to Tenant
 - ◆ Are charges calculated at actual cost without overhead and profit and are any increases limited to actual costs
 - Does Tenant have the right to employ personnel for above-standard cleaning and housekeeping

WINDOW WASHING

- "As needed" with minimum number per year
- Washed inside and out

ELEVATORS

- Passenger elevator
 - Are minimum number available during business hours
 - Are minimum number available after hours
 - Minimum cannot be changed without Tenant consent
 - Does Tenant have any dedicated elevators
 - Is Tenant's sequence in elevator bank important
 - ◆ Does change require Tenant's consent
- Freight Elevator
 - Is availability subject to scheduling

- Is service required at no cost during business hours
- Are after hours and weekend costs calculated at actual cost to Landlord without overhead and profit

ELECTRICITY

- If electricity is separately metered by utility:
 - Does Landlord pay cost to install meters
 - Does Landlord provide electricity to premises meter
- If electricity is separately metered by Landlord:
 - Is Landlord allowed to resell electricity in applicable jurisdiction
 - Is charge to Tenant same as charge to Landlord by utility
 - ◆ Is not, does Landlord get bulk discount
 - ◆ If Landlord make a profit on resales, does income reduce operating cost components relating to electricity
 - If Landlord has option or is required to stop resale of electricity, are there provisions to increase base rent
 - ◆ Is Landlord required to pay costs to convert Tenant to public utility including installation of meter
 - Does lease provide that cost to Tenant shall never exceed cost that utility would charge Tenant for separate account
 - Is Landlord required to provide Tenant with cost information on billings
 - Is it clear that Landlord may not discontinue electricity even if Tenant is in default
- If electricity is provided by Landlord and charged by electrical survey:
 - Is survey method of charging Tenant for electricity permitted in applicable jurisdiction
 - Are methods for survey clearly set out in lease
 - Is frequency of survey clearly stated
 - Are methods for selection of surveyor set out
 - ◆ May Tenant's consultant participate
 - Are results of survey to be fully disclosed to Tenant
 - Review above checklist for additional issues relating to metering of electricity by Landlord
- If electricity is provided as part of building operating expenses
 - Are there provisions to adjust expenses for 24 hour tenants or other tenants with a disproportionate use
- Regardless of method of billing:
 - Is Landlord required to provide risers, feeders and basic wiring to provide Tenant with reasonable amount of electricity
 - ◆ Has Landlord warranted that risers, feeders, etc. shall be sufficient at all times during term to supply Tenant with a minimum connected electrical load specified in watts per square foot of rentable area
 - ◆ Is Landlord required to add additional risers, feeders, etc. to meet Tenant's minimum connected electrical load
 - Does lease require that Landlord be able to provide some minimum amounts, such as 4 ½ watts per square foot of rentable area
 - ◆ Has Landlord given warranty as to maximum watts per square foot of rentable area required for Landlord's standard lighting system
 - ◆ Is wattage left over sufficient to let Tenant operate its office machines, equipment, etc.
 - ◆ Is connected electrical load within limits of Landlord's HVAC system and has Landlord warranted compliance
 - Has Landlord required Tenant to represent that its electrical use will not exceed the safety limits of Landlord's system

- How is Tenant expected to know
- Will Landlord approve in advance all electrical uses shown on plans
- Is Tenant required to pay all costs to meet excess electrical requirements
- Is Tenant required to purchase bulbs, ballasts and tubes from Landlord
 - What does Landlord charge
 - What is minimum job order cost for bulb, ballasts or tubes are part of operating costs, why is there any charge

INTERRUPTION OF SERVICES

- Has Landlord attempted to have Tenant waive all claims against Landlord for a failure to provide or a disruption of services
- Has Tenant negotiated a deletion of the waiver or made it applicable only if services are discontinued as a result of Tenant's acts
- Is Tenant entitled to rent abatement when services are suspended or interrupted:
 - Does rent abatement begin on first day of suspension or interruption
 - Is abatement tied to notice to Landlord
 - Must suspension or interruption be material
 - Are standards for materiality set out
- Has Landlord made affirmative covenant to repair and restore services as promptly as possible
- Does Tenant have any rights of self-help if Landlord doesn't restore within specified period of time
- Does Tenant have right to terminate lease if services not restored by an outside date
- Does Tenant have right to claim damages against Landlord as a result of suspension or interruption of services if it was the result of Landlord's acts or neglect
- Has Tenant given copies of these provisions to its insurance professional to verify that its business interruption coverage is adequate

21. LANDLORD REPAIR OBLIGATIONS (MANDATORY)

- LANDLORD'S AFFIRMATIVE OBLIGATION TO REPAIR, REPLACE AND MAINTAIN ALL PARTS OF BUILDING AND PROJECT IS CLEARLY STATED
- ALL PROPERTY AND EXTERIOR OF BUILDING
- ALL STRUCTURAL ELEMENTS AND COMMON SYSTEMS
- ALL ELEMENTS NECESSARY TO PROVIDE SERVICES TO T
- ALL COMMON AREAS, LOBBIES, LANDSCAPING, ETC.
- AREAS WITHIN T'S PREMISES
 - Structural items
 - TI's
 - Area above suspended ceiling
 - All repairs in walls and below carpet
 - All items which Landlord has agreed to insure
 - Do Landlord obligations depend on notice for Tenant
 - Do Landlord obligations exclude damage caused by Tenant
 - Does exclusion follow insurance arrangements
- IS LANDLORD REQUIRED TO MEET ANY STANDARDS LIKE "FIRSTCLASS NON-INSTITUTIONAL BUILDING"
 - Standards must be clear if Tenant has any self-help and set-off rights
- IS LANDLORD REQUIRED TO IMMEDIATELY BEGIN REPAIR OR REPLACEMENT WHERE REQUIRED AND DILIGENTLY PURSUE TO COMPLETION

- DOES LANDLORD HAVE RIGHT TO ENTER PREMISES WITHOUT NOTICE IN EMERGENCY
 - Is Landlord responsible for damages from forced entry
- IS LANDLORD REQUIRED TO DO REPAIRS, REPLACEMENTS AND MAINTENANCE IN A MANNER TO MINIMIZE INTERFERENCE WITH TENANT
 - Are weekends and overtime required if requested by Tenant
 - Does Tenant have rent abatement if T's space becomes unusable during repair, replacement or maintenance.

22. LANDLORD REPAIR OBLIGATIONS (OPTIONAL)

DOES LANDLORD HAVE RIGHT TO ENTER PREMISES TO MAKE REPAIRS FOR OTHER TENANTS AND TO MAKE CHANGES TO BUILDING IN GENERAL

- Is Landlord limited to work necessary for safety and efficient operation of building
- Is advance notice to Tenant required
- Must Landlord perform work after business hours and on weekends
- Has Landlord given covenant to minimize interference with Tenant's business

IS LANDLORD LIABLE FOR INJURIES TO T'S PERSONALITY AND PROPERTY DURING WORK

DOES LANDLORD HAVE RIGHT TO ENTER WITHOUT NOTICE IN EMERGENCY

- Is Landlord responsible for damages from forced entry
- IS LANDLORD REQUIRED TO DO REPAIRS, REPLACEMENTS AND MAINTENANCE IN A MANNER TO MINIMIZE INTERFERENCE WITH TENANT

- Are weekends and overtime required if requested by Tenant
- Does Tenant have rent abatement if Tenant's space becomes unusable during repair, replacement or maintenance

DOES TENANT'S RENT ABATE IF WORK INTERFERES WITH PART OR ALL OF BUSINESS

23. TENANT REPAIR OBLIGATIONS

IS TENANT'S OBLIGATION LIMITED TO PREMISES ARE PREMISES DEFINED TO EXCLUDE:

- Area above suspended ceiling
- All utility lines serving or in walls and floor of premises including fixtures
- Tenant improvements belonging to Landlord
- Tenant improvements insured by Landlord

DUTY TO REPAIR EXCLUDES:

- Normal wear and tear
- Damage from fire or casualty
- Damage caused by Landlord
- Repairs to be made by Landlord to items included in L's insurance coverage

HAS T AGREED TO REPAIR ANY ITEMS USUALLY COVERED BY LANDLORD SUCH AS ROOF, HVAC, PLUMBING FIXTURES, ETC.

- If so, has T inspected prior to lease
- Have any special warranties for equipment been assigned to Tenant
- If capital expense involved, does Landlord have to pay for any replacements

24. ALTERATIONS, IMPROVEMENTS & ADDITIONS DURING TERM

INITIAL CONSTRUCTION OF TENANT IMPROVEMENTS PRIOR TO COMMENCEMENT OF TERM IS COVERED IN SECTION 8 OF THIS CHECKLIST

THIS SECTION GOVERNS ALTERATIONS MADE BY T DURING THE TERM AT TENANT'S ELECTION AND COST

IS LANDLORD'S CONSENT REQUIRED

- Exceptions for non-structural work
- Exceptions for decorative work
- Exceptions for work less than a specific amount (e.g., \$5,000)
- Is Landlord responsible for getting all other consents such as lenders, ground lessor, municipal, etc.

PROCEDURE FOR CONSENT

- Is notice to Landlord required
- Are plans and specifications required by Landlord
 - Are full working drawings required or will single line drawing be sufficient for consent
 - Are there exceptions for minor work or work less than a specific amount
- Has Landlord agreed to prepare mechanical and electrical plans for Tenant at Landlord expense
- If provided at Tenant expense, is basis for charge set out and reasonable
- Has Landlord waived any charge to Tenant for review of plans
- Is the time period limited for Landlord response
- If plans and specifications are disapproved in whole or in part, must Landlord provide specific written objections
- Are Tenant's contractors subject to Landlord approval
 - Are standards for approval clear and reasonable
- LANDLORD BASIS FOR CONSENT
 - Compliance with applicable laws and codes
 - Compliance with Landlord's building standards
 - ◆ Are building standards specified in detail
 - Does Landlord have any rights of approval of aesthetics
 - Has Landlord agreed not to unreasonably withhold its consent
- Is T required to post adequate security for work
 - Are payment and performance bonds required
 - Is security deposit, if any, adequate for particular work
 - Can Tenant use cash deposits, letter of credit or other collateral for security
- Is Tenant required to comply with Landlord insurance requirements including:
 - Builders risk
 - Workman's compensation
 - Other liability policy
 - Are limits specified and reasonable
 - Has Tenant reviewed requirements with its insurance professional
- Is Tenant required to indemnify Landlord
 - Is scope of indemnity limited to specified work
 - Does Tenant have contractual liability policy to cover
 - Does indemnity cover acts caused by Tenant's contractors
 - Does Tenant's contract with its contractors contain similar indemnity of Tenant
 - Has Tenant reviewed indemnity with its insurance professional
- Payment of fee to Landlord
- Does Landlord charge supervisor fee if Landlord does not do work
- How is fee calculated
- Is fee in addition to general contractors fee
- Does Landlord supply any general conditions

OWNERSHIP OF ALTERATIONS, IMPROVEMENTS AND ADDITIONS

- Does Tenant own until expiration of term:
 - Tenant required to insure
 - Tenant required to restore if fire or casualty
 - Tenant depreciates for tax purposes, or
- Does Landlord become owner upon completion of work
 - Landlord required to insure
 - Landlord responsible for any deductible amounts
 - Landlord required to replace or restore if damages by fire or other casualty
 - Do restoration and rebuild provisions extend rent abatement to period necessary to rebuild
 - If lease terminated because of fire or casualty are insurance proceeds for alterations paid to Tenant or at least unamortized portion of alterations
 - ◆ Are terms for amortization and interest rates fully stated
- Is Tenant required to give Landlord final set of “as built” plans for alterations

REMOVAL OF ALTERATIONS AT END OF TERM

- Does Landlord have right to require removal at Tenant’s expense
- Have all improvements which are of building standard type been exempted from any removal requirements
- Is Landlord required to provide adequate notice to Tenant before expiration of term
- Has Tenant arranged for Landlord to waive removal rights at time consent is obtained
- Does Tenant have right to remove any specific built-in subject to Tenant’s repair and restoration

25. COMPLIANCE WITH LAWS

HAS LANDLORD REPRESENTED THAT BUILDING AND PREMISES COMPLY WITH ALL LAWS, CODES AND REGULATIONS

IS LANDLORD REQUIRED TO MAKE ALL REPAIRS AND REPLACEMENTS NECESSARY TO COMPLY WITH ALL APPLICABLE LAWS, CODES AND REGULATIONS

- Does Landlord duty apply to property, building and premises
- Does duty expressly cover laws concerning toxic and hazardous materials and all environmental laws

ARE COSTS AND EXPENSES OF COMPLIANCE CLEARLY EXCLUDED FROM OPERATING EXPENSE DEFINITION IN PASS THROUGH PROVISIONS

- Exception only for legitimate repair and maintenance expenses

IS T RESPONSIBLE FOR ANY COMPLIANCE COSTS WITH RESPECT TO TENANT’S PREMISES

- Is duty limited to non-structural items only
- Is duty limited to compliance with requirements that apply to a specific use of Tenant and not to general office purposes
- If Tenant is responsible, does Tenant do work or reimburse Landlord for cost of work
- If Tenant is required to reimburse Landlord for work, does Tenant have approval rights over method and cost of work
- See sections 23 and 24 of this checklist concerning work in premises by Tenant and Tenant’s contractors
- If Tenant is responsible for specific use compliance, does lease contain provisions giving Tenant right to terminate if cost of compliance is excessive and compliance is required during last 2 years of term
- Is Tenant required to remove items not in compliance
- Is Tenant required to make any additional payments to Landlord for cancellation

- May Landlord elect to pay for compliance and hold Tenant to lease

26. RIGHTS NORMALLY RESERVED BY LANDLORD

LANDLORD'S RIGHT TO CHANGE NAME OF BUILDING

- Does Tenant have right to reasonable advance notice of change of building name
- Does Landlord have to pay for new stationery, signs, etc. for Tenant
 - Are there any limits
- Does Tenant have any rights of approval of new name
- Can Landlord name building for competitor of Tenant

LANDLORD'S RIGHT TO REGULATE SIGNS

- Are Tenant's signs approved as to location, size and design
- Does Landlord have right to give other tenants name recognition on building
 - Does Tenant have any right of approval
 - Can Landlord give Tenant's competitors' name recognition on building
 - Does Tenant have equal right to name recognition on building

LANDLORD'S RIGHT TO APPROVE AND REGULATE WINDOW TREATMENT AND LIGHTING VISIBLE FROM OUTSIDE VENDORS

- Have lights and window treatment been approved
- Is Landlord responsible for costs of any change once approved

LANDLORD'S RIGHT TO RESTRICT OUTSIDE VENDORS

- Is basis for restriction specified
- Is there any legitimate basis for restriction
- Must Landlord's designated vendor be competitive in price
- Is it clear that restrictions cannot adversely affect Tenant's business

LANDLORD'S RIGHT TO SHOW PREMISES FOR RENT DURING LAST 12 MONTHS OF TERM

- Is Landlord restricted in signs that can be posted at premises
- Is Landlord's access to premises conditioned on reasonable notice to Tenant and subject to scheduling by Tenant to avoid interference with Tenant's business
- Has leasing period been reduced to point where Tenant will have decided not to renew or extend

LANDLORD'S RIGHT TO KEYS AND TO ENTER PREMISES FOR INSPECTIONS

- Do premises contain secured or confidential areas
- Does entrance to such areas or entire space require presence of Tenant except in case of emergency
- Is Landlord responsible for damages caused by forced entry

LANDLORD'S RIGHT OF ACCESS TO ALL UTILITY LINES, PIPES, FLUES, STRUCTURED PARTS OF BUILDING, ETC.

- Landlord covenant to access in manner that will not interfere with T's business
 - Work to be done after hours and weekends
 - Rent abatement if interference
- Reasonable advance notice to Tenant

LANDLORD'S RIGHT TO GRANT EXCLUSIVE TO ANY BUSINESS OR SERVICE IN OR TO BUILDING

- Is there exception for vendors and suppliers of Tenant

LANDLORD'S RIGHT TO APPROVE MOVE OF PROPERTY INTO AND OUT OF BUILDING

- Does Landlord have standard procedure for scheduling movers, freight elevators, etc.
- Is procedure reasonable
- Is Tenant liable for damages caused by move
- Is liability consistent with insurance arrangement and waivers of subrogation

LANDLORD'S RIGHT TO LIMIT VENDING MACHINES IN T PREMISES

- Should waive to Tenant if to be used only Tenant's employees and operated according to code

LANDLORD'S RIGHT TO CLOSE BUILDING OR RESTRICT ACCESS

- Does Tenant have 24 hour access
- Is Landlord required to provide reasonable access for Tenant's business invitees

LANDLORD'S RIGHT TO CHANGE PUBLIC AREAS, RESTROOMS, ETC.

- Tenant's access to premises not affected
- Tenant's use of amenities and appurtenant rights not affected
- If change alters measurement of building, are there provisions to adjust tenant's share of operating expenses (see section 15)

27. TYPICAL RULES AND REGULATIONS

CAN RULES AND REGULATIONS BE UNILATERALLY AMENDED BY LANDLORD FROM TIME-TO-TIME

- Are amendments and changes restricted to those necessary for safety and efficient operation of building
- Amendments shall not affect any rights Tenant has under lease
- At least 30 days advance notice to Tenant before amendment effective

MUST LANDLORD CONTINUOUSLY AND UNIFORMLY ENFORCE RULES AND REGULATIONS THROUGHOUT BUILDING

LANDLORD RESTRICTIONS ON SIGNS

- Has Tenant obtained approval of size, location, color and design in lease
- Has Tenant attached photo or illustration as exhibit to lease

BUILDING DIRECTORY

- Is Landlord required to maintain during term
- Is Tenant guaranteed a minimum number of strips
- Has Tenant made provisions for additional entries for growth and expansion
- Are Tenant's officers, partners, etc. to be listed separately
- Can Tenant list affiliates and subsidiaries
- Can Tenant provide space for any subtenants or assignees
- Can Tenant use any product names
- Is Tenant limited in the frequency of changes requested
- Is there a charge for changes
 - Is the cost specified and reasonable

NO COOKING ON PREMISES

- Are there exceptions for coffee room, radar range, soup warmers, etc.
- Has Tenant confirmed compliance with building or fire code for planned coffee room or kitchen

TENANT WILL NOT MAKE NOISE

- Is Tenant satisfied that normal office equipment will not violate standards
- Has Landlord warranted standard sound-proofing

THE ALLOCATION OF RISK

28. LANDLORD PROPERTY INSURANCE

DOES LANDLORD HAVE AFFIRMATIVE OBLIGATION TO CARRY PROPERTY DAMAGE INSURANCE ON BUILDING DURING TERM OF LEASE

- Is Landlord policy "all-risk" type including perils normal for area such as:

- Flood
- Earthquake
- Fire
- Vandalism and malicious mischief
- Extended coverage perils
- Theft
- Sprinkler leakage
- Water damage
- Explosion
- Is Landlord's deductible limited in amount
 - If not limited, is Landlord financially responsible for deductible amount
- Does minimum coverage include full repair and replacement cost basis for property insured
- Does description of property include any of Tenant's improvements
- Has Landlord waived rights of subrogation against Tenant for all damages covered by policy
 - Have all exceptions for Tenant negligence been deleted
 - Is waiver based on conditions such as "no cost to Landlord"
- Does Landlord's policy have to be placed with an insurance company meeting minimum rating from Best or other rating agency

29. TENANT PROPERTY INSURANCE

DOES TENANT HAVE AFFIRMATIVE OBLIGATION TO CARRY PROPERTY DAMAGE INSURANCE ON TENANT'S PERSONAL PROPERTY DURING TERM OF LEASE

- Does obligation include "improvements and betterments"
- Are "improvements and betterments" meant to be carried on Landlord's policy
 - If carried separately, has Tenant reviewed rent abatement and restoration time under Landlord restoration provisions (see section 34)
- Is Tenant's insurance obligation defined:
 - "All risk"; or
 - Fire and extended coverage; or
 - Other
- Is Tenant required to waive subrogation against Landlord
 - Is waiver conditioned on "no cost" or availability
- Is Tenant coverage specific or contributory
- Is Tenant required to furnish Landlord with certificates of insurance
- Does jurisdiction involved invalidate by statute or court decision Tenant's waiver of rights against a negligent Landlord
- Does Tenant's policy have to be placed with an insurance company meeting minimum ratings from Best or other rating agency
- Is there a limit on Tenant's deductible amount
- Can Tenant self-insure any part or all of property damage risk
- Has Tenant sent copy of both Tenant and Landlord property insurance provisions to T's insurance professional to verify coverage and avoid duplication

30. LANDLORD LIABILITY INSURANCE

DOES LANDLORD HAVE AFFIRMATIVE OBLIGATION TO BUY PERSONAL LIABILITY POLICY FOR PROPERTY AND BUILDING

- Are limits specified and reasonable
- Does policy include contractual liability, personal injury, bodily injury, sickness, disease or

- death, damage or injury to property or person
- Can Tenant obtain proof of Landlord's insurance policy

31. TENANT LIABILITY INSURANCE

DOES TENANT HAVE AFFIRMATIVE OBLIGATION TO BUY PERSONAL LIABILITY POLICY FOR TENANT PREMISES

- Are limits specified and reasonable
- Does policy include contractual liability, personal injury, bodily injury, sickness, disease or death, damage or injury to property or person
- Is Tenant required to give Landlord certificate of insurance
- If Tenant self-insured any part of risk, has exception been made in above

32. WAIVER OF CLAIMS

IS TENANT REQUIRED TO WAIVE CLAIMS AGAINST LANDLORD FOR INJURIES TO PERSON OR DAMAGE TO PROPERTY AS RESULT OF:

- Building or property becoming out of repair
- Accidents in or about property
- Acts or neglect of any other tenant or occupant; or
- Other casualty or event

IS WAIVER APPROPRIATE AT ALL

IS ANY SUCH WAIVER CONSISTENT WITH INSURANCE ARRANGEMENTS

ARE LANDLORD'S NEGLIGENCE OR INTENTIONAL ACTS EXCLUDED

DOES APPLICABLE JURISDICTION PERMIT TENANT'S WAIVER

HAS LANDLORD WAIVED ANY SIMILAR CLAIMS AGAINST TENANT

33. INDEMNITY

DOES LEASE REQUIRE TENANT TO INDEMNIFY LANDLORD FOR CLAIMS, DAMAGES, ETC, ARISING OUT OF TENANT'S ACTIVITIES IN PREMISES OR ON OR ABOUT PROPERTY

- Does indemnity also require Tenant to protect, defend and hold Landlord harmless from such claims
- Is scope of indemnity clearly defined
- Does indemnity attempt to go beyond acts of Tenant and its employees (i.e., business invitees, guests, etc.)
- Does Tenant's public liability policy fit scope of indemnity
 - Does it include contractual liability endorsement
 - Does it include same class of persons (business invitees, guests, employees, etc.)
- Is Tenant indemnity limited by Landlord's negligence or contributory negligence

DOES LEASE REQUIRE LANDLORD TO INDEMNIFY TENANT FOR CLAIMS, DAMAGES, ETC. ARISING OUT OF LANDLORD'S ACTIVITIES ON OR ABOUT THE BUILDING AND PROPERTY

- Does indemnity also require Landlord to protect, defend and hold Tenant harmless from such claims
- Does Landlord's position under insurance provisions or waiver of claims conflict with indemnity

HAS TENANT SENT COPY OF INDEMNITY PROVISIONS TO ITS INSURANCE PROFESSIONAL TO VERIFY COVERAGE

34. DAMAGE FROM FIRE OR CASUALTY

DOES LANDLORD HAVE MANDATORY DUTY TO REPAIR AND RESTORE BUILDING AND PREMISES WITHIN DEFINED LIMITS

- If rebuild tied to percentage of destruction, will percentage be verified by independent party
- If rebuild tied to time period (i.e., rebuild if it can be done in ninety days):
 - Are time periods reasonable
 - Does Tenant have business interruption insurance to match time periods
 - If time periods are extendable because of unavoidable delays:
 - Is process to identify delay reasonable and clear
 - Does Tenant get advance notice of delay
 - Is there an outside rebuild date
 - Does Tenant's business interruption insurance match outside date
 - Is there a basis for outside verification of rebuild time by independent source
 - What are Tenant's rights if outside date is not met
 - Termination
 - Self-help
 - Damages
- Is duty to rebuild limited to insurance proceeds
 - If so, why
 - Is Landlord required to make up any deficiency
 - Is there an outside date to conclude adjustment process
 - What are Tenant's rights if adjustment process exceeds time limit
 - Termination
 - Self-help
 - Damages
- Is duty to rebuild tied to date of availability of insurance proceeds
 - If so, why
 - Is there outside date by which Landlord must conclude adjustment and begin rebuild
- What are Tenant's rights if date not met
 - Termination
 - Self-help
 - Damages
- Must Landlord give Tenant written notice of time estimates within specific period of time

DOES LANDLORD HAVE RIGHT NOT TO REPAIR AND REBUILD BY CEASING USE OF BUILDING OR CANCELING ALL LEASES

- Is Landlord option appropriate for size of building
- If lease is canceled by Landlord, does Tenant have rights to recoup unamortized cost of any TI's insured by Landlord
- If Tenant does not recoup unamortized costs, has Tenant preserved right to take casualty loss on tax return
 - Do provisions or alterations vest title to TI's in Landlord and conflict with this right

ABATEMENT AND SCOPE OF WORK

- Does Tenant rent abate during restoration and repair
- Is abatement tied to "untenantability" or other standard which is clearly defined
- Have all references to Tenant's negligence been removed from rent abatement provisions
- Is rent abatement proportional if premises only partially damaged
- Does rent abatement include gross rent including pass throughs
- Does abatement start on date of damage

- Does Tenant have a reasonable time to prepare its premises for re-occupancy and move in while rent abatement is still in effect
- Does rent abatement period cover time Tenant requires to rebuild TI's for work not to be done by Landlord
- Is Landlord's duty with respect to work in premises clearly defined
 - TI's insured by Landlord
 - TI's that were part of original premises leased to Tenant
- Are Landlord's commitments permitted by Landlord's lender or does lender have rights to apply insurance proceeds to reduce mortgage

CANCELLATION RIGHTS

- If repair and restoration falls behind schedule does Tenant have right to terminate
 - Are time periods reasonable
 - Is Landlord entitled to notice
- Has Tenant preserved its right to claim damages

RELATIONS WITH THIRD PARTIES

35. COVENANT AGAINST LIENS

DOES LEASE CONTAIN RESTRICTIONS AGAINST LIENS BY TENANT'S CONTRACTORS

- Can Landlord "post" the job to defeat liens in applicable jurisdiction

DOES L HAVE RIGHT TO PAY OFF ANY LIENS FILED AGAINST PROPERTY

- Is any investigation of validity required to be made by Landlord
- Must Landlord give Tenant prior notice of intended payment
- Can Tenant delay payment during contest
 - Bonds or other security required by Landlord
 - Is required security reasonable
 - Are time periods for contest adequate

36. CONDEMNATION

DOES LANDLORD HAVE RIGHT TO TERMINATE IF ANY PART OF PREMISES OR BUILDINGS IS TAKEN BY CONDEMNATION

- Are there limits on size of taking before Landlord can terminate:
 - Must taking materially affect Landlord's ability to continue operation of building before termination allowed
 - Taking must be substantial and expressed in minimum percentages
- Must Landlord terminate all other tenants as condition to terminate Tenant's lease
- Is conveyance in lieu of condemnation also included

DOES T HAVE RIGHT TO TERMINATE IF ANY PART OF PREMISES TAKEN FOR ANY PERIOD

- If taking of premises is for less than Tenant's term, can Tenant still terminate
- If not, is Tenant entitled to entire award for taking even if in excess of Tenant's rent

DOES TENANT HAVE RIGHT TO TERMINATE IF PART OF BUILDING OR PROPERTY OTHER THAN PREMISES IS TAKEN

- Are Tenant's rights with respect to a taking of appurtenant rights clearly defined
- Can Tenant terminate if parking is taken
- Can Tenant terminate is reasonable access to premises is affected by taking

IF THERE IS PARTIAL TAKING OF TENANT'S PREMISES AND LEASE IS NOT CANCELLED

BY LANDLORD OR TENANT:

- Does Landlord have duty to restore premises after division
- Are there provisions for reduction of rent and Tenant's proportionate share
- Is Landlord's duty to restore limited to proceeds from taking
- Is Landlord required to make up any deficiency

DAMAGES

- Does Tenant's lease end on date of taking
- Does lease give entire award to Landlord
- Does Tenant have right to participate in proceeding
- Does Tenant have any rights against condemning authority or Landlord for:
 - Unamortized TI's
 - Relocation costs
 - Loss of leasehold
 - Other damages
- If Tenant is precluded from participation in condemnation and TI's revert to Landlord on termination
- Has Tenant made any arrangement for right to be reimbursed by Landlord from condemnation award
- Does applicable jurisdiction identify components of award
- If not, have Landlord and Tenant made reasonable arrangement

37. SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE

IS TENANT'S LEASE SUBORDINATE TO CURRENT AND ALL FUTURE FINANCING ON BUILDING OR PROPERTY

- Is subordination limited to first mortgage from institutional lender
- Has Tenant been given title report to show what liens it is subordinate to
- Is subordination to future liens, including renewals, consolidations, replacements and extensions subject to dollar limits
- Does applicable jurisdiction recognize blanket subordinations without specified amounts
 - If not and if Tenant is required to execute additional subordination agreement, are the terms and amounts clear
- Is Tenant's obligation to subordinate tied to Landlord's lender providing for recognition and attornment or non-disturbance agreement
 - Is form of agreement attached as exhibit to lease

IS TENANT REQUIRED TO ATTORN TO MORTGAGEE, BENEFICIARY OF A DEED OF TRUST OR OTHER PURCHASER AT SALE IN EVENT OF FORECLOSURE OR SALE

- Is agreement enforceable if lender is not a party to lease
- Is election to be made unilaterally by mortgagee, beneficiary or purchaser
- Is period of attornment specified
- Has Tenant conditioned the attornment to a recognition of Tenant's lease
- Has Tenant preserved its right to terminate if its chain of title with Landlord is broken

HAS TENANT REQUIRED A NON-DISTURBANCE AGREEMENT AS PART OF LEASE TRANSACTION

- Is form of agreement attached to lease
- Does agreement recognize all terms of Tenant's lease including Tenant's right of set-off, if any, accrued under lease prior to sale or foreclosure
- If agreement modifies lease provisions, has Tenant reviewed economic and legal impact of change of terms

38. ASSIGNMENT AND SUBLEASE

MUST T HAVE LANDLORD'S CONSENT TO ASSIGN OR SUBLEASE ALL OR ANY PART OF PREMISES

- Has Landlord agreed not to unreasonably withhold consent
 - Has it been stated in lease to give enforceable property right
- Have conditions of Landlord consent been identified including:
 - Subtenant's or assignee's ability to pay rent
 - Is it clear that subtenant's financial ability must relate only to ability to support sublease and not that it be equal to or greater than Tenant's
 - Use may be any general office use
 - Other
 - Is there a limit on number of subleases
 - Has Landlord tried to prohibit Tenant from subleasing to other tenants of the building
 - If Landlord does not consent, does Landlord have to notify Tenant in writing of reasons
- Can Tenant sublet or assign without consent if:
 - To parent, affiliate or subsidiary
 - Entity resulting from merger or acquisition or reorganization
 - Any successor to business of Tenant
 - Only part of premises is involved for period of less than term
- Can Tenant sublet or assign or is sublet or assign deemed reasonable if:
 - General office tenant that is non-governmental and will not increase density of current use; and
 - Tenant remains liable on lease
- Has Landlord defined assignment to include changes in partnerships and corporate ownership
 - Are publicly traded companies deleted
 - Are intra-family exchanges deleted
 - Are restrictions on partner changes reasonable

DOES LANDLORD HAVE RIGHT TO "RECAPTURE" OR LEASE TENANT'S SPACE

- Is recapture limited to portion Tenant proposed to sublet or assign
- If recapture, has Tenant made provision for Tenant to recoup the following:
 - Unamortized TI costs that would have been recovered by sublease or assignment transaction
 - Advertising and marketing costs
 - Legal and accounting fees
 - Costs attributable to vacancy period, if any, that Tenant would have recouped by sublease or assignment
- If Landlord serves notice of recapture, can Tenant withdraw request for consent
- Are time periods for notices and terms between Tenant and Landlord clearly set forth

MECHANICS AND PROCEDURES

What documents must Tenant provide Landlord with request for consent

- Must Tenant provide the proposed sublease or assignment or may Tenant provide only financial terms
- Must Tenant pay Landlord for review of request
 - Is amount reasonable
- How much time does Landlord have to respond
 - Is time reasonably short so Tenant can protect its negotiations with subtenant or

assignee

DOES LANDLORD SHARE IN ANY PROFITS FROM SUBLEASE OR ASSIGNMENT

- If not deleted, are amounts fair
- Does definition of "profit" allow Tenant to recover at least the following before being deemed to have made a profit:
 - Legal and accounting fees related to transaction
 - Advertising and marketing costs
 - Commissions and consulting fees related to transaction
 - Costs of renovating space and preparing for subtenant or assignee
 - Recapture of all rent and other payment made by Tenant to Landlord during period space was not used and on the market for sublease or assignment
- Does "profit" exclude any portion of subtenant rent or assignee payment which are reimbursing Tenant for unamortized value of TI's, initial move in costs, fixtures and equipment incurred by Tenant in initial lease and occupancy
- Are Landlord requirements to establish "profit" and access to Tenant books and records clear and reasonable

39. ESTOPPEL CERTIFICATE

IS TENANT REQUIRED TO PROVIDE ESTOPPEL CERTIFICATE FROM TIME TO TIME

- Is form attached as exhibit to lease, or
- Is required content of certificate spelled out fully
- It is clear that Tenant must only supply information relating to rent payments and Landlord's performance and not personal or credit information of Tenant

DOES TENANT HAVE REASONABLE TIME TO RESPOND

- Have provisions making Landlord attorney-in-fact for Tenant for purposes of response been deleted

IS THERE ANY REQUIREMENT FOR LANDLORD TO SUPPLY ESTOPPEL CERTIFICATE TO TENANT IF TENANT REQUIRES FOR FINANCING, SUBLEASE OR ASSIGNMENT OR OTHERWISE

- If form attached as exhibit to lease, or
- Is required content of certificate spelled out fully

40. QUIET ENJOYMENT

HAS LANDLORD GIVEN EXPRESS WARRANTY OF ITS AUTHORITY TO ENTER INTO LEASE

HAS LANDLORD GIVEN EXPRESS COVENANT OF QUIET ENJOYMENT

- Does covenant exclude subordination provision of lease so Tenant preserves right of damage against Landlord in event of foreclosure

HAS LANDLORD GIVEN EXPRESS COVENANT TO ELIMINATE OR ABATE ANY NUISANCE IN OR ABOUT BUILDING

41. BROKERS

DOES LEASE CONTAIN WARRANTIES BY BOTH LANDLORD AND TENANT IDENTIFYING ALL BROKERS

HAS LANDLORD AGREED TO MAKE ALL BROKER COMMISSION PAYMENTS TO DISCLOSED BROKERS AND HOLD TENANT HARMLESS

- Has Tenant made sure its broker is covered in amount and time of payment of commission

IS TENANT INDEMNIFYING LANDLORD AGAINST OTHER BROKER CLAIMS

- Has Tenant clearly reviewed its connection to property and building to insure that no

additional brokers were responsible for lease or “procuring clause”
HAS LANDLORD INDEMNIFIED TENANT FOR ANY ADDITIONAL BROKER CLAIMS THAT
ARISE BECAUSE OF LANDLORD

THE REMEDIES

42. LANDLORD’S REMEDIES FOR DEFAULT BY TENANT

MONETARY DEFAULTS

- Are all amounts due under lease deemed to be “rent” which may permit expedited forcible entry proceeding
- What are Tenant’s rights if an amount due is in dispute
 - Withhold payment
 - Pay under protest
 - Pay into escrow
- If paid and later returned, does Tenant get interest from date of payment
- Must Landlord serve written notice of default on Tenant before default is deemed to exist
- Is time period to cure reasonable (10 days)

NON PERFORMANCE DEFAULTS

- Is nature of default clearly defined or judgmental
- What are Tenant’s rights if a performance standard is in dispute
 - Perform and collect cost from Landlord if performance was not required
 - Suspend performance while dispute is negotiated
 - File for injunction to stop forfeiture while rights of parties are disclosed
- Must serve written notice of default on Tenant before default is deemed to exist
- Is time for performance reasonable (30) days
 - Is time extended if performance cannot be completed in specified time period and if Tenant has commenced performance and diligently pursues to completion

PERSONAL DEFAULTS

- Is Tenant in default because of corporate reorganizations, restructurings or bankruptcy
 - Why is default provided if Tenant continues to pay rent and perform covenants
 - Is default legally enforceable, i.e., bankruptcy
- If bankruptcy is by involuntary petition, does Tenant have reasonable time (60-90 days) to have petition dismissed
- Is Tenant in default if it vacates premises but continues to pay rent
 - Why
- Is Tenant entitled to any notice of above default

NOTICES

- Must notices be in writing
- Must notice be personally delivered or sent by certified or registered mail, return receipt requested
- See Section 48 of this checklist for issues on service of notice

LANDLORD TERMINATION REMEDIES

- Can Landlord terminate lease and sue for rent less fair market value of premises returned to Landlord
- Can Landlord terminate Tenant’s right of possession
 - Is Tenant responsible for continuing rent
 - Does applicable jurisdiction require Landlord to mitigate damages by attempting to sublet premises
 - Does lease require Landlord to mitigate damages by attempting to sublet premises

- Is Tenant liable for all costs to Landlord for re-letting including commissions, fees, alterations and improvements, advertising, etc.
 - Are there any limits on amount Landlord can spend
- Are there any limits on rent Landlord can negotiate with subtenant
- Can Landlord “firesale” the premises and hold Tenant responsible for the difference for the balance of the term
- Must Landlord consider or accept any reasonable subtenant tendered by Tenant
- Can Landlord take possession of Tenant personalty on premises and sell
 - Does applicable jurisdiction recognize landlord’s lien
 - What steps are required to perfect lien

LANDLORD PERFORMANCE REMEDIES

- Can Landlord cure Tenant non-payment or perform Tenant covenant and sue for money damages in lieu of termination of lease
- Is Tenant entitled to notice of Landlord’s election to perform or pay
- Is Landlord required to meet any standards in payment or performance
 - Competitive prices, bids, etc.
 - Contest amounts due to third parties, etc.

CONFESSION OF JUDGMENT

- Have all confession of judgment provisions been deleted

43. TENANT’S REMEDIES FOR DEFAULT BY LANDLORD

HAS NEGOTIATED LEASE TO INCLUDE REMEDIES AND PROCEDURES FOR DEALING WITH L DEFAULT

IF LANDLORD HAS FAILED TO MAKE PAYMENTS TO THIRD PARTIES WHO PERFORM SERVICES TO BUILDING AND PROPERTY, MAY TENANT MAKE PAYMENTS

- Is notice to Landlord required
- Is notice period reasonable
- What are rights of Tenant during notice period if premises untenable
 - Abatement
 - Damages
- Can Tenant offset any amounts paid Tenant, plus interest, against rent due under lease
- Can Tenant sue Landlord for damages

IF LANDLORD HAS FAILED TO PERFORM COVENANT IN LEASE (SUCH AS REPAIR AND MAINTENANCE) CAN T PERFORM

- Is notice to Landlord required
- Is notice period reasonable
- What are rights of Tenant during notice period if premises untenable
 - Abatement
 - Damages
- Can Tenant offset any amounts paid for performance, plus interest, against rent due under lease
- Can Tenant sue Landlord for damages

CAN T TERMINATE LEASE IF LANDLORD HAS DEFAULTED IN PROVIDING ANY SERVICES TO TENANT OR IN PERFORMING COVENANTS OF LEASE

- Is notice to Landlord required
- Must Tenant set time for termination
- Can Tenant sue Landlord for all costs incurred as result of termination
 - Money costs

- All relocation costs
- Difference between Tenant's current rent and Tenant's new rent over balance of term

NOTICES

- See above concerning service of notice
- Must Tenant serve notice on Landlord's lender, ground lessor or other party
 - Only if Tenant has been advised of party and given accurate address
 - Does third party have right to cure Landlord default
 - Does third party have additional time period in which to cure
 - Has Tenant limited additional time period for cures

44. ATTORNEYS FEES AND COSTS

IS RECOVERY OF FEES MUTUAL

IS RECOVERY TIED TO COURT DECISION

MUST FEES AND COSTS BE REASONABLE

IS TENANT REQUIRED TO PAY ANY FEES AND COSTS ARISING OUT OF LANDLORD'S DEALINGS WITH THIRD PARTIES AS THE RESULT OF TENANT'S ACTS

- Is Tenant entitled to notice and right to defend

IS AWARD OF FEES BASED ON "WINNER TAKE ALL" OR SOME ALLOCATION OF RESPONSIBILITY

HOLDING OVER

CAN LANDLORD CHARGE INCREASED RENT DURING HOLDOVER

- Double rent and rent adjustments
- Is it permitted in applicable jurisdictions or is it a penalty
- If Landlord elects to declare lease extended, can Landlord still claim increased rent

CAN LANDLORD ELECT TO EXTEND LEASE

- Month to Month; or
- One year; or
- Renewal or entire term
- Is renewal subject to same terms and conditions including rent and rent adjustments
- Does applicable jurisdiction have law governing hold over election rights of Landlord

IS TENANT LIABLE FOR ALL DAMAGES OF LANDLORD CAUSED BY HOLDOVER

- Direct and consequential
- Does any part of increased rent get applied to damages
- Does Tenant have right to notice disclosing potential damages

45. DISPUTE RESOLUTION

ACTION AT LAW OR EQUITY

- Does lease give Tenant and Landlord rights to pursue any remedy at law or in equity
- Does lease attempt to waive trial by jury
- Has waiver been deleted

ARBITRATION

- Does lease provide for arbitration for all or specific disputes
 - If form of arbitration described, such as American Arbitration Association, state form of arbitration or others
 - Are numbers and choice of arbitrators set out
 - Are agreements on payment of costs clearly set out

- Is arbitration to be binding

MEDIATION

- Have Tenant and Landlord agreed to any other form of dispute resolution
- Has Tenant reviewed dispute resolution options with Tenant's legal counsel

THE BOILERPLATE

46. NON-WAIVER

IS ANY NON-WAIVER PROVISION EQUALLY APPLICABLE TO LANDLORD AND TENANT
DO PROVISIONS REQUIRE THAT ANY WAIVER MUST BE IN WRITING AND SIGNED BY
BOTH T AND LANDLORD

47. NOTICES

PARTIES ENTITLED TO NOTICE

- Are parties identified by full name and complete address
- Are there multiple parties for either Tenant or Landlord such as specific officers, outside counsel, etc.
 - Must all notices be served to constitute notice under lease; or
 - Have additional notices been provided as "courtesy copies"
- Does Tenant have provision for service of notice at current address before move to premises
 - Does lease provide for change of notice address after commencement date of lease
- Can either Tenant or Landlord change parties and address for notice upon written notice to other

MUST ALL NOTICES BE IN WRITING

- Any exceptions for emergency

SERVICE OF NOTICE

- Is notice deemed served on posting, receipt or a specified number of days after posting
- Must notice be personally delivered or sent by certified or registered mail, return receipt requested
 - Any exceptions for notice by telecopy or overnight courier
 - How will proper service be proved
- Has Tenant been given complete name and addresses for parties such as lenders and ground lessor who may be entitled to notices under some lease provisions
 - Is burden on Landlord to provide such information in advance or notice requirement is waived

48. CROSS-DEFAULT PROVISIONS

DOES LEASE PROVIDE THAT IF TENANT HAS TWO OR MORE LEASES WITH L A
DEFAULT UNDER ONE LEASE IS A DEFAULT UNDER ALL LEASES
HAS TENANT PROTECTED MAIN LEASE BY PROVIDING THAT DEFAULT UNDER
STORAGE LEASE, PARKING LICENSE, ETC., WILL NOT AFFECT MAIN LEASE

49. CONVEYANCE BY LANDLORD

DOES LEASE ATTEMPT TO RELEASE L FROM LIABILITY AFTER SALE OR CONVEYANCE
OF BUILDING AND PROPERTY.

ARE THERE EXCEPTIONS FOR LIABILITIES ACCRUING PRIOR TO DATE OF SALE OR

CONVEYANCE
IS NEW OWNER REQUIRED TO ASSUME LANDLORD'S LIABILITIES IN WRITING

50. UNAVOIDABLE DELAYS

DOES LEASE CONTAIN GENERAL PROVISIONS EXTENDING PERFORMANCE TIME DUE TO "UNAVOIDABLE DELAYS" OR "FORCE MAJEURE"

- Does provision apply to both Landlord and Tenant
- Does provision exclude all monetary payments
- Does list of "unavoidable delays" clearly exclude items within Landlord's reasonable control or items for which Landlord should bear risk

IS IT CLEAR THAT AN UNAVOIDABLE DELAY WILL NOT EXTEND ANY PERIOD BEYOND AN OUTSIDE DATE

DOES PARTY CLAIMING UNAVOIDABLE DELAY WILL NOT EXTEND ANY PERIOD BEYOND AN OUTSIDE DATE

DOES PARTY CLAIMING UNAVOIDABLE DELAY HAVE TO PROVIDE THE OTHER WITH NOTICE AND REASONABLE DESCRIPTION OF DELAY AS A CONDITION TO CLAIM DELAY

- Does extent of delay extend the time for performance day for day

ARE THERE ANY SPECIFIC DATES WHICH SHOULD BE EXCLUDED FROM UNAVOIDABLE DELAY CONCEPT

51. MISCELLANEOUS

RIGHTS AND REMEDIES CUMULATIVE

- Does it apply to both Tenant and Landlord

INTEREST PAYMENTS ON AMOUNTS DUE

- Does it apply to both Tenant and Landlord
- Is interest at fixed rate or "float" over prime
 - Is source of prime rate identified
 - If interest rate floats, is it enforceable in applicable jurisdiction
- Does interest begin on date of default or date of notice

CONSTRUCTION AND INTERPRETATION RULES

- Is law of jurisdiction identified for purposes of construing lease
- Are provisions governing gender, corporation and individuals, etc., included
- Is there a provision binding all successors, heirs, assigns, etc.
 - Does clause specifically exclude assignments in violation of assignment and sublease clause
- Is there a statement that all representations and warranties are contained in lease and no modification allowed unless signed by both Landlord and Tenant
- Are there provisions indicating that lease will not be construed against drafting party
 - If so, is it clear that Tenant really did negotiate lease with representation of counsel
- Does lease provide that exchange of drafts shall not constitute offer to lease until both Tenant and Landlord accept, sign and deliver lease
- Are section headings provided only for convenience and do not modify or amplify lease
- Is any partnership between Tenant and Landlord disclaimed
- Does lease contain "time is of the essence" provisions
- Is lease severable if a portion is held to be unenforceable
 - Can either Tenant or Landlord terminate lease if part is declared unenforceable
 - Is right to terminate tied to material or designated terms only
- Is Tenant prohibited from recording lease

- If so, may Tenant record a short-form memorandum of lease
- Is form attached as exhibit to lease
- Consents
 - Does lease provide that whenever a party requests a consent or approval, it will not be unreasonably withheld or delayed
 - If exceptions, are they clearly stated

52. SELECTED APPURTENANT RIGHTS OF TENANT

PARKING

- Is minimum level of parking guaranteed
- Is parking designated as covered or uncovered
- Are locations shown on exhibit
- Can locations be changed without Tenant's consent
- Is there a charge for parking
 - Is it reasonable
 - Can it be changed during term
 - Are there limits on increases
- Does Tenant have right to acquire more parking if Tenant expands premises
 - Is formula set out
- Has Landlord agreed to maintain a reasonable number of public parking spaces for building
 - Has location for public parking been fixed and shown on exhibit to lease
 - Has Landlord agreed to provide such spaces at Landlord's cost or will Landlord charge for visitor parking
 - Will Tenant be given preferred rate for purpose of parking validation

TENANT MIX

- Does lease give Tenant any right of approval over tenant mix of building
- Does lease give Tenant any right to terminate if tenant mix violated
- Does lease give Tenant right to reduce rent if tenant mix violated
- Does Tenant have any right of approval over specific use on ground floor of areas adjacent to lobby
 - Retail stores
 - Restaurants
- Is tenant mix clearly identified with specified limitations such as:
 - General office purpose
 - Non-governmental tenant with occupancy not to exceed 1 person per 200 square feet
 - Medical or dental offices used for non-intrusive treatment of patients
 - Other restrictions

STORAGE SPACE

- Is floor plan for storage space attached as exhibit to lease
- Is storage space self-contained or used in common with others
 - If used in common, what steps are necessary for appropriate security
- Is freight elevator access to storage area available
- Is access to storage space available twenty-four hours every day
- Are any services supplied to storage area
 - Electricity
 - HVAC
- Is there a charge to tenant for use of storage space or services provided
 - If so, is charge reasonable

- Has Landlord provided Tenant with a basis for such charges
- If storage space is not part of rentable area of building, why is there a charge to Tenant
- If storage space is important to Tenant, has Tenant been given option on any additional storage space

LEASE EXECUTION

53. LEASE EXECUTION BY LANDLORD

DOES LEASE EXECUTION MATCH DESCRIPTION OF LANDLORD IN PREAMBLE TO LEASE
 HAS LANDLORD PROVIDED EVIDENCE THAT LANDLORD HOLDS TITLE TO PROPERTY
 HAS LANDLORD PROVIDED EVIDENCE THAT OFFICER OR PERSONS EXECUTING
 LEASE HAVE AUTHORITY

IF LEASE IS EXECUTED BY AN AGENT:

- Is Landlord identified; and
- Has agent disclosed its basis for authority

HAS LANDLORD ATTEMPTED TO EXCULPATE ITSELF FROM LIABILITY UNDER THE LEASE

- What reasonable basis does Landlord to be relieved of liability
- If Landlord's liability is restricted to the building and its assets, has Landlord disclosed its equity in the building along with specific and contingent liabilities
- What are Tenant's rights if Landlord's equity in building or property is less than outstanding debt
- In all cases, is Landlord liable for breaches of warranties and representations without limitation
- If Landlord's ability is limited to the building or property is it clear what assets are included in such descriptions
 - Rent income
 - Insurance receipts
 - Condemnation
 - Payments or refunds of any kind to Landlord
 - Proceeds from any refinancing

ARE THERE ANY UNUSUAL REQUIREMENTS FOR EXECUTION OF LEASE DOCUMENT IN APPLICABLE JURISDICTION

- Must signatures be notarized or witnessed
- Must signatures be under seal

54. LEASE EXECUTION BY TENANT

DOES LEASE EXECUTION MATCH DESCRIPTION OF TENANT IN PREAMBLE TO LEASE

HAS TENANT FOLLOWED ITS INTERNAL RULES TO INSURE PROPER AUTHORIZATION BY SIGNING OFFICER, PARTNER, ETC.

IF CORPORATE AUTHORIZATION OR ADDITIONAL PARTNER SIGNATURES ARE REQUIRED, ARE THEY READILY AVAILABLE

IF TENANT IS A PARTNERSHIP, HAS TENANT ATTEMPTED TO LIMIT THE LIABILITY OF INDIVIDUAL PARTNERS TO THE ASSETS OF THE PARTNERSHIP

55. GUARANTY

ARE PRINCIPALS OF TENANT REQUIRED TO GUARANTY THE TERMS OF THE LEASE

- Does guaranty cover costs of curing Tenant's performance defaults as well as monetary defaults

IS GUARANTOR A PRINCIPAL SHAREHOLDER OR PARTNER OF TENANT

- Is guarantor indemnified by corporation or partnership

IS GUARANTOR ENTITLED TO NOTICE AND GIVEN AN OPPORTUNITY TO CURE DEFAULTS BEFORE GUARANTOR BECOMES LIABLE

- Are time periods sufficient for guarantor to work with T to achieve cure

CAN THE LEASE BE AMENDED OR MODIFIED BY TENANT WITHOUT CONSENT OF GUARANTOR

CAN TENANT EARN SUFFICIENT CREDIT AFTER PERFORMANCE FOR SOME PERIOD OF TIME TO RELEASE GUARANTY

56. LEASE REVIEW BY TENANT'S ADDITIONAL PROFESSIONALS

HAS TENANT REVIEWED FINAL FORM OF LEASE WITH TENANT'S LEGAL COUNSEL

HAS TENANT SENT A FINAL COMPLETE COPY OF THE LEASE TO ITS INSURANCE PROFESSIONAL AND ASKED FOR A LETTER CONFIRMING TENANT'S COMPLIANCE WITH LEASE REQUIREMENTS AS WELL AS RECOMMENDATIONS ON TYPES OF POLICIES AND COVERAGES THAT TENANT SHOULD CARRY DURING TERM

HAS TENANT BEEN PROVIDED A BASIC PROFORMA BY TENANT'S BROKER, ACCOUNTANT, ETC., THAT CONTAINS REASONABLE PROJECTIONS ON THE EFFECTIVE COST OF THE LEASE OVER THE TERM

IF TENANT WILL BE INVOLVED IN ANY CONSTRUCTION WORK, HAVE TENANT'S CONTRACTORS OR CONSTRUCTION ADVISORS REVIEWED AND APPROVED TIME PERIODS AND COMPLIANCE REQUIREMENTS AND CONFIRMED THE AVAILABILITY OF SPECIAL MATERIALS OR EQUIPMENT