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2024 Real Property Law Retreat

Rome Wasn't Built In A Day, And Neither Will Your TI's: Tenant Build-Outs for
Restaurant, Retail and Office Leases

Saturday, March 9, 2024
10:15am - 11:15am

Speakers: Laura Drossman, Judith Oheb, and Katrina Solomatina

Conference Reference Materials

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2024 REAL PROPERTY LAW RETREAT



Rome Wasn't Built In A Day, And Neither Will Your TI's: Tenant Build-Outs for Restaurant, Retail and Office Leases

March 8, 2024

Speakers

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Agenda

I. Introduction

II. Top Issues

- Customization v. Standard
- Structuring TIs
- Timing Issues
- Removal/Restoration Obligations

III. Concluding Thoughts

What you Get/What you Need: Customization vs Standard



Office, Retail, Restaurant

- a. Office:** Generally more standard than other property types given generating need to evolve, particularly since COVID
 - i. Balancing desire for custom use and marketability to subtenants
 - ii. More readily set up for as is.
- b. Retail:** Depends on the nature of use
 - i. Apparel to apparel vs medspa, grocery, etc.
- c. Restaurant:**
 - i. Much more frequently need custom build out
 - ii. Less second gen use.
 - iii. Bathrooms
- d. Logistics/Design/Space Planning:**
 - i. Office** build outs follow trends, but even a dated design is functional
 - 1. Bench seating vs private offices
 - ii. Restaurants** function = cash flow
 - 1. Proper design for front and back of house, storage, employee break rooms, flow - ecosystem
 - iii. Retail** somewhere in between, depending on whether the space will lend itself to transfer to a similar user. Users can vary wildly



Who Pays What, and How?

Structuring TI's:

- a. **Turnkey by Landlord**
 - i. Great if big sophisticated landlord and/or tenant without experience/bandwidth
 - ii. Less preferred if Tenant has consistent design standards, more often in retail and restaurant chains.
 - iii. Landlord/Tenant build – Managed allowance or split of work
 - 1. Can get messy with two “cooks in the kitchen”

- a. **Tenant Build** – Tenant pays all
 - i. Query whether Tenant has bandwidth/experience



TIA



- a. **Negotiate** in advance for the balance to be applied to free rent. The \$ was baked into the deal so tenant should get full benefit.
- b. **Disbursement** timing is crucial, particularly the more boot-strapped a tenant is
- c. **Disbursement** conditions should be fair, but protect both parties.
- d. What happens upon **default** – lose the TIA or just delay?
- e. **Negotiate** for milestone payments if the scope will take longer, maybe not if it's shorter.
- f. **Completion bond/securitization** of TIA or Tenant Build
 - i. May inflate administrative work and cost, but sometimes it's reasonable for the landlord to expect such protection
- g. A “**spec**” should be “Specific”
 - i. Quality of finishes/standards need to be specified, particularly if there is a capped contribution and tenant pays above standard
- h. **Warranty/Indemnity** issues depending on whose vendors do what. Ideally one party handles all (usually)

TI Issues

- a. Tax issues**
 - 1. With a tenant-funded TI project entitles a tenant to Qualified Improvement Property deduction
 - 2. With a TIA, the landlord gets the deduction
 - 3. Strategize equipment depreciation
- b. Construction management fees.**
 - i. For tenant, tie to “lesser of actual or a % of hard costs”
 - ii. For landlord, likely want to tie to total costs (hard and soft)
- c. Requirements for landlord agents** – limit to core building system
- d. Managed Allowance Issues**
 - i. Tenant’s architect + Landlord’s contractor can be a mess
 - ii. For tenant, negotiate to adjust the cap if landlord’s vendor is causing overages.
 - iii. For Landlord, negotiate for pari passu in making advances if in milestones.
- e. Vendor approvals and Requirements**
 - i. For Tenants, limit restrictions on choice to core systems, structure
 - ii. For Landlords, protect the asset – Only the choice vendors can touch



Timing Tips

- a. For **tenants**, TI timeline has to align with rent commencement.
 - i. General tips for tenants:
 - 1. Tie RCD to permit issuance vs signing date
 - 2. Build in extension for force majeure, delays, if possible
 - ii. For **landlords**, keep a tight leash, put accountability on tenants for “Tenant Delay”
 - iii. Change orders happen – they shouldn’t be punitive
- b. Laser focus on **work letter timelines**/logistics is key
 - i. Specifics on that
 - ii. Have project management vendors review closely
 - iii. Be sure the parties are regularly meeting to discuss
- c. **Spending** before you sign – Hard to avoid, particularly with retail, restaurant
 - i. **Landlord** may require indemnity for costs if tenant walks away
 - ii. **Tenants** can negotiate for credits



Timing Issues

- a. Office Issues: Relocation timing, decommissioning and installations
- b. Retail Issues: Launch timelines affect high level growth strategies.
- c. Restaurant Issues:
 - i. Delay can often be fatal – particularly if small investor groups or bootstrapped.
 - 1. ABC license may be long lead time item and crucial to cash flow
 - 2. Contingencies help, but to get launched timely, Tis may need to occur simultaneously. \$\$\$
 - 3. Industry specific third party agencies - Health department sign off.
- d. Permitting/Delays, generally order of intensity
 - i. Restaurant – heavy (ABC, Health Dept,
 - ii. Retail
 - iii. Office
 - iv. Change of Use, Conditional use permits delays – Wine bar, Cannabis



End of Term: Removal/Restoration Obligations



- a. **Office** potentially less complicated, more often turnkey
- b. Dry **retail** in the middle, depending on nature of the business
- c. **Restaurant** more frequently involves custom, intensive build out
- d. **Restaurants** may spend tons on infrastructure. Landlords will expect that the tenants leave what they found – if they redo the kitchen, they can't rip it all out.

Conclusion

THANK YOU!

Feel free to contact us with any questions



TENANT WORK LETTER

This Tenant Work Letter shall set forth the terms and conditions relating to the design and construction of the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Articles or Sections of "this Lease" shall mean the relevant portions of the Office Lease to which this Tenant Work Letter is attached as Exhibit I, and all references in this Tenant Work Letter to Sections of "this Tenant Work Letter" shall mean the relevant portions of Sections 1 through 6 of this Tenant Work Letter. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

SECTION 1 LANDLORD'S WORK

1.1 **Landlord's Work.** Landlord shall, within ninety (90) days following the Lease Commencement Date, perform the work set forth on Exhibit D-1 attached hereto and made a part hereof.

SECTION 2 IMPROVEMENTS

2.1 **Allowance.** Tenant shall be entitled to a one-time tenant improvement allowance (the "**Allowance**") in the amount \$[] for the costs relating to the initial design, permitting and construction of Tenant's improvements, which, except as provided in Section 2.2.1, below, are permanently affixed to the Premises (the "**Initial Alterations**"). In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Allowance. Any Initial Alterations that require the use of Building risers, raceways, shafts and/or conduits, shall be subject to Landlord's reasonable construction rules, regulations, and restrictions. All Initial Alterations for which the Allowance has been made available shall be deemed Landlord's property under the terms of the Lease; provided, however, Landlord may, by written notice to Tenant, notify Tenant that a work item in the Initial Alterations, which constitutes a Specialty Alteration, must be removed, prior to the end of the Term, or and to repair any damage to the Premises and Building caused by such removal and return the affected portion of the Premises to their condition existing prior to the installment of such Initial Alteration; provided, however, that, notwithstanding the foregoing, upon request by Tenant at the time of Tenant's request for Landlord's approval of the "Final Working Drawings," as that term is defined in Section 3.3 of this Tenant Work Letter, Landlord shall notify Tenant, to the extent any element of the Initial Alterations reflected in such Final Working Drawings constitutes a Specialty Alteration, that such item will be required to be removed pursuant to the terms of this Section 2.1.

2.2 **Disbursement of the Allowance.**

2.2.1 **Initial Alteration Allowance Items.** Except as otherwise set forth in this Tenant Work Letter, the Allowance shall be disbursed by Landlord only for the following items and costs and, except as otherwise specifically and expressly provided in this Work Letter or the Lease, Landlord shall not deduct any other expenses from the Allowance (collectively the "**Initial Alteration Allowance Items**"):

2.2.1.1 Payment of the fees of the Architect and the “Engineers” (as that term is defined in Section 3.1 of this Tenant Work Letter), and Tenant’s construction manager, and any other engineers and/or consultants for design and construction, including for lighting and HVAC equipment, and payment of any reasonable, out-of-pocket third-party fees incurred by Landlord in the review of structural, mechanical or electrical drawings that are a part of the “Construction Documents,” as that term is defined in Section 3.1 of this Tenant Work Letter, by an architectural or engineering consultant hired by Landlord (provided that such fees shall not exceed \$[____]);

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Initial Alterations;

2.2.1.3 The cost of construction of the Initial Alterations, including, without limitation, any separate meters or sub-meters for the Premises, testing and inspection costs, and contractors’ fees and general conditions;

2.2.1.4 The cost of any changes in the Building structure when such changes are required by the Construction Documents, such cost to include all direct architectural and/or engineering fees and expenses, and any City or permit costs, incurred in connection therewith;

2.2.1.5 The cost of any changes to the Construction Documents or Initial Alterations required by all applicable building codes (the “**Code**”);

2.2.1.6 The cost of connection of the Premises to the Building’s energy management systems and for condenser water hook-up fees, if applicable;

2.2.1.7 Sales and use taxes and Title 24 fees, gross receipts taxes and any other taxes imposed on or pertaining to the Initial Alterations; and

2.2.1.8 Any costs and/or expenses incurred in connection with the design, permitting and construction of the Initial Alterations which are (i) the obligation of Tenant under this Tenant Work Letter (but not the purchase price of furniture or personal property, other than built-in furniture systems), or (ii) expressly designated in the Lease as costs and/or expenses which may be deducted from the Allowance.

2.2.2 Disbursement of Allowance. Following the completion of construction of the Improvements, Tenant’s opening for business to the public, and satisfaction of the “**Disbursement Conditions**”, Tenant shall submit to Landlord a request for disbursement (the “**Allowance Request**”), and, within thirty (30) days of Landlord’s receipt of the Allowance Request (the “**Allowance Payment Date**”), and provided Tenant is not then in monetary default or material non-monetary default (beyond any applicable notice and cure periods) under the terms of the Lease, Landlord shall make a wire transfer to Tenant in the amount of the Allowance. For purposes hereof, the “**Disbursement Conditions**” shall mean: (A) Tenant’s delivery to Landlord of (i) evidence (such as paid invoices or receipted bills that are marked “Paid in Full,” or cancelled checks to the general contractor that performed the Initial Alterations or vendors) that Tenant actually paid for labor rendered and materials delivered to the Premises with respect to the Initial

Alterations; (ii) properly executed mechanics lien releases in compliance with both California Civil Code Section 8134 and 8138, and (iii) two (2) hard copies and one (1) electronic copy of the “Close-Out Package” (as that term is defined in Section 3.3 below); (B) Landlord’s determination, in good faith that no Non-Compliance Work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Project, the curtain wall of the Project, the structure or exterior appearance of the Project; (C) Architect’s delivery to Landlord of a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Premises has been substantially completed), and (D) issuance of a certificate of occupancy for the Premises. If Landlord identifies any work that is in material non-compliance with the Approved Working Drawings (the “**Non-Compliance Work**”), Landlord shall provide a detailed statement identifying such Non-Compliance Work and Tenant shall cause such work to be constructed at Tenant’s expense. Landlord’s payment of such Allowance shall not be deemed Landlord’s approval or acceptance of the work furnished or materials supplied as set forth in Tenant’s requisition request.

2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Allowance to the extent costs are actually incurred by Tenant for Initial Alterations Allowance Items. All Initial Alterations Allowance Items for which the Allowance has been made available shall be deemed Landlord’s property under the terms of this Lease.

SECTION 3

CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Documents. Tenant shall retain an architect/space planner reasonably approved by Landlord (the “**Architect**”) to prepare the “Construction Documents,” as that term is defined in this Section 3.1. Tenant shall retain (or cause the Architect or, on a design-build basis, the Contractor to retain) engineering consultants reasonably approved by Landlord (the “**Engineers**”), which approval shall be granted or withheld within ten (10) Business Days following Tenant’s written request, to prepare all plans and engineering working drawings relating to the work to be undertaken in the Premises by Tenant. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the “**Construction Documents**.” Tenant shall deliver one (1) hard copy and one (1) electronic copy of the Construction Documents to Landlord. Landlord’s review of the Construction Documents as set forth in this Section 2, shall be for its sole purpose and shall not imply Landlord’s review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Documents are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord’s space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Documents, and Tenant’s waiver and indemnity set forth in this Lease shall specifically apply to the Construction Documents.

1.1 Final Space Plan. Tenant shall supply Landlord with four (4) hard copies and one (1) electronic copy of its final space plan for the Premises, if and as applicable depending upon the nature of the improvements proposed by Tenant, before any architectural working drawings or engineering drawings have been commenced. The final space plan (the “**Final Space Plan**”) shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall advise Tenant within five (5) Business Days after Landlord’s receipt of the Final Space Plan for the Premises if the same is approved, or, if the Final Space Plan is not reasonably satisfactory or is incomplete in any respect, disapproved, in which event Landlord shall include in its notice of disapproval a reasonably detailed explanation as to which items are not satisfactory or complete and the reason(s) therefor. Landlord shall not unreasonably withhold its consent to the Final Space Plan, provided that it shall only be reasonable for Landlord to withhold its consent to the final specifications if the design of such improvements (i) will have a material adverse effect on the Building Structure, or Building Systems (including the exterior appearance of the Building), or (ii) does not comply with any applicable Laws (collectively, a “**Design Problem**”). If Tenant is so advised, Tenant shall promptly cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require and deliver such revised Final Space Plan to Landlord. If Landlord disapproves the Final Space Plan, Tenant may resubmit the proposed Final Space Plan to Landlord at any time, and Landlord shall approve or disapprove of the resubmitted Final Space Plan, based upon the criteria set forth in this Section 2.2, within five (5) Business Days after Landlord receives such resubmitted Final Space Plan. Such procedures shall be repeated until the Final Space Plan is approved.

1.2 Final Working Drawings. After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the “Final Working Drawings” (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the “**Final Working Drawings**”) and shall submit the same to Landlord for Landlord’s approval. Tenant shall supply Landlord with four (4) hard copies and one (1) electronic copy of such Final Working Drawings. Landlord shall advise Tenant within seven (7) Business Days after Landlord’s receipt of the Final Working Drawings for the Premises if the same are approved, or, if the Final Working Drawings have a Design Problem, Landlord may disapprove. If Tenant is so advised, Tenant shall immediately revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith, and Landlord shall approve or disapprove the resubmitted Final Working Drawings, based upon the criteria set forth in this Section 2.3, within five (5) Business Days after Landlord receives such resubmitted Final Working Drawings. Such procedure shall be repeated until the Final Working Drawings are approved.

1.3 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord (the “**Approved Working Drawings**”) prior to the submission of the same to the appropriate municipal authorities for all applicable building permits (the “**Permits**”) and commencement of construction of the Initial Alterations by Tenant; provided, however, at Tenant’s election and at Tenant’s risk with respect to any subsequent changes that may be required by Landlord in accordance with this Tenant Work Letter, Tenant may submit the Final Working Drawings to the appropriate municipal authorities for Permits concurrently with Landlord’s review thereof. After approval by Landlord of the Final Working Drawings, Tenant shall submit such Approved Working Drawings for the Permits. Tenant hereby agrees that neither Landlord nor Landlord’s consultants shall be responsible for obtaining any building permit for the Initial Alterations or certificate of occupancy for the Premises and that obtaining the same shall be Tenant’s responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy (or its jurisdictional equivalent). No material changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. Landlord shall provide any approvals and take any actions required under this Tenant Work Letter within the time periods specified herein, or, if no time period is specified, then within five (5) Business Days.

1.4 Change Orders. In the event Tenant desires to materially change the Approved Working Drawings, Tenant shall deliver notice (the “**Drawing Change Notice**”) of the same to Landlord, setting forth in detail the changes (the “**Tenant Change**”) Tenant desires to make to the Approved Working Drawings. Landlord shall, within five (5) Business Days of receipt of a Drawing Change Notice, either (i) approve the Tenant Change, or (ii) disapprove the Tenant Change to the extent there is a Design Problem and deliver a notice to Tenant specifying in reasonably sufficient detail the reasons for Landlord’s disapproval. Any additional costs which arise in connection with such Tenant Change shall be paid by Tenant pursuant to this Tenant Work Letter; provided, however, that to the extent the Allowance has not been fully disbursed, such payment shall be made out of the Allowance subject to the terms of this Tenant Work Letter.

SECTION 2

CONSTRUCTION OF THE INITIAL ALTERATIONS

2.1 Tenant’s Selection of Contractors.

2.1.1 The Contractor. Tenant shall retain a licensed general contractor, approved in advance by Landlord (“**Contractor**”), to construct the Initial Alterations. Landlord’s approval of the Contractor shall not be unreasonably withheld.

2.1.2 Tenant’s Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant, together with the Contractor, shall be known collectively as “**Tenant’s Agents**”. The subcontractors used by Tenant, but not any materialmen, and suppliers, must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed.

2.2 Construction of Initial Alterations by Tenant's Agents.

2.2.1 Intentionally Deleted.

2.2.2 Tenant's Agents.

2.2.2.1 Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work. Tenant's and Tenant's Agent's construction of the Initial Alterations shall comply with the following: (i) the Initial Alterations shall be constructed in accordance with the Landlord Approved Working Drawings, subject to minor field adjustments and Landlord approved Tenant Changes; (ii) Landlord's reasonable and customary rules and regulations for the construction of improvements in the Building, a copy of which have been provided to Tenant and which shall not be amended as they apply to this Lease prior to substantial completion of the Initial Alterations, provided if there is a conflict between the construction rules and regulations and the Lease, the Lease shall govern, (iii) Tenant's Agents shall submit schedules of all work relating to the Initial Alterations to Landlord, and (iv) Tenant shall abide by all reasonable rules made by Landlord with respect to the use of freight, loading dock, storage of materials, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Initial Alterations provided that such rules and regulations shall not conflict with the terms of this Tenant Work Letter.

2.2.2.2 Indemnity. Tenant's indemnity of Landlord and Landlord's indemnity of Tenant, as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's or Landlord's, as the case may be, non-payment of any amount arising out of the Initial Alterations and/or Tenant's or Landlord's, as the case may be, disapproval of all or any portion of any request for payment. The foregoing indemnity shall not apply to claims caused by the negligence or willful misconduct of Landlord, its member partners, shareholders, officers, directors, agents, employees, and/or contractors, or Landlord's violation of this Lease.

2.2.2.3 Requirements of Tenant's Agents. Each of Tenant's Agents shall guarantee to Tenant, to the extent customary for such type of Tenant's Agent in the Santa Monica, California marketplace, and for the benefit of Landlord that the portion of the Initial Alterations for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall, to the extent customary for such type of Tenant's Agent in the Santa Monica, California marketplace, be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the completion of the work performed by such contractor or subcontractors. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Initial Alterations, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Initial Alterations shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. To the extent reasonably necessary, Tenant

covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

2.2.2.4 Insurance Requirements.

2.2.2.4.1 General Coverages. All of Tenant's Agents shall carry workers' compensation insurance for their respective employees in compliance with statutory requirements; Commercial General Liability insurance, including bodily injury, property damage, and Products and Completed Operations coverage, with limits in amounts not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate (except that the Contractor shall carry Commercial General Liability Insurance with limits of at least \$5,000,000 per occurrence and \$5,000,000 in the aggregate); and products-completed operations insurance with limits of at least \$5,000,000 in the aggregate, provided that such limits may be satisfied with a combination of primary and excess liability policies; and in such form as is customarily carried by comparable contractors or agents in the greater San Francisco, California area, with responsible insurance companies authorized to do business in the state in which the Premises are located. The Commercial General Liability insurance policies shall include Landlord and Tenant as additional insureds for on-going and completed operations.

2.2.2.4.2 Special Coverages. Tenant (or the Contractor) shall carry "Builder's Risk" insurance in an amount reasonably approved by Landlord covering the construction of the Initial Alterations.

2.2.2.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 3.2.2.4 shall be delivered to Landlord before the commencement of construction of the Initial Alterations and before the Contractor's equipment is moved onto the site. All such commercial general liability policies of insurance must contain a provision that, if available by the carrier, the company writing said policy will provide Landlord at least thirty (30) days prior written notice of any cancellation or lapse of the effective date, and ten (10) days written notice in the event of the policy cancellation due to non-payment of premium. In the event that the Initial Alterations are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at no cost to Landlord. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Initial Alterations are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord of the Contractor, which is to be maintained for five (5) years following completion of the work and acceptance by Landlord and Tenant. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall, to the extent available, preclude subrogation claims by the insurer against anyone insured thereunder. Such commercial general liability insurance shall provide that it is primary insurance as respects the owner and that any other valid and collectible insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 3.2.2.2 above.

2.2.3 Governmental Compliance. The Initial Alterations shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance

Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

2.2.4 Inspection by Landlord. Landlord shall have the right to inspect the Initial Alterations at all reasonable times, provided however, that Landlord's failure to inspect the Initial Alterations shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Initial Alterations constitute Landlord's approval of the same. Should Landlord reasonably disapprove any portion of the Initial Alterations as Non-Compliance Work, Landlord shall, as soon as reasonably possible, notify Tenant in writing of such disapproval and shall specify the items disapproved and the reasons therefor. Any defects or deviations in, and/or disapproval by Landlord of, the Initial Alterations to the extent the same is Non-Compliance Work shall be rectified by Tenant at no expense to Landlord.

2.3 Notice of Completion; Record Set of As-Built Drawings; Close-Out Package.

2.3.1 Notice of Completion. Within ten (10) days after completion of construction of the Initial Alterations, Tenant shall cause a Notice of Completion (or the equivalent thereof in the State of California, if any) in the office of the Recorder of the county in which the Building is located, and shall furnish a copy thereof to Landlord upon such recordation. In the event Tenant fails to so record the Notice of Completion as required pursuant to this Section 3.3, then such failure shall not, in and of itself, constitute a default hereunder but Tenant shall (a) indemnify, defend, protect and hold harmless Landlord and the Landlord Parties from any and all loss, cost, damage, expense and liability (including, without limitation, court costs and reasonable attorneys' fees) in connection with such failure by Tenant to so record the Notice of Completion as required hereunder, and (b) not be entitled to receive the Final Retention pursuant to this Tenant Work Letter until such time as the lien period for Tenant's Agents has expired.. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense.

2.3.2 Record Set of As-Built Drawings. At the conclusion of construction, Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings (the "**Record Set**") is true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord four (4) hard copies and two (2) electronic copies (in .pdf and CAD format) of such Record Set within ninety (90) days following issuance of a certificate of occupancy for the Premises.

2.3.3 Close-Out Package. At the conclusion of construction or as soon as reasonably practical thereafter, Tenant shall deliver to Landlord copies of all closed Permits, all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises (collectively, along with the recorded Notice of Completion described in Section 3.3.1 above and the Record Set described in Section 3.3.2 above, the "**Close-Out Package**").

SECTION 3

MISCELLANEOUS

3.1 Tenant's Representative. Tenant has designated [_____] (email address: [_____]) as its representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

3.2 Landlord's Representative. Landlord has designated [_____] (email address: [_____]) as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

3.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

3.4 No Miscellaneous Charges. Landlord shall not charge Tenant or Tenant's contractors or agents for parking or any services used during construction, installation or relocation including any of the following: toilet facilities, hoisting charges, electrical services, water, parking, HVAC or the use of non-exclusive freight elevators or the Exclusive Elevator during the construction and move-in period.

3.5 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if a monetary Event of Default or material non-monetary Event of Default as described in the Lease or this Tenant Work Letter has occurred at any time on or before the substantial completion of the Initial Alterations, then in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance until Tenant cures such Event of Default.

EXHIBIT D-1

LANDLORD'S WORK

Work Letters Workshop

Critical Questions for Key Phases

#1 Planning ☞ What are We Building?

#2 Construction ☞ Who is Doing the Work?

#3 Completion ☞ How Do We Close This Out?

#4 Post ☞ Does the Letter Match the Lease?

#1 Planning What are We Building?

Purposes of Work Letters:

- Defining Scope and Responsibilities
- Managing Process, Schedules and Budget
- Minimizing Surprises & Avoids Disputes

Attaching Plans and Scope are help with:

- Getting Parties Aligned - Tenant gets pre-approvals
- Helping Vendors Scope Out Roles
- Helping Contractors Bid with Accuracy
- Kicking Off Permitting Process

Milestones and Approval Windows Keep Parties on Track and Accountable

Things to Consider:

- Balance Number of Approvals with Speed of Completion
- Company Closures/Absences that Could Delay Approvals
- Negotiate for Reciprocity of Deemed Approvals/Rejections

Soft Costs = planning and design fees, such as architects, engineers, permitting.

- **Tenant Strategies:**
 - Clarify allowance dollars are available for soft costs, or
 - Negotiate for separate soft costs allowance
- **Landlord Strategies:**
 - Exclude or cap % or # of dollars available for soft costs from allowance
 - **Permitting Issues:**
 - Clarify **who pulls what** permits
 - Provide for **adequate timelines**, with mechanisms for **adjustments** – Delays are common

#2 Construction 🗑️ Who is Doing the Work?

IDENTIFY: Is it a Landlord-Build or Tenant-Build?

- **Contractor Selection** – Each party should have reasonable approval
- **Construction Management Fee**
 - Typically charged, whoever builds it
 - CONTROL by
 - Capping at % of HARD costs
 - Removing entirely (ideally at LOI stage)
 - Should be lower if 3rd party contractor, higher if landlord-contractor
 - **WATCH OUT for:**
 - **”Managed Allowance”**
 - Landlord-Build with capped allowance and Tenant pays overage
 - Negotiate split of overage costs, approval rights throughout
 - **Review Fees** in addition to CMF – Eliminate, cap, wrap into CMF

Change Orders

Causes

- Permit requirements
- Materials availability
- Space requirements

Impact

Increases Costs + Time

Negotiate To Minimize Impact:

- Only a CO if Tenant-Requested
- Tenant approval rights
(over \$ threshold)
 - Set response times for approvals
 - Deemed approval terms

#3 Completion 🗨️ How Do We Close This Out?

Substantial Completion – Basics:

Simply Put:

Date of completion, but for “Punchlist Items”

Can Get Complicated:

May trigger commencement, and often source of disputes

To Avoid Disputes:

1. Hold Regular Meetings + Walk-Through 30 days prior, and on anticipated completion
2. Subject to Mutual Determination by parties or architects of completion
3. Objective Standard - Issuance of Certificate of Occupancy

Tenant Delay

Impact:

Accelerates commencement day-for-day, based on Tenant-caused delay

To Manage/Minimize:

- Limit to Tenant-requested changes & matters within Tenant’s control
- Condition upon notice and cure period

Payment Structures:

- **LL PAYS, T REIMBURSES** for COs + Above-Building Standard Improvements
- **LL PAYS** Core + Shell, **T PAYS** for Improvements
- **LL PAYS TO CAP, T PAYS** overages

WHO PAYS WHOM?

1. Landlord ▷ Contractor
2. Landlord ▷ Tenant ▷ Contractor

Allowance Payments – Negotiating Tips:

- **For Tenants:**
 - Get OFFSET RIGHT if Landlord ▷ Contractors to avoid breach
 - Push for ADEQUATE TIME following completion before reversion of funds to Landlord (to account for delayed invoices)
- **For Both Parties:**
 - Clarify in the work letter:
 - Who bears cost?
 - Paid in advance or as incurred?
 - From allowance or *pari passu*?

#4 Post Does the Letter Match the Lease?

They should!

Commencement Date: Should sync to Substantial Completion

Property Condition: As-is provisions in the Lease should be qualified by any Landlord Work

Warranties: Should be assigned to Tenant upon commencement

Restoration: Should be waived clearly in work letter and/or lease