

From PLI's Course Handbook

*Negotiating Commercial Leases: How Owners & Corporate Occupants
Can Avoid Costly Errors - Fall 2006*

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LETTERS OF INTENT AND
DRAFTING DECISIONS THAT
AFFECT THE PROFITABILITY AND
MANAGEMENT OF THE BUILDING

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This portion of the program will focus on the use of letters of intent in commercial leasing transactions and the challenges faced by property managers when lawyers draft leases that deviate substantially from the owner's standard form. We will start by reviewing the benefits that can be obtained by landlords and tenants through the use of letters of intent and term sheets in leasing transactions and the terms and conditions that should be included in letters of intent. We then will discuss lease provisions that, if poorly drafted, can lead to difficulties in managing the building and that could result in a reduction of the building owner's return on its investment.

Letters Of Intent

Letters of intent and term sheets are commonly used by landlords and tenants in commercial leasing transactions. In general, the parties to a lease will gain the most benefit from using a letter of intent or term sheet ("LOI") when the lease will be complex; such as in the case of a lease with an anchor tenant or a tenant that will be occupying a substantial amount of space in the building. In these cases, the LOI will serve to memorialize the areas of understanding and to facilitate further discussions in complex negotiations. However, in many cases, smaller tenants also will benefit from the use of an LOI, since the LOI will serve to outline the principal business terms of the lease and foster the negotiation process.

An LOI can also serve to facilitate either the landlord's or tenant's obtaining approval of the lease before it enters into lengthy negotiations. For example, a landlord may require its lender's approval of a lease if it is with an anchor or large tenant or may need to show its lender that it has satisfied certain pre-leasing requirements in connection with the construction of a new building. In these cases, a landlord will likely seek to obtain its lender's approval of the lease on the basic terms and conditions contained in the LOI. As a result, the LOI should be comprehensive in its coverage of the essential business terms of the lease without getting bogged down in the minutiae of the terms and conditions that will be more exhaustively set forth in the lease. If the LOI is too comprehensive and the final lease deviates significantly from the terms and conditions of the LOI, the pre-approval obtained by the landlord may be of little use.

The most significant benefit derived by the parties to a lease from the use of an LOI is that the LOI will facilitate and expedite the negotiation of the lease. Keeping this in mind, the LOI should not be overly long or detailed. Otherwise, the parties may expend a substantial amount of time

and money negotiating the LOI, which will detract from the parties goal, which is to expedite the process. Accordingly, a well crafted LOI will cover in a general manner the material business terms of the lease. The LOI should include provisions describing the location and size of the premises within the building, the term of the Lease, options in favor of the tenant (e.g., expansion options, extension options, contraction options, ROFR rights and ROFO rights, if any), the purpose or use of the premises, restrictions on use, the components of rent, assignment and sub-leasing rights, construction obligations (i.e., tenant improvements), parking rights, security deposit requirements and other material terms. From the perspective of the tenant, the LOI also should clearly describe any exclusive uses in favor of the tenant, rent concessions, special security requirements, special amenities (e.g. exclusive parking, rooftop access), tenant improvement allowances and any non-standard utility and other requirements (e.g., higher than standard electricity requirements, the need for rooftop access and any requirements for uninterrupted power sources and stand alone generators). If the parties can agree upon the general business terms described above at the LOI stage, it is less likely that significant business issues that can kill a deal will arise during the lease negotiations.

The use of LOIs also can benefit a landlord when it is using the services of a third party broker to market space in the building. In these cases, a form LOI will serve to provide the broker with a template for its discussions and negotiations with other brokers and tenants, even if the landlord does not intend to use an LOI for every lease.

LOIs can also be beneficial to a tenant in cases in which it knows its space needs, but has the ability to choose among several comparable buildings. In these cases, the terms and conditions generally included in an LOI can be restated in a request for proposal ("RFP") submitted to several landlords. If the tenant submits an RFP to several landlords, it will be better able to evaluate which of the buildings and landlords will be best suited for the tenant. The use of an RFP in these circumstances also will serve to provide the tenant with a good cross-section of what is available in the marketplace. The use of an RFP, however, is best suited to tenants that are financially strong and in circumstances where the market is generally favorable to tenants.

Although the LOI is intended to set out the material business terms of the proposed lease, it is equally important to provide in unambiguous terms whether or not the LOI is binding on the parties. The failure to include a provision regarding the binding nature of the document could

result in the formation of a contract, especially if the LOI is detailed and comprehensive. Accordingly, if the parties do not want to be bound by the LOI, they should include a provision that clearly establishes this intent. An example of a provision that seeks to limit the enforceability of an LOI follows:

"Except as hereinafter provided, this letter of intent is not intended to be an does not constitute an agreement or binding commitment or contract, but rather is an expression of the parties' present intentions so that negotiations can proceed more efficiently. [This letter of intent does not create any obligation on the parties to negotiate.] An agreement and binding commitment and contract will occur only upon the execution and delivery by the parties of a definitive lease agreement as contemplated above. [However, Sections ___ through ___, inclusive, of this letter of intent are contractually binding upon the parties and are separately enforceable as of the date hereof.]"

Although the use of a provision such as this should be sufficient to express the parties' intent regarding enforceability, you should also consult the statutes and case law of the jurisdiction in which you practice to determine whether any additional language may be required to ensure that the LOI is not binding. The bracketed language in the sample provision can be used for this purpose. If the parties desire to make certain provisions of the LOI binding and enforceable (such as a confidentiality provision or an agreement to negotiate for a specific period of time) they should clearly identify the provisions that are binding and those that are not binding. If the parties decide that certain provisions of the LOI will be binding, the parties also should consider including a provision limiting the amount of damages that can be recovered as a result of a breach to an agreed upon amount and also should specifically exclude any liability for consequential damages, lost profits, and punitive damages.

A copy of a template for an LOI is attached. While the template is fairly comprehensive, it will need to be tailored to each transaction. We will discuss in more detail certain of the provisions contained in the LOI template.

Lease Provisions that Can Adversely Affect the Owner's ROI or Create Property Management Conflicts

Although it can be said that each provision of a lease has an impact on the owner's return on investment, there are several provisions that truly affect that return. This section of our presentation will focus on those provisions. We will also discuss how drafting these provisions in a manner that deviates substantially from the owner's form lease requirements, or in an inconsistent manner on a lease by lease basis, can make the administra-

tion and management of the building more difficult for the property manager. The lease provisions we will discuss are outlined below:

I. Rent Provisions

- a. Commencement Date
- b. Early Occupancy and Payments During the Early Occupancy Period
- c. Measurement of the Premises
- d. Components of Rent
 - (i) Base Rent
 - (ii) Operating Expenses
 - (iii) Taxes
 - (iv) Other Components of Additional Rent
 - (v) Gross Up Clauses
- e. Rent Concessions

II. Use Clauses

- a. General Provisions
- b. Prohibited Uses
- c. Exclusive Uses

III. Building Services

- a. Basic Services
- b. Electricity
- c. After Hours Services
- d. Excessive Use of Building Systems
- e. Fiber Optics and Other Utility Requirements
- f. Self-help rights

IV. Maintenance and Repairs

- a. Tenant's Repairs
- b. Landlord's Repairs

V. Casualty Clauses

- a. Rights to Terminate
- b. Restoration Obligations
- c. Rent Abatement
- d. Lock out provisions

VI. Assignment and Subletting

- a. Consent Requirements
- b. Recapture Rights
- c. Profit Sharing

VII. Surrender

- a. Condition on Surrender
- b. Removal of alterations, initial improvements and trade fixtures

VIII. Options in Favor of Tenant

- a. Extension Options
- b. Expansion Options
- c. Determination of Rent
- d. ROFR Rights
- e. ROFO Rights

IX. Communication, Electrical and Utility Lines

- a. Installation and Removal Obligations
- b. Use of Rooftop Space
- c. Supplemental Cooling Equipment
- d. Generators and Uninterrupted Power Supplies

LETTER OF INTENT TEMPLATE

[LANDLORD'S OR LANDLORD'S BROKER'S LETTERHEAD]

[DATE]

[TENANT OR TENANT'S Broker's NAME AND ADDRESS]

Re: Proposal for Lease by **[NAME OF TENANT]** in building located at **[ADDRESS]**, which Building is part of the office project known as "**[NAME OF PROJECT]**".

Dear _____:

_____ on behalf of _____ ("**Landlord**"), is pleased to submit a lease proposal for **[NAME OF TENANT]** ("**Tenant**") to lease space in the referenced Building on the terms and conditions set forth as follows. This proposal is submitted in order to permit the parties to engage in open and informed discussions of potential leasing terms, and is not intended as and shall not constitute an offer, an acceptance or a contract.

1. BUILDING. Office building located at _____

2. BUILDING DESCRIPTION. **[TO BE COMPLETED]**

3. PREMISES. Floor(s) Approximate Rentable Square Feet

[INSERT APPROPRIATE FIGURES]

OPTIONAL PROVISIONS
RELATING TO THE EXPANSION
OF THE PREMISES:

- 3.1. PRE-MOVE-IN EXPANSION OPTION. Tenant shall have the right, up until _____, to lease approximately _____ rentable square feet on the _____ (_____) floor of the Building under the same terms and conditions as those set forth herein for the initial Premises, subject only to the determination by Landlord of revised dates for submission of construction drawings by Tenant relating to such space.
- 3.2. MUST-TAKE SPACE. Tenant shall lease _____ rentable square feet of space on the _____ floor of the Building during _____. The exact amount of and delivery date of such space shall be determined by Landlord in its discretion. The leasing of such space shall be on the same terms and conditions as are then applicable to the initial Premises; provided that if such space has been previously improved, Tenant shall take such space in its "as is" condition, and if such space has not been previously improved, Tenant shall receive an improvement allowance equal to _____.
[NOTE—THERE ARE SEVERAL WAYS TO HANDLE THE IMPROVEMENT ALLOWANCE —THE FOREGOING IS ONE METHOD].

3.3. OPTIONS FOR
ADDITIONAL SPACE.

Tenant shall have the right to lease additional space ("**Option Space**") in the Building. The location and scheduled delivery dates for each increment of Option Space and the range of square footages for each such increment are as follows:

<u>Rentable</u>	<u>Delivery</u>	
<u>Square Footage</u>	<u>Floor</u>	<u>Date</u>

**[INSERT APPROPRIATE
FIGURES]**

Tenant shall give Landlord eighteen (18) months' written notice of its intention to exercise each option prior to the scheduled delivery date.

Landlord shall deliver the Option Space up to twelve (12) months prior to or twelve (12) months following the scheduled delivery date at Landlord's discretion.

Terms and conditions for such Option Space shall be the terms and conditions being quoted by Landlord for comparable space in the Building as of the date of the commencement of the respective option, but in no event shall the annual base rent for the Option Space be less than the then current Annual Base Rent, plus escalations, for the Premises. The rights granted to Tenant hereunder are personal to Tenant and may only be exercised by Tenant when Tenant is in possession of the entire Premises.

3.4. RIGHT OF FIRST OFFER.

Landlord shall grant to Tenant a one-time right of first offer, following initial leasing, on all remaining space on the _____ (_____) floor of the Building. The terms and conditions for the lease of such space shall be those then being quoted by Landlord for the leasing of comparable space in the Building, but in no event shall the annual base rent for such space be less than the then current Annual Base Rent, plus escalations, for the Premises. Tenant must elect to lease such space within five (5) business days of Landlord's offer to lease such space. If Tenant does not timely elect to lease such space, Landlord may lease such space to anyone whom Landlord desires upon terms acceptable to Landlord. The rights granted to Tenant hereunder are personal to Tenant and may only be exercised by Tenant when Tenant is in possession of the entire Premises.

3.5. RIGHT OF FIRST NEGOTIATE.

Tenant shall have a one-time first right to negotiate, after initial leasing, on the space located on the ___ floor of the Building. Landlord shall notify Tenant of its intent to lease such space and Tenant shall have five (5) business days to commence good faith negotiations with Landlord concerning such space. If Tenant does not timely elect to negotiate with Landlord to lease such space, Landlord may lease such space to anyone whom Landlord desires upon terms acceptable to Landlord. The rights granted to Tenant hereunder are personal to Tenant and may only be exercised by Tenant when Tenant is in possession of the entire Premises.

4. METHOD OF MEASUREMENT [SEE **OPTIONAL NEGOTIATED PROVISION**]. The rentable square footage of the Building and the Premises is calculated pursuant to the Standard Methods of Measuring Floor Area in Office Buildings, ANSI Z65.1-1996 ("**BOMA**"), provided that the rentable square footage of the Building includes, and therefore, the rentable square footage of the Premises includes a portion of, the common area of the Building, and the occupied space located within the Building and dedicated to the service of the Building [**OPTIONAL CLAUSE TO PROVIDE CAP FOR BOMA PLUS MEASUREMENT**—(collectively, the "**Additional Area**"); and provided further that the amount of the Additional Area shall not exceed an amount equal to ___ percent (___%) of the rentable footage of the Building measured pursuant to BOMA].
5. PURPOSE OF USE [SEE **RETAIL PROVISIONS**]. The Premises will be used for business and professional offices in keeping with the character of a first class office building. [**RETAIL PROVISION - The Premises will be used only for [INSERT SPECIFIC RETAIL USES ALLOWED]**].
6. LEASE TERM. The term of the Lease (the "**Lease Term**") shall be [**INSERT TERM**] years commencing upon substantial completion of the Premises, which is anticipated to be [**INSERT ANTICIPATED LEASE COMMENCEMENT DATE**].

OPTIONAL PROVISIONS
RELATING TO THE EXTENSION
OR TERMINATION OF THE
LEASE TERM.

6.1. OPTION TO RENEW.

Tenant shall have _____ (_____) five (5) year option(s) to renew all space then under lease by Tenant, upon first providing Landlord with eighteen (18) months' prior notice. The annual base rent for an option term shall be the base rent then being quoted by Landlord for comparable space in the Building as of the date of the commencement of such option, but in no event shall the annual base rent be less than the Annual Base Rent, plus escalations, paid by Tenant at the expiration of the then current Lease Term. The rights granted to Tenant hereunder are personal to Tenant and may only be exercised by Tenant when Tenant is in possession of the entire Premises.

6.2. TENANT LEASE CANCELLATION OPTION UPON PAYMENT OF A TERMINATION FEE. [SEE CALCULATION OF TERMINATION FEE].

Tenant shall have a one-time right to cancel the lease effective at the end of the ____ month of the initial Lease Term (the "**Termination Date**"). Tenant must give notice of its intention to cancel the lease not later than one-year prior to the Termination Date. In the event Tenant exercises its option to cancel, Tenant shall, at the time of such exercise, pay Landlord a cancellation fee equal to **[THE AMOUNT OF THE TERMINATION FEE CAN BE CALCULATED AT THE LEASE PROPOSAL STAGE AS FOLLOWS:** The Cancellation Fee is equal to the sum of the following amounts: (i) the present value (using

a discount rate as low as possible, preferably seven percent (7.0%)) of the unamortized tenant improvement allowance, brokerage commission, free rent, and all other monetary concessions given in connection with the Lease, and (ii) an amount equal to the Base Rent, as escalated, that would have been due under the Lease during the one-year period commencing on the day after the Termination Date]. The rights granted to Tenant hereunder are personal to Tenant and may only be exercised by Tenant when Tenant is in possession of the entire Premises.

6.3. TENANT CANCELLATION
OPTION UPON FAILURE OF
LANDLORD TO TIMELY
COMPLETE THE
PREMISES.

Landlord shall use diligent efforts to cause the completion of Tenant's space to occur on or before **[INSERT A DATE PREFERABLY ONE YEAR LATER THAN THE ANTICIPATED LEASE COMMENCEMENT DATE]** (the "**Outside Date**"). In the event the delivery of the Premises is delayed beyond the Outside Date; and such delay is not caused by Tenant or by force majeure, then Tenant's sole right shall be a five (5) business day right to terminate the lease by written notice to Landlord. Notwithstanding the above, Landlord shall have the one-time right to extend the Outside Date for thirty (30) days by delivering to Tenant a certificate from Landlord that in Landlord's best good faith judgment the substantial completion of Tenant's space will occur within thirty (30) days after the Outside Date. In addition, if, at any time, Landlord determines that Landlord

will be unable to deliver the Premises by the Outside Date, Landlord may notify Tenant of Landlord's good faith opinion, as to when the Premises will be delivered, and within five (5) business days thereafter, Tenant must notify Landlord as to whether Tenant will (i) terminate the Lease or (ii) agree to extend the Outside Date to the date set forth in Landlord's notice.

6.4. CONTRACTION OPTIONS.

Tenant shall have the right at the expiration of the ____ lease year and at the end of the ____ lease year to reduce its space by up to one full floor in each instance. In the event the Tenant elects to exercise such option, Tenant shall provide twelve (12) months' written notice to Landlord in each instance. Tenant shall pay a penalty payment to Landlord equal to Landlord's un-amortized balance of costs of the transaction (excluding rent lost), utilizing a 7% interest rate for such amortization, plus six (6) months of gross rent. Tenant shall pay 20% of such penalty upon its initial notice to Landlord, an additional 30% of such payment at six (6) months prior to the effective date of termination and the balance to be paid 30 days prior to the date of termination of such space.

7. ANNUAL BASE RENT
[SEE OPTIONAL RETAIL
PROVISION].

The annual base rent (the "**Annual Base Rent**") per rentable square foot of the initial Premises during the Lease Term shall be as follows:

<u>Months</u>	<u>Annual Base Rent</u>
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[INSERT APPROPRIATE FIGURES]

[RETAIL PROVISION—
PERCENTAGE RENT—Tenant shall pay, as annual rent under the Lease, the greater of (i) the Annual Base Rent, and (ii) ___ percent (___%) of the annual gross sales for the Premises].

8. RENT ABATEMENT.

Tenant's obligation to pay the Annual Base Rent shall be abated for the first **[INSERT FREE RENT PERIOD]** months of the Lease Term. Notwithstanding such abatement, Tenant shall pay its full share of operating expenses and real property taxes attributable to such period of time.

9. PROPERTY TAX AND
OPERATING EXPENSE
ADJUSTMENTS **[SEE**
ALTERNATIVE PROVI-
SIONS OF "EXPENSE
STOP" VERSUS "BASE
YEAR" SCENARIOS VER-
SUS RETAIL "N/N/N"
SCENARIO].

[EXPENSE STOP—If, during the Lease Term, Tenant's proportionate share of taxes and operating expenses for the Building exceeds **[INSERT EXPENSE STOP]** per rentable square foot of the Premises, Tenant shall be responsible for such excess. Operating expenses will be calculated on a grossed-up basis reflecting variable operating expenses as if the Building was fully occupied.]

OR

BASE YEAR—If, during the Lease Term, Tenant's proportionate share of taxes and operating expenses for the Building exceeds the amount of operating expenses and taxes for **INSERT BASE YEAR**, Tenant shall be responsible for such excess. Operating expenses will be calculated on a grossed-up basis reflecting variable operating expenses as if the Building was 95% occupied. Real property taxes will be calculated as if the Building and parking structure were fully completed and fully assessed.]

OR

RETAIL PROVISION—N/N/N—During the Lease Term, Tenant shall pay its proportionate share of taxes and operating expenses for the Building. Operating expenses will be calculated on a grossed-up basis reflecting variable operating expenses as if the Building was fully occupied].

OPTIONAL RETAIL PROVISION—Tenant shall, at its expense, directly meter the Premises for water, gas, and electrical usage, and Tenant shall pay directly for such utilities].

10. ASSIGNMENT AND SUB-
LEASING [SEE **RETAIL
PROVISION AND NEGOTI-
ATED RECAPTURE PRO-
VISION**].

Tenant shall have the right during the Lease Term to sublease or assign all or any portion of the Premises to a related entity or affiliate (as defined in Landlord's lease form) upon notification to Landlord. In addition, Tenant shall have the right to assign or sublease to unrelated entities as provided below. Tenant shall remain liable to Landlord for performance under the Lease regardless of such sublease or assignment.

In addition, Tenant shall have the right to assign or sublease all or any portion of the Premises subject to Landlord's consent, which consent will not be unreasonably withheld or delayed. Landlord shall retain 85% of all profits paid in connection with any sublease or assignment in excess of Tenant's rent obligations hereunder. [**RETAIL PROVISION** —Tenant shall have the right to sublease or assign all or a portion of the Premises subject to Landlord's consent, which consent may be withheld by Landlord in its sole discretion. Landlord shall retain the profits from such sublease or assignment].

Upon Tenant's notice to Landlord of an intended sublease or assignment of all or any portion of the Premises, Landlord shall have the right to recapture such sublease or assignment space (except to any related entity or affiliate of Tenant). **[ALTERNATE NEGOTIATED RECAPTURE PROVISION**—If Tenant intends to sublease or assign all or any portion of the Premises, Tenant shall give Landlord notice of such intention, and Landlord may, within ninety (90) days of such notice, recapture the portion of the Premises pertaining to the intended assignment or sublease for the term of such intended sublease or assignment],

11. **CONSTRUCTION OF TENANT IMPROVEMENTS [SEE ALTERNATIVE PROVISIONS FOR LANDLORD CONTROLLED CONSTRUCTION WITH “ALLOWANCE” VERSUS “TURN-KEY” SCENARIOS AND “TENANT CONTROLLED CONSTRUCTION WITH ALLOWANCE”].**

[LANDLORD CONTROLLED CONSTRUCTION\ALLOWANCE—Landlord shall provide Tenant an allowance of \$_____ per usable square foot of Premises to be used by Tenant for permanently affixed improvements and the cost of all architecture and engineering fees, licenses and permits for the construction of the Premises]

OR

[LANDLORD CONTROLLED CONSTRUCTION\TURN-KEY—Landlord shall construct the Premises according to **[INSERT PLANS AND SPECIFICATIONS]**, but in no event shall Landlord's contribution to the cost of the construction of the Premises exceed \$_____ per usable of the Premises.

Tenant shall select an interior architect of its choice who shall prepare Final Space Plans for the entire Premises by _____, 200_. Tenant shall submit drawings, specifications, quantities and purchase releases for all long-lead items and for all structural and internal stairway items and requirements to be used in connection with the construction of the tenant improvements by _____, 200_. Tenant shall submit Final Working Drawings to Landlord on or before _____, 200_. Landlord shall construct the improvements and shall be paid a construction supervisory fee by Tenant of [INSERT FEE] the total cost of such design and construction.

[USE THIS PROVISION WITH BOTH LANDLORD CONTROLLED CONSTRUCTION SCENARIOS AND IN ORDER TO EXPEDITE THE DESIGN PROCESS DURING LEASE NEGOTIATIONS].

[TENANT CONTROLLED CONSTRUCTION WITH ALLOWANCE—Landlord shall provide Tenant an allowance of \$_____ per usable square foot of the Premises to be used by Tenant to construct the Premises. Tenant shall retain a contractor selected from a list of contractors approved by Landlord to construct the Premises. Tenant shall pay Landlord a construction coordination fee of [INSERT FEE] of the total cost of the design and construction of the Premises].

12. PARKING. Tenant shall rent parking passes in the Building parking facility at a ratio of ____ parking passes per one thousand (1,000) rentable space square feet of the Premises. Parking rates will be **[INSERT PARKING RATE]** per space per month. Parking rates are guaranteed for the first year of the Lease Term. Thereafter, Tenant will pay according to the Building's posted rates.
13. HEATING, VENTILATION AND AIR-CONDITIONING. **[SEE OPTIONAL PROVISION].** Landlord, as part of operating expenses, shall furnish heating, ventilation and air-conditioning for normal office usage, Monday through Friday, from 9:00 a.m. to 6:00 p.m., and Saturday, from 9:00 a.m. to 12:00 p.m., except for recognized national and state holidays. **[OPTIONAL—**Landlord shall provide, upon Tenant's request and at Tenant's expense, after-hours heating, ventilation and air conditioning on an hourly, full-floor basis under terms and conditions to be established by Landlord].
14. ELECTRICITY. Landlord, as part of operating expenses, shall provide Tenant with electricity for lighting and normal office equipment to the extent such electrical consumption does not exceed four (4) watts per rentable square foot of the Premises.
15. CLEANING SPECIFICATIONS. Landlord, as part of operating expenses, will clean Tenant's premises five (5) days per week.

16. IDENTITY. Tenant shall be permitted to install, at its expense and subject to Landlord's consent which will not be unreasonably withheld, signage at the entrance of its premises on any full floor that it occupies. Signage on multi-tenant floors will be according to Building standard.
17. DIRECTORY BOARD. Landlord, at Landlord's expense, will furnish Tenant with space on the Building directory for two (2) designated names per each one thousand (1,000) rentable square feet of the Premises.
18. BUILDING MANAGEMENT. The managing agent of the Building shall operate the Building in a first class manner.
19. BUILDING SECURITY. Landlord, at Landlord's expense (to be included as an operating expense), shall provide Building security, equipment, personnel, procedures and systems. Tenant, at its own cost and with Landlord's consent, shall be permitted to install its own security system for the Premises.
20. SECURITY REQUIREMENTS [SEE ALTERNATE PROVISIONS]. [Tenant shall pay a security deposit equal to _____ (____) months' Annual Base Rent (calculated as of the ____ month of the Lease Term) upon execution of the Lease].
- [Tenant shall pay a security deposit equal to _____ (____) months' Annual Base Rent (calculated as of the ____ month of the Lease Term) upon execution of the Lease.]
- AND/OR
- [Appropriate guarantees shall be determined upon Landlord's review of Tenant's financial information.]
- AND/OR
- [The obligations of Tenant under the Lease shall be personally guaranteed by the principals of the firm.]

AND/OR

[It is understood and agreed that the partners of Tenant shall be personally jointly and severally liable for any claim arising out of or relating to the Lease.]

OPTIONAL MISCELLANEOUS PROVISIONS.

21. OPERATION OF PREMISES [RETAIL PROVISION] Tenant shall continuously operate the Premises during the hours of _____ on _____, except national holidays.
22. RELOCATION ALLOWANCE. Landlord will provide Tenant up to \$_____ per usable square foot of the Premises for the cost of Tenant's relocation to the Premises. Such relocation costs are subject to Landlord's approval, which shall not be unreasonably withheld.
23. NON-DISTURBANCE AGREEMENT. Landlord shall use good faith efforts to secure and deliver to Tenant a non-disturbance agreement executed by the first trust deed holder of the Building.
24. BUILDING PLANNING. Upon notice to Tenant, Landlord may relocate the Premises to other space in the Building.

25. TENANT'S RIGHT
TO ABATE BASE RENT.

If the Premises is made untenable for Tenant by Landlord, Tenant shall give Landlord notice, specifying such failure to perform by Landlord. If Landlord has not cured such default within five (5) business days after the receipt of the notice, Tenant may immediately abate Base Rent payable under this Lease for the portion of the Premises rendered untenable for Tenant, until the earlier of the date Landlord cures such default or the date Tenant recommences use of that portion of the Premises so affected. Such right to abate Rent shall be Tenant's sole and exclusive remedy at law or in equity for a Landlord default.

26. USE OF FIRE STAIRS.

Tenant may use for employee circulation, fire staircases or other internal base building staircases that connect one floor of the Premises to another and may install code compliant, card key access systems within such stairways. Tenant may, at its sole cost, improve such stairways and walkways with drywall, carpeting, lighting and paint, subject to applicable fire code and with colors and materials reasonably acceptable to Tenant and Landlord.

27. RESTORATION OF
PREMISES.

Tenant shall not be required at the termination of the Lease, to remove any of the tenant improvements installed during the initial construction of the Premises or any subsequent expansions or re-modeling of such Premises.

28. ACCESS AND SECURITY.

Tenant shall have 24 hours per day, 7 days per week, 52 weeks per year access to their Premises, the Building and any related facilities, such as parking garages, cafeterias and conference centers. Tenant shall comply with all reasonable rules and regulations relating to security and access to the Building imposed by Landlord, including use of key card security systems installed in the elevators and main lobby entrances to the Building. Tenant shall have the right to install and maintain at its own expense, key card security systems to control access to its Premises.

29. ROOFTOP COMMUNICATIONS EQUIPMENT.

Tenant shall have the right at its option and expense to install communications receiving and sending equipment on the rooftop of the Building. Tenant shall pay the reasonable market rent for such access to the roof, currently priced at \$_____ per month per antenna or communications device. This rent may be increased annually by the applicable increase in CPI. Tenant agrees that such equipment will be provided for Tenant's sole use and will not interfere with Landlord's or other tenant's communications systems or equipment installed on the roof.

30. GOVERNMENTAL COMPLIANCE.

Landlord will be responsible for insuring that all aspects of the Building and property are in compliance with all applicable governmental rules and regulations in effect at the time of the execution of the Lease, and thereafter during the term of the Lease.

31. ESTOPPEL CERTIFICATES. Tenant shall agree to provide Estoppel Certificates going forward, as reasonably requested by Landlord. The form of such agreement shall be negotiated as part of the lease negotiation process and attached to the lease as an exhibit.

This lease proposal is intended as an outline of the major lease provisions only and, whether or not countersigned, is not a binding agreement by either party to lease the Premises. As a result, notwithstanding the execution of this lease proposal by Landlord and Tenant, neither Landlord nor Tenant shall have any legal obligation or liability to the other with respect to the matters set forth in this lease proposal unless and until a mutually agreed upon lease document is fully executed and delivered by both parties. As such, the parties hereby acknowledge and agree that this lease proposal is nonbinding and that any acts or omissions undertaken or any costs or expenses incurred by Landlord or Tenant following the execution of this lease proposal are made or incurred at such party's sole risk and expense. Tenant hereby acknowledges that the execution of this lease proposal by Landlord does not in any way prohibit or limit Landlord's right to market the Premises or a portion thereof or to negotiate and/or consummate a lease transaction with third parties with respect to all or a portion of the Premises. This lease proposal contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this lease proposal, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose.

The undersigned acknowledges that all correspondence (including this lease proposal) and all communications between Landlord, Tenant, and the undersigned concerning information which may ultimately become or becomes part of the Lease is confidential information (collectively, the "**Confidential Information**"). Whether or not the Lease is ultimately consummated, the undersigned and Tenant shall keep the Confidential Information strictly confidential and shall not disclose the Confidential Information to any person or entity other than Tenant's financial, legal, and space planning consultants.

Please return a signed counterpart of this letter by no later than **[DATE]** to confirm your concurrence with the noncontractual terms outlined here.

Sincerely,

“[LANDLORD OR LANDLORD’S BROKER]”

By: _____
Its: _____

“TENANT”

By: _____
Its: _____

cc: