

NOVEMBER

2007

KEVIN F. JURSKINSKI, ESQ.
COMMERCIAL LEASE NEWSLETTERS

I. Continuing Ongoing Maintenance, Repairs and Expenses.

This is an area that is often a negotiated aspect of lease obligations and which should be specifically identified by the Landlord.

The commercial Landlord of a shopping center needs to identify what areas of repair outside the premises or as part of the structure are to be considered Common Area Maintenance, (CAM), which of course would allow for a pass through from the Landlord to the Tenant.

Thereafter, all of the remaining areas of maintenance, repairs and replacements should be specifically identified, allocating to whether the Landlord or the Tenant is responsible for maintenance repairs or replacements to the structure. The following are sample lease provisions for informational purposes:

a. Landlord's Maintenance and Repair Obligations.

Landlord shall be responsible only for the following areas and repairs:

1. Maintenance, Repair and Replacement of roofing system
2. Maintenance, Repair and Replacement of HVAC roof top systems

b. Tenant's Leasehold Improvements or Tenant's Obligations.

Tenant shall, at his expense, throughout the term of this Lease, take good care of the Premises, the fixtures and appurtenances therein and Tenant's Property. Tenant shall be responsible for all repairs, interior and exterior, structural and non-structural, ordinary and extraordinary, in and to the Premises and the facilities and systems thereof, inclusive of the need for which arises out of: (1) Tenant's Leasehold Improvement or alterations;

(2) the installation, use or operation of Tenant's Property in the Premises; (3) the moving of Tenant's Property in or out of the Building; or (4) the act, omissions, misuse or negligence of Tenant or any sub-Tenant or any of its or their employees' agents, contractors, or invitees. If damage is caused by the negligence of Tenant, its employees, agents, contractors or invites, Tenant at its expense, shall promptly replace all scratched, damaged or broken doors and glass in and about the Premises and shall be responsible for all repairs, maintenance and replacement of wall and floor coverings in the Premises and for the repair and maintenance of all sanitary and electrical fixtures therein. Tenant shall promptly make, at Tenant's expense, all repairs in or to the Premises for which Tenant is responsible pursuant to this Section, and any repairs required to be made by Tenant to the mechanical, electrical, sanitary, heating, ventilation, air conditioning, or other systems in the Premises shall be performed only by contractor(s) reasonably designated by Landlord, save and except for Landlord's specific obligations set forth in 12(a) hereinabove. All such repairs shall be performed at such times and in such manner as shall cause the least interference with the operation of the central systems of the Premises or the Building in which the premises is located and the use of the Premises by other occupants. All such repairs shall be subject to the supervision and control by Landlord for which Landlord may charge Tenant a reasonable fee. If Tenant fails to make such repairs promptly, or within 10 days after occurrence, and to the satisfaction of Landlord, Landlord may at its option, make such repairs, and Tenant shall repay the cost thereof to Landlord on demand. Tenant waives all rights to make repairs at the expense of or on the behalf of Landlord, or to deduct the costs thereof from Rent. Any other repairs in or to the Building and the facilities and systems thereof for which Tenant is responsible shall be performed by Landlord at Tenant's expense.

The sole responsibility and cost to the Tenant shall be the repair and maintenance to any grease traps or required modification to the plumbing system needed by Tenant for use of the Premises as a restaurant facility.

c. **Tenant's Obligations for Common Area Outside of Premises and Signage.**

As a cost to Tenant and as part of the exterior Common Area Maintenance, Tenant shall keep and maintain both the interior and exterior of the Premises and its systems serving the Premises (other than the specific items identified in Section 12(a) hereinabove) in good working order, condition and repair, and shall make all repairs, structural and otherwise, interior and exterior, as and when needed in or about the Common Area, except for those repairs or maintenance obligations for which Tenant is responsible pursuant to the provisions of this Lease (Section 3(b), 9(a) and 12(a) above).

Tenant also acknowledges and agrees that it is fully responsible for all exterior maintenance as identified hereinabove, inclusive of maintenance, repair and replacement of exterior signage, parking lot, driveways, curbing and all other aspects of the exterior of the Premises.

Landlord shall have no liability to Tenant, nor shall Tenant's covenants and obligations hereunder be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury to business arising from any work needed to be performed by tenant or Landlord's making any repairs or changes which Landlord is required or permitted by this Lease, or required by law, to make in or to any portion of the Building or the Premises, or in or to the fixtures, equipment or appurtenances of the Building or the Premises, such repairs to be completed within a reasonable time. Landlord shall not be liable for any damage to Tenant's property caused by water from bursting or leaking pipes, waste water about the rented property, or otherwise: or from an intentional or negligent act of any co-tenant or occupant of the property surrounding the rented property, or other occupant of the property surrounding the rented property, or other person, or by fire, hurricane or other acts of God: or by riots or vandals: or from any other cause: all such risks shall be assumed by the Tenant. Landlord shall not be required to furnish any services or facilities to, or to make any repairs to or replacements or alterations of, the Premises where necessitated due to the fault of the Tenant, its agents and employees, or other Tenant's, their agents or employees. Additionally, Tenant waives any and all claims of any kind, nature or description against Landlord arising out of the failure of the Landlord from time to time to furnish any of the services requested to be furnished hereunder including, without limitations, air conditioning, heat, electricity, elevator service, and toilet facilities.”

Next Month: Little observed but important provisions regarding insurance, maintenance and repairs to premises to be contained in commercial leases.

The material contained herein is copyrighted and provided as public service to educate the intended audience. Neither the material contained herein, nor the speaker addressing such material, should be considered as providing legal advice as to a specific case or situation. Your situation may differ and you should consult the attorney of your choice for more information.