WORK LETTERS

Attached is a sample work letter agreement for the construction of the tenant improvements in a new office building. In this workletter, the design of the new office building has not been completed. Accordingly, the work letter focuses on issues relating to both the construction of the tenant improvements and the base building. The work letter also addresses the issues of tenant allowances and the ability of the tenant to contract directly for the construction of the tenant improvements. The work letter is annotated to raise some of the questions that inevitably must be addressed in the context of the negotiation of the substantial number of complex issues involved in the construction of tenant improvements.

WORK AGREEMENT

It is the intent of this Exhibit that Tenant shall be permitted freedom in the interior design and layout of its space, consistent with applicable building codes and with sound architectural and construction practices in first-class office buildings, provided that no interference is caused to the operation of the Building's mechanical, plumbing or electrical systems or other building operations or functions, and no increase in maintenance or utility charges will be incurred by Landlord.

This workletter is used for a new multi-tenant office building where the final design of the building is not yet completed. The Landlord is working with a prominent architect to design a 1st class building. Although the introductory language suggests that the Tenant will have much freedom in the design of the Premises, the Landlord has a significant interest in controlling the process and ensuring that the Tenant’s design, from both aesthetic and mechanical standpoints, integrates with the building.

A. BASE BUILDING
1. **The Design Process of the Base Building**

   (a) **Generally.** Landlord shall, at its cost and expense except as provided in Section A.1(d), design the base Building in accordance with the schematic drawings that will be attached to this Exhibit B promptly following completion of such schematic drawings ("Outline Specifications"). Landlord shall have the right to modify such Outline Specifications in any manner that Landlord deems necessary or appropriate as long as the design of the base Building is consistent with first-class office buildings in Washington, D.C. The plans and specifications created for the base Building in accordance with this Exhibit B, as such plans and specifications may be revised from time to time in accordance with the provisions of this Exhibit B, are known herein as the "**Base Building Plans and Specifications**".

   - Are there schematic drawings that can be attached when the lease is signed? What about specifications of certain of the base building materials and finishes?
   - How much flexibility does the Landlord have in completing the design of the base building? Doesn’t Tenant need to impose reasonable controls on the design issues to ensure that Tenant gets the building that it has bargained for?
   - Beyond the design issues, what is included in the base building? If the Base Building Plans and Specifications are not fully developed, the workletter should include a detailed description of the base building components.

   (b) **Landlord's Architects and Consultants.** The Landlord's base Building architect ("Landlord's Architect") will be responsible for the conceptual, schematic and design development phases of the Building as well as being involved in the contract administration phase.

   - Tenant’s architect needs to see the construction documents for the base Building. Moreover, if Tenant is developing its plans on a parallel track with the Landlord, there needs to be a mechanism for Tenant to be kept advised of changes in the base Building drawings that will affect the Premises.

   (c) **Design Input by Tenant.** The base Building is currently in the schematic design phase of development. Tenant shall have the right to provide input for the details of the final design, selection of materials, material colors and Building Systems. Notwithstanding the foregoing, in all events, Landlord shall make the final determination with regard to all drawings and specifications for the Building.

   - Here we have an example of a generous starting point from the Landlord. At least the Tenant has the opportunity to comment on the base Building Plans. But, if this is the lead tenant, how are disagreements resolved? How does the Tenant ensure that this is really a 1st class office building when the Landlord sharpens its pencil and implements a variety of cost saving measures?

   (d) **Base Building Modifications at Tenant's Request.** Landlord shall cooperate in
good faith with Tenant to allow Tenant to make modifications to the Outline Specifications and/or the Base Building Plans and Specifications during the design process described above to the extent such modifications to such plans and specifications directly affect the Premises and do not affect the common areas of the Building or the Building Structure and Systems. The timing of the submission of plans for any such modifications shall be coordinated with the design and construction schedule for the base Building. If Tenant requests work to be done in the Premises or for the benefit of the Premises or to the Building that necessitates revisions or changes in the design or construction of the Building Structure and Systems, any such changes shall be subject to prior written approval of Landlord. Tenant shall be responsible for all costs (subject to application of the Tenant Allowance) and all Tenant Delay resulting from such design revisions or construction changes, including architectural and engineering charges, and any special permits or fees attributed thereto.

2. **Landlord's Work.** Landlord shall, at its cost and expense, cause its contractor to construct the Base Building Work (as hereinafter defined) in a good and workmanlike manner and the "Shell Work" as described in Schedule 2 of this Exhibit B. "Base Building Work" shall mean the construction detailed on the Base Building Plans and Specifications.

   - Shell Work – what is it and what does it include? Who has the expertise to examine Schedule 2 of this Workletter – the Tenant’s office manager, the architect or the leasing counsel? Shell definitions are an important economic component of the overall lease transaction. If the Landlord’s shell work does not include, for example, VAV boxes at the perimeter of each floor for the distribution of air conditioning and heat, the Tenant will be in for quite a surprise when the bid comes back for the cost of the tenant improvements.

**B. LEASEHOLD IMPROVEMENTS**

1. **Landlord shall deliver the Premises to Tenant following completion of the Shell Work, ready for construction of the Leasehold Improvements by Tenant.** Prior to delivery of possession and acceptance of the Premises by Tenant, Tenant and Tenant's architect together with Landlord and Landlord's contractor shall make an inspection of the Premises to ensure that the Shell Work has been performed in accordance with Schedule 2 to this Exhibit B. A punch list (the "Punch List") of items to be completed or corrected shall be prepared at the time of such inspection. Landlord's contractor shall have the final and conclusive determination as to which items constitute Punch List items. All work and materials over and above the Shell Work (the "Leasehold Improvements"), including the design and architectural work required in connection with such Leasehold Improvements, shall be at Tenant's sole cost and expense.

   - How can the Landlord have “final and conclusive” determination of what goes on the Punch List? Isn’t it the Tenant’s interest that should control here?
C. PLANS AND SPECIFICATIONS

1. Plans.

(a) All plans, working drawings and specifications relating to the Leasehold Improvements (the "Tenant's Plan") shall be prepared at Tenant's expense by an architect who shall be approved by Landlord, licensed in the District of Columbia and engaged by Tenant; provided that all mechanical, electrical, structural, fire protection and life-safety plans and specifications shall be prepared by Landlord's engineers for the Building who shall be engaged by Tenant at Tenant's expense. Tenant's architect shall verify, in the field, the conditions of the Premises and the Building. Tenant is solely responsible for such verification and Landlord shall have no responsibility in connection therewith.

Tenant is obligated to use the Landlord’s mechanical engineers for preparing all of the MEP and related plans? How does the Tenant protect itself on the pricing of this work?

Tenant’s architect is burdened with verifying all of the field measurements? Is this a proper allocation of responsibility for a to-be-built building?

(b) Both the preliminary space layout and Tenant's Plan, including any changes or modifications thereto, shall be subject to Landlord's approval, shall conform with the plans for the Building and shall comply with all Laws. Tenant shall pay all fees in connection with filing the Plan, obtaining permits and obtaining final approval by governmental authorities. Landlord shall have no liability whatsoever to Tenant on account of any delay by applicable governmental authorities in issuing any required building permits or approvals.

Landlord's approval – what are the standards? What are Landlord’s real concerns? Hasn’t the Landlord already approved Tenant’s architect?

(c) Landlord agrees that it will not unreasonably withhold its approval of the space layout and the Tenant’s Plan or any changes or modifications thereto; provided, however, Landlord shall have the right to approve or disapprove, in its sole and absolute discretion, those elements of the Plans which Landlord may approve or disapprove in its sole and absolute discretion pursuant to Section ___ of the Lease.1 Notwithstanding the review of any of the Tenant's Plan by Landlord or its architect, engineers or consultants and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's architect, engineers or consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any inconsistencies, omissions or errors contained in the Tenant's Plan. Landlord's approval of the Tenant's Plan shall in no way be deemed to be acceptance or approval of any element therein contained which is in violation of any Laws. Landlord's approval of the Tenant's Plan and the filing thereof shall not be construed or deemed to be a representation or warranty by Landlord that the Tenant’s Plan comply with Laws.

1 __________________________________________________________________________ Modern Real Estate Transactions, January 2000. - -