

OnSite

COMMUNITY BUILDERS & REMODELERS ASSOCIATION OF NJ NEWSLETTER

CBRA Thanks our 2013 Board of Directors



2014 AWARDS OF
EXCELLENCE
CALL FOR ENTRIES
SEE CENTER INSERT



Quarter Notes



By **Barbara A. Schwartz, Esq.**
Porzio Bromberg & Newman, P.C.
Morristown, NJ



Landlord Services: Included or Extra?

INTRODUCTION

Under fair and well-drafted leases, landlords should have certain obligations to their tenants. Of these obligations, perhaps the most important ones relate to the provision of services. This article describes some basic services that landlords provide to tenants and the allocation of the cost of these services. Except where noted, this article focuses on services provided in office leases.

SERVICES IN GENERAL

Services provided by landlords may include heating, ventilation and air conditioning (“HVAC”), elevators, cleaning, electricity, water and other utilities. Typically, a minimum level of services (“Included Services”) is provided to tenants without an additional charge specific to the service provided. Of course, the landlord’s cost to provide Included Services is covered by the rent and operating charges paid by tenants. The provision of electricity is often an exception to the general rule of Included Services, since tenants may purchase electricity directly from the utility provider, or on a sub-metered or rent inclusion basis from the landlord.

The evaluation of services provided under the lease should consider the level of each Included Service and any extra services that may be required in order to support the operation of the tenant’s business. The extent and cost of extra services should be reviewed carefully since these factors will impact the overall cost of the lease and may affect the affordability of the deal. Even if the base rent seems low, a lease can quickly become expensive if the level of Included Services is insufficient.

TYPES OF SERVICES

HVAC

HVAC service is usually provided as an Included Service during a building’s regular business hours. The delivery of HVAC services may either be (1) pursuant to specifications based on design and occupancy assumptions that may or may not reflect the reality of the tenant’s occupancy and which should be reviewed by the tenant’s engineer or (2) based on a more general standard, such as “to provide reasonably comfortable occupancy in the premises.” Depending on the times and days of occupancy by the tenant, “overtime” HVAC service may be required so that adequate HVAC is provided during hours other than the building’s regular business hours. Advance notice requirements and charges for overtime service vary among buildings and some landlords require tenants to pay for a minimum number of hours of overtime service and/or that the tenant requesting the service pay for service for the entire floor, even if the tenant only occupies a portion of the floor. Retail tenants often provide and maintain their own HVAC equipment to serve their own space.

Elevators

If the building contains elevators, tenants should have access to a passenger elevator at all times, and to a freight elevator, at a minimum, during regular business hours, which, due to union rules, may differ from the regular business hours for HVAC service. Before entering into a lease, tenants should understand the cost and availability of overtime freight elevator service and for what purposes the freight elevator can or must be used. In lieu of elevator service, retail tenants may need access to loading docks, the availability and cost of which should be set forth in the lease.

Electricity

Electricity can be provided and billed in a variety of ways, including by direct or sub-metering, or on a rent inclusion basis. If the premises are directly metered to the electric company, then the tenant is billed by, and makes payments directly to, that company. If the premises are sub-metered from the building’s meter, then the tenant pays the landlord for its electric consumption, often plus an administrative fee. Finally, the lease may contain a rent inclusion provision under which the tenant pays a per square foot amount for electricity that is subject to increase if the landlord finds (by way of a survey of usage) that the tenant is using more electricity than was originally anticipated. In addition to the cost, when reviewing the electricity provisions of the lease, it is important to consider the electrical capacity available to the premises and to be sure that it is sufficient to support the tenant’s business operations. If not enough power is available, the lease should permit the installation of additional equipment to provide additional power. In addition to standard electrical service, a tenant may desire emergency back-up power. Not all buildings have this capability, so if it is desirable or required, it should be discussed in the early stages of the lease negotiation.

Cleaning

Basic cleaning is an Included Service in most office leases. While landlords try to use broad, general language to describe the included cleaning services, tenants should try to have cleaning specifications attached to the lease so that there is clarity around the extent and frequency of cleaning services. Cleaning services not covered by the specifications, but desired by the tenant, may be negotiated between the tenant and the landlord’s cleaning contractor, since landlords rarely allow multiple contractors to work in their building.

Water, Gas, Steam

Water for ordinary lavatory, cleaning and pantry use is customarily provided by landlords as an Included Service. Heating of water, however, such as for cooking or a dishwasher, usually carries an additional charge. Gas and steam, if required, are most likely to be provided by the utility and directly metered to the tenant requiring the service.

CONCLUSION

This article identifies some common services supplied by landlords and the way that landlords recover the cost of these services. It is important for tenants to understand that some costs of services are included in the rent or operating charges that are readily apparent in the lease, and that other services carry more well-hidden extra charges.