Addressing Security Concerns in Commercial Office Leases in the Wake of September Eleventh.

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In the wake of September 11th, 2001, there is renewed awareness as to the likelihood that prestigious office buildings ("trophy buildings"), particularly those possessing iconic value as national landmarks, as well as their high-profile, multi-national corporate tenants ("trophy tenants"), might be targeted for terrorist attacks[1]. As a result, commercial landlords must anticipate that building security protocols will be subjected to an unprecedented degree of scrutiny. Prospective tenants are more likely to demand, in the early stages of lease negotiation, relatively detailed information about a building's security procedures, in order to confirm that the landlord is addressing not only traditional criminal threats but possible terrorist threats as well. They are also increasingly likely to demand some level of input as to the formulation of building security policy and to try to expressly incorporate into the final lease agreement some type of warranty as to the substance and the quality of the security-related services to be provided by the landlord. In other words, prospective tenants are more likely to insist not only on clarifying the specific parameters of the security services to be provided under the lease but also to insist on incorporating the landlord's professed security protocols into the body of the lease itself, so that breaches or inefficiencies would be more likely to qualify as events of landlord default.

This renewed pre-occupation with "security" language creates a potential hurdle in the negotiation of commercial office leases, insofar as it will generally be in the landlord's interest to resist making any kind of warranty, express or implied, as to the safety or security of the tenants in the Building. The landlord may be willing, within reason, to warrant that during the lease term the Building will remain free of certain kinds of structural defect or of certain kinds of hazardous discharge, and may therefore be willing, in that limited sense, to warrant the Tenant's safety from certain kinds of bodily injury. However, the landlord is generally not in a position to protect its tenants, in any kind of meaningful sense, from the criminal acts of third parties, least of all from acts of terrorism. If anything, the landlord could be expected to provide some level of "access control," and even this is likely to be minimal during normal business hours. As a result, to the extent the landlord agrees to address such safety issues in the body of the lease itself, it is in the landlord's interest to characterize the issue as being one of "access control" rather than of "security." In other words, the landlord should generally make every effort to avoid the implication that it has undertaken to provide security services to its tenants, and therefore to

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[1] U.S. multinational companies may be particularly vulnerable to targeting of their foreign branches and offices. See "Singapore Details Terrorist Plot to Bomb U.S. Ships and Soldiers," Seth Mydans, New York Times, January 11, 2002, reporting the discovery by Singapore police of a list of more than 200 American companies in Singapore targeted for possible terrorist attack by the Jamaah Islamiyah.

avoid giving the impression that it has somehow warranted to protect its tenants or others in the Building from criminal or terrorist acts.

In fact, regardless of whether the landlord's standard lease specifically addresses the issue, the owners of office space will invariably have arranged to have the Building patrolled, on some basis, by some form of personnel (*e.g.*, continuous 24-hour monitoring of the lobby space and some patrolling of other parts of the building and of the building perimeter during business and/or non-business hours). But the Tenant should understand that the role of building access personnel is of necessity somewhat limited. During normal business hours, their role is generally no more than to prevent loitering, solicitation, and panhandling in the building common areas and – perhaps – to act on behalf of the tenants to report perceived security problems to the police or other authorities. But generally speaking, building personnel are not given particularly free rein – at least not during normal business hours - to conduct any form of screening or to demand identification of those seeking admittance to the upper floors. Much of the actual security work (such as it is) is in fact delegated to the tenants themselves: it is they who are generally responsible for dispensing access and card keys to their employees, for promptly reporting loss of such cards to building management, and for periodically reviewing the access codes to their premises.

This is not to dispute the importance of access control. It may of course make perfect sense for a prospective tenant to review the landlord's building access protocols at some early stage of the negotiation process. However, the tenant should not enter into a lease of office space with the automatic expectation that the landlord will be providing "security" services in the traditional sense. The tenant should generally expect comparatively little from the landlord in the way of access control, on the understanding (i) that even such limited controls have generally been reasonably effective in preventing traditional crime, and (ii) that any additional restrictive measures would probably be only marginally successful in preventing or containing a terrorist attack. As discussed below, to the extent a prospective tenant, contemplating leasing space in a trophy building, is concerned about the possibility of a terrorist attack, it should probably focus not so much on the building's access protocols (as pertaining to such traditional issues as the signing-in of visitors and delivery persons) but rather on such issues as evacuation preparedness and the training of building personnel with respect to the screening of suspicious packages.

In sum, "security" clauses in commercial lease agreements have traditionally focused on the prevention of traditional crimes: vandalism, theft, personal assault. In the wake of September Eleventh, such clauses must be reviewed to ensure that they address, to some reasonable extent, the prevention and containment of terrorist attacks. This article will therefore begin by addressing some of the security concerns of prospective tenants, primarily those who are contemplating leasing space in a trophy building or who have reason to believe that they may themselves be the targets of terrorist attempts. While a tenant will rarely have sufficient bargaining power to obtain meaningful changes in the landlord's security protocols, we hope to identify some of the basic warranties that a tenant might reasonably expect to have incorporated into the lease agreement. We will then address some of the drafting issues which are likely to be of particular concern to the landlord, focusing less on the substance of the access or security services to be provided, and more on the ways in which the landlord can ensure that any increased security costs are properly passed on to the tenants.

Basic Preventative Measures to Be Contemplated by Landlords and Tenants.

To begin with, a security-conscious prospective tenant might seek to have included in the lease a general security clause to the effect that the landlord will provide security services consistent with those provided in comparable buildings. The landlord, on the other hand, should make every effort to resist this phrasing and should agree only to provide "access control" consistent with that supplied in comparable buildings. The landlord thereby avoids any implication that it has undertaken, as one of its obligations under the lease, to protect its tenants from criminals and terrorists, and reduces the likelihood that tenants could seize upon any random criminal incident in order to claim that the landlord had somehow defaulted under the lease. Once the tenant has acknowledged that the landlord's responsibility, such as it is, is really to provide some basic level of access control, it can engage in a more useful assessment of the adequacy of the services actually provided. In the absence of some kind of temporary local or national crisis situation (such as that which existed in the immediate aftermath of the attacks on the World Trade Center on September 11th, 2001), building personnel should generally not be expected to screen access to the elevators during normal business hours and should be expected to allow anyone in conventional business dress to proceed unhindered to the upper floors. The question then arises what kinds of additional controls might be appropriate in order to address other kinds of recurring situations.

For example, what kinds of restrictions should be imposed, during normal business hours, on the access of messengers and delivery people? Such visitors are commonly directed, during ordinary business hours, to sign in with lobby personnel and to display some form of identification before proceeding to the upper floors. Of course, this is not a particularly effective way to screen out criminals. The parties might therefore agree to further restrictions: for example, building management could maintain a list of those tenants who had agreed to receive messages or deliveries, so that if a messenger sought access to the premises of a tenant that had agreed to accept messages, she could simply be provided with a visitor's badge and granted access to the elevators. If the tenant had not agreed to have such messages delivered directly to its premises, the messenger could be directed to wait at the security desk while building personnel summoned the tenant, so that it could send down an employee to take receipt of the message.

Another such recurring issue is the level of access screening to be conducted after normal business hours. Assuming an individual can gain access to the lobby area after hours by means of a building access card, should that individual be further screened by lobby personnel (for example, being called upon to sign in and/or to display a building- or government-dispensed identification card) before being allowed to proceed to the elevators? It would of course be relatively easy for the parties to more tightly regulate the after-hours access of the tenants' employees: for example, the parties might agree to have tenants designate in advance employees requiring after-hours access, so that only such employees could be granted access to the upper floors after display of a picture identification card and/or of a Building access card. Such measures would probably not be deemed especially intrusive, and while they might not be a particularly effective way to avert terrorist attacks, they might be reasonably successful as a means of dissuading traditional criminal behavior.

The prospective tenant should also try to assess the level of access control in effect in any underground or adjacent parking areas. Recall that the first attack on the World Trade Center in 1993 was carried out by manner of an explosives-laden van parked in the Center's underground garage. One way to minimize security problems in this area is to bar access to the general public by manner of a card/key system, so that only tenants' employees, building management representatives and other presumably pre-screened individuals can obtain access to the site. To the extent that there is some degree of public access to the garage, the lease might provide for random inspections of visitors' vehicles, presumably focusing on more suspicious vehicles such as vans and other large delivery vehicles, such as might likely be used to store explosives. The lease might also specifically envision the monitoring of deliveries, providing for delivery vehicles to be inspected and/or removed if left unattended for a given length of time. Finally, the lease might provide for building personnel to regularly patrol the parking areas, not only in order to help prevent traditional criminal activity but also to monitor the area for abandoned packages and other "suspicious" materials.

As indicated by the recent anthrax scare, another priority is for the tenant to carefully review any Building procedures as they pertain to the handling of mail and other deliveries. Given a position of sufficient bargaining power, a prospective tenant might insist that any mail-handling be performed off-site. Failing this, it should at least try to confirm that the landlord has in place reasonable procedures for the identification, handling and disposal of suspicious packages. Any receptionists or mail room personnel employed by the landlord should be trained in the identification of suspect parcels (*e.g.*, letters or parcels lacking return addresses, marked with infantile or illiterate handwriting, stamped with excessive postage or unusually thick or lopsided). Any mail or packages properly identified as suspect should not be transported within the building but should be temporarily segregated while personnel make some attempt to assess their legitimacy (as by identifying the sender or confirming that the intended recipient was expecting a similar delivery). To the extent that, after investigation, building personnel continue to have doubts about the legitimacy of a package, they should immediately relay their concerns to building security, to police and to local emergency response authorities, and should envisage evacuating tenants out of the impacted area.

In reviewing the building's mail-handling protocols, the tenant should assure itself that the landlord conducts some degree of reasonable, on-going training with respect to those of its employees who regularly engage in the handling or the sorting of mail and other packages. Of course, it will often be the tenants who, through their receptionists and mail office personnel, are in fact performing the bulk of any mail-handling on-site, and to this extent it may be primarily the landlord will seeks assurances as to the competence and training of the tenants' employees. Prospective tenants can therefore get a sense as to how seriously the landlord takes the issue of mail security by reviewing the lease to see whether it requires any particular level of training for the tenants' mail-handling employees, whether it purports to impose any kind of building-wide protocol with respect to the identification and handling of suspicious packages or whether it imposes any kind of co-ordination between the tenants' employees and the building's own mail-sorting personnel.

The landlord should also be prepared to conduct, on short notice, an evacuation of the building in response to a terrorist or other threat. The tenant might therefore seek to obtain from the landlord at some relatively early stage in the negotiations a detailed report of Building

security procedures in the event of fire, bomb threat, terrorist attack or other foreseeable threat, including information as to how tenants would be notified of any such emergencies and a detailed evacuation plan. Any hesitation or equivocation on the landlord's part in delivering such a detailed report can be taken as a reasonable indication that the landlord is not sufficiently concerned about building security. Among the specific provisions that a tenant might reasonably expect to have incorporated in the lease would be some assurance that the landlord would maintain a Building-wide public address system for the communication of emergency information (*e.g.*, evacuation notices). The tenant might also expect inclusion of some requirement that tenants report perceived emergency situations to building management for communication to other tenants in the Building. The lease might provide for the landlord to conduct a given number of emergency evacuation drills (preferably no fewer than two each year) and might provide some level of detail as to what exactly such drills would entail (for example, a simulated physical evacuation of tenant staff from the Building and/or instruction as to the use of Building safety systems and equipment). Finally, the lease might provide for the landlord to supply the tenant on some kind of regular basis with documentation certifying that the Building's life safety systems had been inspected and were in good working order, and to immediately notify the tenant in the event that any life safety system failed any routine inspection. Finally, the tenant might try to obtain inclusion of some kind of warranty to the effect that escape and exit paths (for example, in the Building stairwells) would be regularly inspected to ensure that they remained clearly marked, well-illuminated, and free of obstacles.

Whether or not the lease specifically addresses the issue, it is reasonably common for various common areas (including building entrances and exits, parking facilities, loading docks and freight elevator lobbies) to be monitored by video. Depending on the parties' relative security concerns, they might want to alter the lease to specifically address the issue of video surveillance in some detail. They might consider, for example, requiring building management to retain videotapes from any closed circuit television (CCTV) system for some minimum length of time. The landlord might of course want to restrict Tenant's entitlement to review the tapes, presumably subjecting it to some kind of reasonableness requirement.

Note that in reviewing the security language of a proposed lease, the prospective tenant should potentially be concerned not only with the issue of building-wide security, but also with the extent to which it will be entitled to institute additional security measures on its premises. In effect, the tenant may want to reserve the right, at least under certain circumstances, to maintain armed or unarmed guards within the premises. Of course, the landlord is likely to be legitimately concerned about the potential presence on the grounds of armed security guards over which it does not exert immediate control. Before agreeing to any such concession, the landlord would therefore at the very least want to strengthen the lease's indemnity language in order to specifically insulate itself from potential vicarious liability arising out of any negligence or deliberate misconduct by the tenant's private security personnel. The tenant might also want to reserve a right to install additional security systems within the premises and within the immediate periphery of the premises. The landlord would want to ensure, however, that any such additional security systems must first be determined to be compatible with landlord's own pre-existing security systems and with any other building systems. The landlord should also ensure that any such additional systems are properly cross-referenced in the other sections of the lease (as in the "Alterations" and "Surrender" sections) and that any such systems are to be installed at Tenant's sole expense. In addition, the landlord should review the lease's "pass-

through" provisions to ensure that the tenant will bear its proper share of any additional costs (*e.g.*, electricity costs) incurred as a result of such measures.

Finally, the lease should provide the name and contact number of an individual who can be reached on a continuous, 24-hour emergency basis with any security concerns. The tenant should be able to rest assured that it can obtain immediate contact, at any time of day or night, with a knowledgeable building security representative. Any such contact information should of course be reasonably specific (providing cell phone and beeper numbers) and should be updated regularly, with the landlord immediately notifying the tenant of any changes or additions to such contact information. (By the same token, the tenant might be required to submit a 24-hour emergency contact as well.)

Notwithstanding all of the foregoing discussion as to the kinds of provisions that a tenant might want incorporated in the lease, the simple reality is that a prospective tenant will generally lack the negotiating power to obtain any kind of meaningful change in the landlord's security policies. Such security procedures will simply be proclaimed non-negotiable by the landlord and presented more or less as a *fait accompli*. The tenant should, however, be able to obtain at a bare minimum reasonably detailed information from the Landlord at a relatively early stage of negotiation with respect to its basic security protocol (*e.g.*, level of evacuation preparedness, level of training of building personnel with respect to the identification and handling of suspicious packages). In other words, the tenant should be able to obtain a relatively detailed statement of building security protocols, and to the extent it finds them reasonably satisfactory, it should be able to obtain their incorporation into the lease, presumably in the form of an exhibit or series of exhibits. The tenant should also have comparatively little difficulty obtaining a general warranty to the effect that the landlord will provide continuous access control on a level consistent with that provided in comparable buildings. Once the tenant has obtained some kind of commitment from the landlord to provide a given level of access control and to maintain a given level of emergency preparedness (both by virtue of the general "comparable buildings" language and by virtue of the specific incorporation into the lease of any professed Building protocols), the tenant can try to cross-reference these security commitments in the default section of the lease, so that any failure to provide service consistent with that provided in comparable buildings, or any failure to maintain the services and procedures enumerated in the accompanying security exhibits, might constitute a breach by the landlord. Of course, in so doing, the tenant must also ensure that anything professedly granted in the "security" provision is not surreptitiously taken away in another section of the Lease (*i.e.*, that the tenant's entitlement to a given level of access control is not waived or disclaimed by virtue of a different provision).

Suggested Provisions for Inclusion by the Landlord.

The landlord will often be wary of tenants' demands for increased "security" services. To the extent that the landlord undertakes to provide additional services in order to "protect" its tenants from the depredations of third parties, it runs the risk (i) that it will incur additional costs that might not be properly passed on to the tenants by virtue of the lease's operating expense language, (ii) that it will open itself to accusations that it has not adequately fulfilled its "security" obligations and has therefore defaulted under the lease, and (iii) that it might be subject to claims of actual tort liability in the event that it fails to prevent or properly contain a

criminal or terrorist incident. What then can the landlord do to protect itself, in light of tenants' increasing attention to their leases' security provisions?

As we've suggested above, the first thing the landlord should do is to eliminate any reference in the lease to the provision of "security" services. The tenant should be more than satisfied if the landlord agrees (i) to provide "access control" consistent with the level of such services provided in Comparable Buildings (properly defined), (b) to allow the tenant, at its expense, to install such "security systems" in its own premises as do not interfere with the proper functioning of any security systems or Building Systems maintained by the landlord (provided that the tenant shall be solely responsible for the monitoring, operation and removal of any such additional security systems), and (c) to provide incorporation into the lease of an exhibit reciting basic "Building Safety" protocols (for example pertaining to the proper maintenance of Building-wide public address systems, the regular conducting of evacuation drills, the regular testing of Building Safety systems, and the training of Building personnel in the identification and handling of suspicious mail and packages).

These issues can be addressed in the form of a single basic "building safety" provision in the lease, for which we have included some non-controversial model language at the end of this article. Again, at the risk of belaboring the point, the landlord should avoid the use of the term "security" and should characterize the issue as being one of "building safety," a more neutral expression that embraces aspects of access control and emergency preparedness without overstating the level of the landlord's involvement. While the landlord cannot necessarily expect to eliminate every reference to security from the lease (for example, our model provision refers to the maintenance of "security systems"), it should be able to avoid inclusion of any language which might suggest that it had undertaken to supply "security personnel" for the protection of its tenants. Any guards or monitors, whether deployed in the main lobby area or elsewhere in the Building, should be characterized in the lease, as in all communications with tenants, as "access control personnel." It is of paramount importance that the landlord repudiate any impression that it has warranted to safeguard the personal safety of the tenants in the Building. The tenant should understand that the role of Building "access control personnel" is primarily to discourage trespass. And as far as any Building-wide safety programs are concerned (*e.g.*, evacuation drills, training of tenant employees in the use of Building Safety equipment), the landlord should emphasize that it is not unilaterally warranting the tenants' safety but rather engaging in a communal effort, with their participation and cooperation, to prepare them for the eventuality of a Building emergency.

The landlord should also reserve the right, in the building safety provision or in any accompanying exhibits, to promulgate additional, reasonable access control or building safety procedures. In effect, it won't always necessarily be the tenant who is pushing for increased access controls: the landlord should anticipate that it might occasionally encounter resistance or criticism from the tenant if it decides to implement additional measures, and should specifically reserve the right to effect reasonable changes or additions to its security protocols. Of course, to the extent that the landlord foresees the need to conduct any kind of screening or inspection of incoming visitors or vehicles, it should post adequate notices to that effect (*e.g.*, notices at the entrances to any parking areas to the effect that the building management reserves right to conduct random inspections of delivery and other vehicles, notices in building lobbies to the

effect that messengers must sign in at the reception desk), in order to avoid claims of harassment by tenants or third parties.

In connection with the foregoing, the landlord should also review the lease to confirm that it includes some kind of specific disclaimer to the effect that the landlord will not in any event be held responsible, in any capacity or to any extent, for the admission of any person into the building or for any resulting criminal or terrorist activity. This could generally be accomplished in the context of a conventional indemnification clause. Such clauses are rarely the object of intense negotiation and can be used in this instance to further emphasize the fact that the landlord has in no way warranted, by virtue of the provision of any access control services, to protect the tenants from criminal or terrorist attack. Of course, the tenant might seek to dilute such language by rendering the indemnification conditional on the absence of any gross negligence or willful misconduct on the part of any landlord access personnel. The landlord might then counter with specific language to the effect that it would in no event be deemed liable with respect to any act or omission by its employees or agents with respect to the prevention of any catastrophic event (such as a terrorist attack) for which it had been unable, after reasonable effort, to obtain reasonably affordable insurance coverage. In addition, as mentioned above, the landlord will always want to reserve the right to implement more stringent access controls. For this reason, the indemnification language might be drafted in such a way as not only to insulate the landlord from liability in the event that its access controls are claimed to have been inadequately stringent and to have failed to prevent a criminal incident, but *also* in order to insulate the landlord from liability or claim of breach in the event that its screening procedures are claimed to have been overly stringent and to have somehow resulted in economic loss to the tenant (as by virtue of delayed access to the premises).

In addition, landlords (especially those engaged in the management of "trophy" buildings) should review their leases to ensure that they specifically address the eventuality of terrorist attacks and of acts of war. In the event of such an attack, there should be no confusion as to whether the event qualifies as a "force majeure" or entitles affected tenants to an abatement of rent. The landlord should therefore confirm that any force majeure provision specifically encompasses any acts of war or terrorist attacks (including bio-chemical attacks): the provision should of course be phrased in such a way as to include not only such terrorist attacks as directly affect the Building in which the premises are located, but also any such attacks as generate a national state of emergency or heightened security alert, such as that which existed in the week that followed the World Trade Center attack and which resulted in the temporary closure of major office buildings throughout the United States. Such force majeure language can then be cross-referenced at various other points in the lease, as for example in any provision addressing temporary interruptions in the provision of utility services. The landlord might attempt, for example, to deny tenants' entitlement to any rent abatement in the event that any such interruption in services resulted from an enumerated force majeure event, particularly if the event (such as might be the case with respect to a terrorist attack) were not properly insurable. This is an important issue, insofar as the force majeure provision can be unobtrusively cross-referenced in any number of lease provisions, in order to afford the landlord additional time to perform any of its obligations under the lease (*e.g.*, conducting of repairs or provision of services) in the event of certain kinds of wide-scale national emergency or economic disruption.

Of particular concern to the landlord will be its ability to preserve its profit margin by passing on any increased "security" costs to its tenants. To this end, the landlord should reserve the right, in the lease's section governing operating expenses, to adjust any base year allowance to reflect unforeseen, catastrophic expenses. For example, the landlord should be able to retroactively increase the expenses allocated to the building for the base year in order to reflect additional costs incurred in that year with respect to any unforeseen force majeure events (specifically including, of course, any terrorist attacks or acts of war). In so doing, the landlord might also contemplate inserting language prohibiting any decrease in the tenant's proportionate share of operating expenses below its share of such expenses for the base year. In effect, the landlord could anticipate future decreases in security, insurance and other related expenses below current levels and could therefore arrange to gross up the tenant's share of such costs in any subsequent year to base-year levels. Finally, the landlord should reserve the right to pass through any amortizations connected with such capital expenditures as are "intended to effect economies in the operation or maintenance of the Project, or any portion thereof, or to reduce current or future operating expenses." The landlord can thereby pass through the costs of any capital improvements that result in decreased security costs, as by reducing the number of access control personnel. To the extent the landlord had succeeded in locking in the tenant at the base year levels of any "security" costs, it could provide a specific exception with respect to any cost decreases effected as a result of such a capital improvement, so that the tenant would be able to obtain its share of any such cost decrease below the corresponding base year rate to the extent that it was already being charged for its proportionate share of the corresponding capital improvement.

Another issue to be taken into account is the availability of insurance coverage against terrorist attack. Recent reports suggest that such coverage is again becoming widely available, albeit at relatively high premiums, after insurers began excluding it from their standard commercial policies in the immediate wake of September Eleventh[2]. Nonetheless, commercial landlords should expect that such coverage could again become unavailable or prohibitively expensive in the event of another major attack. As a result, the landlord should probably avoid making any kind of absolute commitment in the landlord insurance provision to maintain terrorism coverage, although it could commit to making some kind of "reasonable effort" to obtain it. Moreover, the landlord insurance provision should be carefully cross-referenced with other sections of the lease. For example, as discussed above, the indemnification provision should be drafted in such a way as to provide absolute indemnity for the landlord, regardless of any claim of negligence, with respect to any event for which the landlord has been unable to obtain reasonably affordable insurance coverage. The provision should specifically envision the possibility that the landlord might be unable to procure or maintain affordable terrorism insurance and should provide in that event for the landlord to have complete indemnity with respect to any alleged failure to prevent a terrorist attack.

Finally, the landlord should anticipate, particularly when a trophy building is involved and particularly in the event of renewed terrorist attacks, that some prospective tenants will be exceedingly security-conscious and will be inclined to invest a considerable amount of energy in the negotiation of the lease's "security" provisions. (As previously discussed, of course, there

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[2] See "Rethinking Dire Warnings by Insurers After Sept. 11," by Joseph B. Treaster, in the New York Times, February 27, 2002.

should ideally be no such thing: the landlord's model lease should speak only in terms of "building safety" or of some other such neutral phrase.) The landlord should therefore contemplate taking certain pro-active measures to avoid becoming bogged down in endless, futile negotiation as to the intricacies of its "access control" protocols. One way to do this is to emphasize in detail the "security" (supply euphemism) obligations of the tenants themselves (*e.g.*, their obligations to immediately report loss of building access cards, to periodically revise access codes, to immediately report suspicious activities to building personnel and to participate in evacuation drills and building safety training sessions). By emphasizing in excruciating detail the tenant's own "access control" and "building safety" obligations under the lease, one might be able to deflect the tenant's energies from discussion and criticism of the landlord's own building-wide safety protocols. Another possible technique is to move as much as possible of the discussion of the landlord's "building safety" protocols out of the body of the lease and into one or several incorporated exhibits. By so doing, the landlord is more likely to successfully convey the impression that its access control and building safety protocols are completely beyond negotiation.

This being said, the objective of such drafting is not to side-step the issue of building safety. To the contrary, it is absolutely imperative in the current environment, both from the standpoint of its relations with its tenants and of its protection of its physical investment, that the landlord implement detailed, efficient guidelines governing access control, mail screening, building communication and emergency response. It must be prepared to communicate its policies to the tenant by manner of a comprehensive "building safety" exhibit. And it must engage in continuous refinement of those policies by manner of employee training, testing of building safety mechanisms, and involvement of tenants in building safety exercises. In so doing, however, the landlord can and should take certain steps to limit its financial exposure. By the same token, it can instill in its prospective tenants a more realistic expectation as to the level of protection it can provide (*i.e.*, very little) and as to the level of influence they can have on the formulation of Building "security" procedures.

SAMPLE BUILDING SAFETY PROVISION

Section ____. Building Safety. Landlord shall provide twenty-four (24) hours per day, every day of the year, on site access control personnel consistent with such service in Comparable Buildings. Although Landlord agrees to provide such access control personnel, notwithstanding anything to the contrary contained in this Lease, neither Landlord nor the "Landlord Parties," as that term is defined in Section ___ of this Lease, shall be liable for, and Landlord and the Landlord Parties are hereby released from any responsibility for any damage either to person or property (specifically including any damage or injury resulting from a criminal or terrorist attack) sustained by Tenant incurred in connection with or arising from any acts or omissions of such access control personnel. Subject to the TCCs of Article __ of this Lease, Tenant may, at its own expense, install its own security system ("**Tenant's Security System**") in the Premises; provided, however, that Tenant shall coordinate the installation and operation of Tenant's Security System with Landlord to assure that Tenant's Security is compatible with Landlord's security system and the Building Systems and to the extent that Tenant's Security System is not compatible with Landlord's security system and the Building Systems, Tenant shall not be entitled to install or operate it. Tenant shall be solely responsible,

at Tenant's sole cost and expense, for the monitoring, operation and removal of Tenant's Security System; provided further, however, that notwithstanding the foregoing, Tenant may install any security system that is independent of and which does not affect, Landlord's security system and which does not create a Design Problem or affect Landlord's ability to operate the Project. Subject to "Applicable Law," as that term is defined in Article __ of this Lease, Tenant shall have the right to utilize the Building stairwells for purposes of traveling between floors of the Premises, and in connection therewith, subject to Applicable Law, Landlord's approval, and the terms of Article __, Tenant shall have the right to install in the Building stairwells security card readers or similar devices to limit access to the Premises. Landlord shall in addition maintain such access control and building safety procedures as are set forth in Exhibit __ to this Lease, the terms of which are hereby incorporated in this Lease to the same extent as if fully set forth herein.