COMMERCIAL TENANT'S LEASE INSIDER®
NEGOTIATING, DRAFTING, & LIVING WITH YOUR LEASE

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Negotiate Green Lease to Improve Operations—and Bottom Line

Making a building "green" involves more than just using environmentally friendly construction materials and turning off the lights after closing time—although these are two things that certainly should be part of a comprehensive plan to green your office or retail space. Efficient operation of a property is equally important.

Unfortunately, many tenants don't know what steps to take to renegotiate their leases to include green provisions, or, in the case of a tenant moving into a new property, how to negotiate a green lease initially. Tenants should be aware that both old and new buildings can become green to streamline operations and cut costs—it's just a matter of working with their owners to craft a green lease that both can agree on.

Exhibits Transform Standard Lease into Green Agreement

While green leases are appealing to many tenants, they may have no idea how to ask their owners to implement one. "There is a huge fear factor out there," says Alan Whitson, RPA, president of the Corporate Realty, Design & Management Institute and chair of the Model Green Lease Task Force. The task force is responsible for creating the first ever Model Green Lease for tenants and owners to use in negotiations. (See Drafting the Model Green Lease: An Agreement Tenants and Owners Can Live With, to find out more about the success of the project.)

There is a tendency for some people to overhype greening, comments Whitson, which can be intimidating to tenants who are cautiously approaching their owners with a green request. Whitson recommends working with your broker to decide exactly what you are looking for in your green lease, and then opening up the conversation to your owner. Don't be surprised if it doesn't want to change its usual lease document very much or use a lease document that you have presented. But owners often agree to meet tenants half way and change their standard documents to reflect the green lease provisions suggested.

So you most likely will not be able to present your owner with the Model Green Lease and insist that the entire document be used as *your* lease. However, the way a commercial lease is structured actually lends itself to substituting provisions from the Model Green Lease that reflect the green specifications you are asking for. A green lease is structured so that the bulk of the document covers the required basic legal information, usually in boilerplate language. But the specifications as to how the lease actually will be carried out—for example, what contractors, services, and utilities will be used—are listed in exhibits at the end of the lease.

So, if you have an existing lease, it should be easy to pull out non-green exhibits and integrate the Model Green Lease exhibits that you want to replace them with—after getting your owner's consent. If you're entering into a new lease, decide which sections of the Model Green Lease you want to apply to your new space and show them to your owner.

Don't Miss Crucial Opportunities

Some owners will see the benefit of greening an office or retail space. But if you have to convince your owner that it should implement provisions from the Model Green Lease in either your current building or a new one that you will be moving into, you must show the owner that it will be a win-win situation for both of you.

There are only two times when a green negotiation will happen: when a new lease is negotiated, or when an owner approaches you on its own about making green changes. The sooner you bring up greening in the negotiation process with an owner, the easier and more feasible it will be. This doesn't work later, Whitson says, because money becomes an issue. Owners think it's too expensive to make green changes after tenants already are into their leases. A negotiation must be at the beginning of your lease or when your owner makes improvements for its own reason, he stresses.

Be Specific About Performance

One major goal of a green lease is to improve building performance, which covers indoor air quality, lighting, and acoustics, to give tenants a better working environment. "Leases are notoriously vague about things that are important to the tenants," says Whitson, "so you want to have a lease document that covers them."

Things that affect everyday performance usually are not in the lease document, such as ventilation rates, at what temperature the building will be kept, lighting, and other operating details such as green cleaning. Driving better building performance largely depends on how specific green lease provisions are. For example, specifying the operating hours of an office building on weekdays and keeping the building open on Saturdays but not running the mechanical system unless specifically requested, eliminates costs that you would pay for, but not use. See our Model Lease Clause: Add Building Performance Clause to Green Lease, for an example of how to make a lease provision as detailed as possible.

When negotiating your green lease, keep in mind other incentives for the owner to improve performance. For instance, the tenant usually pays utilities separately to service companies; under that structure, the owner has no incentive to improve performance of the building because it collects a management fee based upon all of those expenses. Conversely, if you negotiate a "full-service gross lease" you have no incentive to save energy because all tenants share the total cost—and you could end up subsidizing other tenants in the building that are energy inefficient.

Try to use a "modified gross lease," and make sure there are balances in it. For example, give the owner an incentive to control the cost by recommending that it give an energy allowance to each tenant. If a tenant uses more than its allowance, it pays for the overage. When tenants have to pay for additional energy that is not in the budget, consumption drops.

➤ *Drafting the Model Green Lease: An Agreement Tenants and Owners Can Live With*

When Alan Whitson, RPA, president of the Corporate Realty, Design & Management Institute, became frustrated by the industry's lack of progress in overcoming the biggest financial obstacle to green buildings—the so-called "split-incentive"—he launched the Model Green Lease project. Whitson assembled a national task force of attorneys, real estate brokers, corporate tenants, commercial property owners, and green building consultants from both sides of the negotiating table to create a lease document that encourages more green buildings by increasing the return to owners on green investments.

The final product, recently published by the Corporate Realty, Design & Management Institute, brings the green building movement to the economic center of commercial real estate: the lease agreement between the owner and tenant.

"The reason we don't have more green buildings is that there is a split in incentive where the party spending money to go green doesn't get the benefits. We wanted to make the lease document neutral so it wasn't an owner's lease or a tenant's lease." The result is a lease document that would exist between a *good* owner and a *savvy* tenant, and that achieves productivity.

Over the years, Whitson says, the operational risk for buildings has been transferred from the owner to the tenant. The Model Green Lease puts that operational risk back on the owner's shoulders, but rewards it for doing a good job. "Tenants don't want to run buildings," Whitson points out, "they want to use the buildings, and that's it."

An owner should want the best space possible, which now means a green space, so that the next tenant will want to lease from it. "The days of an owner being a bean counter are over," says Whitson, who believes that good property management is the key now. "Owners realize they have to get out there and perform."

The Model Green Lease is available at *www.squarefootage.net.*

Your lease also should specifically protect you from things that other tenants might do, by setting rules and regulations about construction agreements and recycling so that, as a responsible tenant, you don't have to worry about things like air pollution from other tenants in the building. Ask for an overarching specification in the lease requiring the building to have defined standards, and obligating the owner to operate the building to those standards. Things like under- or over-ventilation can cause employees to catch colds, which lowers the productivity of your entire workforce.

MODEL LEASE CLAUSE

Add Building Performance Clause to Green Lease

Because attorneys, not engineers, write lease documents, leases typically lack specific "performance metrics" that can be a source of disagreements and frustration between owners and tenants. The Model Green Lease addresses this issue by including the appropriate ANSI/ASHRAE standards and an additional clause to translate technical information into terms a tenant and building manager can use.

Include this clause after the mechanical engineer that designed the building HVAC system decides on the appropriate standards for your building and they are verified by the building commissioning process. Show this clause to your attorney before using it.

HEATING, VENTILATION, AND AIR CONDITIONING

(a) Heating, ventilation, and air conditioning (HVAC) during Normal Business Hours in each season shall be at such temperatures and in such amounts as to comply with ANSI/ASHRAE Standard 55-2004, Thermal Environmental Conditions for Human Occupancy, and ANSI/ASHRAE Standard 62.1-2004, Ventilation for Acceptable Indoor Air Quality.

(b) The HVAC system that services the Premises shall be designed, installed, and maintained in a manner that shall maximize its efficiency and shall, during Normal Business Hours, maintain the temperature of the Premises within the following range of temperatures, subject to unusual heat loads caused by Tenant's extraordinary use of the Premises or alteration of the Premises made contrary to the provisions of this Lease:

➤ **SUMMER:**	Outside:	[93] Degree Fahrenheit Dry Bulb [74] Degree Fahrenheit Wet Bulb
	Inside:	[75] Degree Fahrenheit Dry Bulb 50% Relative Humidity
➤ **WINTER:**	Outside:	[22] Degree Fahrenheit Dry Bulb
	Inside:	[72] Degree Fahrenheit Dry Bulb 50% Relative Humidity

Play by Five Rules to Negotiate, Maintain Green Lease

You may not be able to get everything you want in your green lease, but sticking to the following rules will make negotiations—and then living with your lease—easier:

Give owner incentive to operate efficiently. You want your owner to operate the building well; the down market is pushing tenants of all sizes to look at recasting their existing leases, making your owner fearful that you might leave the space. This is a great time to start talking about a green lease: Offer to renew your lease early if the owner will add green provisions, making the building's operations more efficient and less costly. That way, your owner has a financial incentive to go green, because it is a way to keep you as a tenant.

Be specific in lease about building performance. You'll get only the green amenities that you specify in the lease, so require the following performance drivers to be green:

➤ *Daytime cleaning.* Using cleaning crews during the workday means that less lighting must be used at night, reducing a building's energy consumption by 6 percent to 10 percent.

➤ *Green cleaning.* Using fewer cleaning chemicals is less expensive and improves air quality.

➤ *Insulation.* Check insulation for thermal efficiency.

➤ *Recycling programs.* Effective recycling programs have been proven to turn building operating costs into an income stream, in turn, offsetting those costs.

➤ *Lighting.* Consider a lighting system with automated occupancy controls that turn lights off when a space is unoccupied, and put lighting on a timer system when applicable.

Require annual environmental report. This report should include data concerning energy, recycling, and air quality for the building. "What gets measured gets managed, typically," says

Whitson. "So, if you start off with those three things, you're way ahead."

Know what you need. Understand the difference between the amount of space that you *want,* and the amount that you actually *need* for your business; even though rent may be the same for properties of different sizes, if you take extra space for the same rent it isn't a bargain—there will be a huge difference in operating costs.

Make sure it's in the document! If your building changes owners a few times in a few years, but your 15-year lease was not specific when you signed it, you will be powerless against a future inefficient owner.

Managing Your Green Lease

After successfully negotiating a green lease, it is up to you to manage it. You must make sure that the green provisions are being carried out by keeping track of them and insisting that the owner sticks to the terms. The longer you wait to correct a violation of the lease, the worse it will get. "That's why a lease document is so important," says Whitson. "Make sure you know what you're entitled to and make sure you get it."

Understand the bills you get from your owner. Never pay a bill that contains only amounts that you allegedly owe with no explanation of the charges. Make sure that you are getting what you pay for, and know exactly what your payment includes.

Space is only 8 percent of the cost of doing business, but 28 percent to 40 percent of the impact on employees' productivity. There is a strong correlation between good facilities and happy employees. "Cleaner, better buildings are one of the best things you can do for employee productivity," Whitson says.

Insider Source

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For more information, visit:

www.commercialtenantsleaseinsider.com

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