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Ten ways to 'green' a commercial lease

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With the increasing focus on sustainability in connection with commercial developments, it is important that commercial property owners incorporate green provisions into their leases to allow a landlord and its tenants to work together to ensure that the building is operated in the most environmental friendly manner by incorporating energy-efficient standards and best practices.



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Because leases are long-term agreements and the green movement continues to evolve, best practices would dictate that property owners incorporate as much flexibility into their leases as possible to allow for this evolution.

These green lease provisions range from stipulating the products and type of construction activities a tenant can utilize in its initial build-out and in future alterations, incorporating rules and regulations to be followed by all tenants of the building, and implementing sub-metering to allow the landlord to make continual improvements to the building or larger development.

While there are numerous ways for a landlord to incorporate its environmental and energy efficiency initiatives into commercial leases and to ensure tenants comply with these initiatives, ten common ways to do so are set forth below:

1. **Redefine operating expenses.** Operating expenses should be redefined to provide the landlord the opportunity to amortize the cost of capital projects that reduce operating expenses

(as long as they do not exceed the savings) and to also allow the landlord to adjust its base-year operating expenses down to the level that the operating expenses would have been had the energy-efficient systems been in place during the base year.

2. **Allow for sub-metering of the premises.** To properly offer incentives to tenants to incorporate energy-saving measures such as installing ENERGY STAR® equipment and appliances, turning off lights, and installing motion sensors or daylight controls into its premises, the lease should provide for sub-metering of the utilities, where sub-metering is permitted.

3. **Revise the rules and regulations.** The rules and regulations should be revised to allow, at a minimum, for a building or center-wide recycling program and the auditing of that program, and the landlord to reduce power when required by the utility company. The lease should also provide the landlord with the flexibility to revise the rules and regulations as the green movement evolves.

4. **Revise the tenant work letter and alterations provision.** The tenant work letter and alteration provision should be revised to define sustainable product requirements and construction practices for the building, including lighting, motion sensors, floor finishings and coverings, paints, sealants and adhesives, and bathroom fixtures such as waterless urinals and water-efficient toilets.

5. **Incorporate operational procedures for the building.** The lease should state the standard to which the building is being operated (i.e., a specific level of LEED certification) and the tenant should be required to comply with that standard, where applicable. Also important is the creation and incorporation of operational procedures for items such as after hours or excess energy usage that can be passed through to tenants and providing the landlord with reasonable access to the premises to install energy-efficient systems.

6. **Create green cleaning specifications.** Create and implement green cleaning specifications which define the materials and procedures to be

utilized in cleaning the building and premises. Only environmentally-friendly cleaning products should be permitted.

7. **Provide for construction waste management.** Identify materials that must be recycled or reused during any construction process in order to facilitate the reduction of waste and redirection of reusable materials.

8. **Incorporate a hazardous materials provision.** Clearly identify what hazardous materials are and stipulate that neither landlord nor tenant shall violate any laws relating to hazardous materials.

9. **Revise the maintenance and repair provision.** Provide for any maintenance and repairs undertaken by the tenant to be completed in accordance with the building's green practices.

10. **Create a tenant manual or handbook.** Create a manual or handbook to be delivered to each tenant of the building that explains the features and benefits of the building and how to best maximize those features to create and maintain an energy-efficient workplace. This should also provide for regular reporting of energy achievements to foster continuous improvements.

The above suggestions are just some of the many ways to incorporate green provisions into commercial leases. Adding green provisions to commercial leases will allow a landlord and its tenants to work together to ensure that the building is operated in the most environmentally friendly and efficient manner, thereby creating cost savings for the landlord and its tenants.

The changes outlined above should be incorporated into new commercial leases with new or existing tenants and can also be incorporated by lease amendment with existing tenants.

The most important thing to remember is that the landlord will need flexibility to continue to implement new environmental and energy efficiency initiatives within the building as the green movement evolves. As a result, all new commercial leases should provide the landlord with this flexibility.