

Your Lease Can Help Save Our Planet



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With increased importance placed on environmental, social and governance (ESG) principles, and with numerous companies prioritizing socially conscious goals, many landlords and tenants have implemented “Green Leases” as part of their commercial leasing standards. Green leases are lease agreements which, in addition to standard lease terms and provisions, aim to minimize our society’s collective impact on the natural environment by promoting environmentally conscious and sustainable construction, development and use of leased real property.

This article provides an overview of several green leasing provisions in retail and office leases which are commonly implemented by both landlords and tenants in order to make their leases more environmentally conscientious, highlights a few benefits of these green leasing provisions, and touches on how such provisions can be effectively negotiated and incorporated into lease documents.

Data Sharing

One preliminary measure frequently instituted in green leases is the collection of utility consumption data. Requiring landlords and tenants to share meter readings and information pertaining to utility usage can prove pivotal in assessing property utility demands, and can thereby assist in identifying utility conservation initiatives.

For example, diagnosing above-average energy consumption may prioritize the implementation of energy efficient equipment, such as LED lighting and Energy Star products, whereas diagnosing above-average HVAC usage may prioritize installation of insulation and weather stripping of windows and doors. Data sharing is a collaborative effort between landlords and tenants, and the parties can work together to identify methods which help make such reporting easy and efficient. Moreover, tracking this data both before and after the implementation of energy efficiency measures provides quantifiable evidence of lower utility and operating costs, and demonstrates ecologically sustainable efforts.

Operational Practices

Landlords can promote property access by environmentally conscious means. This can include providing convenient bus shelters to encourage public transportation, installing racks and lockers to accommodate bicycle riders, and fostering the use of electric vehicles by furnishing electric vehicle charging stations. Increased accessibility options bring new users to retail properties and more employees to office buildings. Furthermore, electric vehicle charging stations can provide landlords with additional revenue increase property visibility (as many electric vehicle charging stations providers list the charging stations online), and increase the amount of time someone remains at a property while their vehicle is charging (thereby potentially increasing sales at the property). Green leases can expressly permit, and even require, the installation of such facilities.

Green leases are frequently used to address day-to-day operations within a property. For example, owners and tenants can identify energy-inefficient equipment and systems, or equipment and systems nearing the end of their lifespans, and green lease provisions can require replacements with energy-efficient products. It is important to note that the implementation of energy efficiency measures can provide a financial benefit for parties by reducing overall operating costs. Green leases can be used to: require tenants to utilize products which maximize water efficiency in order to reduce the burden on potable water supply and wastewater systems; address lighting, mandating daylight dimming controls and vacancy sensors; mandate the use of non-toxic cleaning products ; and establish standards requiring the use of specific environmentally friendly or locally sourced materials in buildouts and alterations of leased premises.

Passthrough Costs

Passthrough costs (typical in net leases) allow the landlord to invest in the property and pass such costs to the tenant. For example, a landlord can replace old exterior lighting systems with high efficiency lighting systems and be reimbursed for all or a portion of such costs from tenants. Passthrough costs are frequently amortized over a certain period of time, which helps balance the long-term benefit of such improvements (more frequently realized by the landlord) with the short-term benefit of such improvements (realized by the tenant). Although some tenants may initially balk at the idea of paying for a property owner to make their property “greener” or more energy efficient, such capital investments can help lower operating costs and utility costs which burden tenants, thereby providing a tenant benefit and helping make such passthrough costs more palatable.

Certifications

There are several certifications a property owner can obtain with respect to making their buildings more energy efficient and environmentally friendly. One commonly utilized certification is Leadership in Energy and Environmental Design (“LEED”), which rates the environmental performance of buildings and awards points based on the multiple factors relating to carbon, energy, water, waste, transportation, materials, health and indoor environmental quality. LEED’s rating categories range from building design and construction (both exterior and interior) to operations and maintenance.

Another common certification is Energy Star, a program that is run by the U.S. Environmental Protection Agency and the U.S. Department of Energy, and provides information on the energy consumption of different products and devices, and even buildings. The use of Energy Star labeled products and devices, as compared with non-Energy Star labeled items, help reduce greenhouse gas emissions and can lead to cost savings for both property owners and tenants.

Having these types of certifications is becoming more and more attractive to tenants and investors, and in some cases, even required. In addition, some certifications – as well as some investments in green building technologies – can provide tax credits and tax incentives which encourage such investment and can serve to offset the costs of same.

Incorporation of Green Lease Provisions into Lease Documents

It is important to note that incorporating green leasing concepts does not necessarily require a complete overhaul of party's lease documents. Rather, small, incremental document modifications can help incorporate initial green leasing efforts, and pave the way to expand on such concepts in the future (whether to reflect new green leasing goals and priorities, or reference new technologies). Green leasing provisions need not be limited to new leases, but can also be incorporated into amendments of existing leases.

In our experience, some tenants will initially and instinctively push back on green leasing concepts because these provisions are new, different and unlike more familiar lease terms. Therefore, it is helpful if letters of intent provide reference to the inclusion of green lease provisions in the lease documents so as to evidence the parties are agreeable to same. Moreover, we found it beneficial, prior to negotiating green lease provisions, to briefly discuss the intent and goal of these provisions and the importance they have to a particular lease party. This approach (making the parties aware of the inclusion of green lease provisions at the initial lease discussion stages, and educating the parties as to the value of specific green lease terms) can greatly aid in finalizing same.

Conclusion

Green lease provisions can help assess property conditions, identify key areas for improvement, encourage investments which result in resource conservation and lower operating costs, provide evidence of these cost savings, and potentially provide financial incentives – all while enhancing property marketability and rents, and fostering improved corporate images. Many green leasing provisions are beneficial to both landlords and tenants. Likewise, landlords and tenants are more frequently asking about these provisions, and investors are more frequently requiring same. Achieving the benefits of a green lease requires buy in from all parties involved, and in turn this collaborative effort results in multiple benefits for everyone – the landlord, the tenant, the environment and ultimately, our planet.

If you have questions about the implementation of green leases into your commercial leasing standards, or if you're seeking legal guidance on similar matters, contact [Michael L. Nisengard \(mnisengard@lippes.com\)](mailto:mnisengard@lippes.com) or [Richard R. Capote \(rcapote@lippes.com\)](mailto:rcapote@lippes.com) of Lippes Mathias LLP's real estate practice team.