

COMMERCIAL LEASING: 5 HOT BUTTON ISSUES

There are countless issues that could be negotiated in a standard office or retail lease, but in most cases, neither party has the time or inclination to go to the mat on all potential issues. Beyond the usual deal terms that are set forth in a typical letter of intent, property managers should be aware of the following five issues that are of particular concern to tenants, as these are often heavily negotiated issues that impact most tenancies.

1 Removal of Alterations. All premises alterations will eventually be removed. Most form leases require a tenant to remove its alterations to the premises at the end

of the term. Tenants often negotiate modifications that eliminate the requirement to remove alterations, or limit a tenant's removal obligation to certain alterations. For instance, initial improvements may be exempted, as may any alteration for which the landlord does not require removal when it consents to the alteration. Property managers should be aware that different tenants have different removal requirements, and as a lease term draws to a close, the manager should keep in mind the expected condition of the premises upon termination. When considering a tenant's request for consent to alterations, a landlord or property manager should focus on who has the obligation to remove the alterations.

2 Letter of Credit for Security Deposit. Landlords expect and should receive security deposits adequate to cover certain damages or defaults by a tenant during the

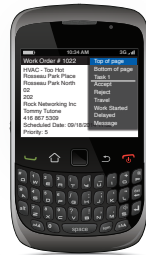
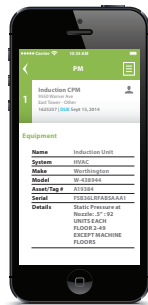
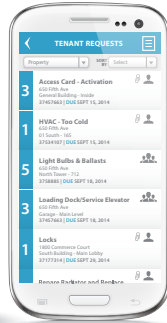
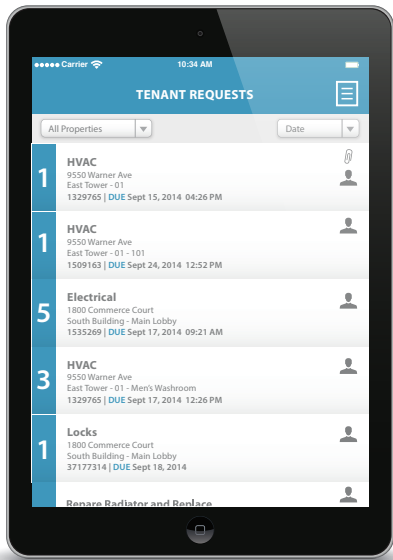


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lease term. High-rent and long-term leases often require tenants to post significant cash deposits to satisfy the security deposit requirement under the lease. However, in lieu of the cash deposit, landlords are often satisfied with a letter of credit that the landlord can draw upon in the event of default. The letter of credit has few downsides for the landlord, as it provides the

necessary security and any direct costs of the letter of credit are paid by the tenant.

3 Assignment and Subletting Rights. While a tenant usually does not expect to assign the lease or sublet the premises when the lease is negotiated, assignment and subletting rights are highly negotiated

lease provisions as tenants seek to hedge against business changes that may arise during the term and landlords seek to maintain control of the premises. Many form leases give landlords broad discretion to deny consent to a tenant's assignment and subletting requests. Because provisions are highly negotiated, however, restrictions likely vary from tenant to tenant within a building. Landlords and managers should be aware of these distinctions.

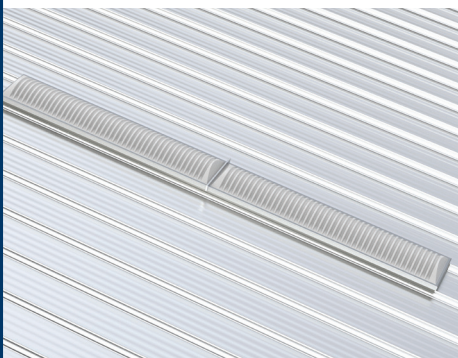
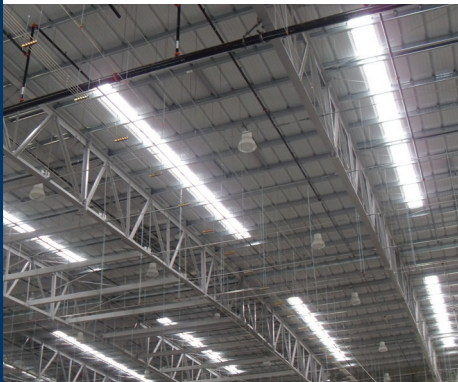
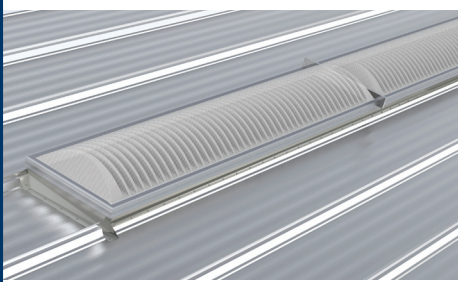
4 Future Lease Modifications. Landlords often seek future protections by having a tenant agree in the lease that it will consent to future lease modifications. From a landlord's perspective, such language is helpful in the event that a lender, insurer or other third party requires certain lease language. However, landlords should not rely on these provisions, as tenants often seek to eliminate or severely restrict the tenant's obligation of future consent. Landlords should obtain third-party input prior to execution of the lease. In the event that lease modification is required during the term, the landlord or manager should seek the tenant's consent with sufficient time and a solid rationale.

5 Commencement. One of the most important issues in a lease is its commencement date. However, for a variety of reasons, the commencement date is rarely defined in the lease as an actual date, but is instead defined as earlier or later than some future event (i.e., delivery, permit issuance, work completion). Because so many lease provisions are triggered by the commencement date, property managers should ensure that the commencement date is clearly documented so that there is no future dispute as to when lease obligations commenced. ■

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