

The Life Sciences Lease: A Marathon, Not a Sprint

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Leases often form the start of a long term relationship between a landlord and tenant. This dynamic is much more critical in the life sciences context, and the process of lease negotiation and implementation requires integration and cooperation between the landlord and tenant teams. The lease creates a roadmap for what can be a very long tenancy, and needs to be carefully thought through and negotiated.

Due to the higher capital infrastructure required for life sciences companies, lease terms are typically longer than other types of leases and the motivation to renew in place is much higher, so having a good underlying lease is critical. The following outline some of the commonly negotiated areas in life sciences leases:

- Use and Zoning This is predominantly a tenant issue because landlords will not typically make representations or and provides warranties related to zoning, but this is a critical diligence item and should be explored both for current and future uses (including potential acquirer uses and assignee/sublessee uses). Landlords need to look at this as well, even if no representations are being made, because leasing space to a company who cannot use it will be problematic, even if no liability is created.
- Capacity for Utilities Life sciences users typically use more of everything. Part of the diligence
 process is determining the capacity of the building or project and ensuring it will meet the tenant's
 needs now and for any future uses, and negotiating for any utility upgrades necessary to support the
 particular user's needs.
- Hazardous Materials storage and disposal is a big issue, especially where there are other users in the same building or project. As a diligence item, the parties need to look at the Fire Code and other uses at the project to make sure there is enough capacity and that the user is allocated sufficient capacity to meet its current and future uses. Historical uses and pre-existing or migratory hazardous materials need to be addressed. These are obviously of concern for a life science user and are more concrete risks than in an office context, so responsibility for these items has to be clearly stated. Trenants will want to ensure they are not liable for other tenants' hazardous materials and mishaps as well.
- Surrender obligations many owners require an exit assessment and Phase I upon surrender, and tenants should ensure that they are provided a current Phase I/exit assessment, as applicable, when they take occupancy so there is a baseline. The surrender obligations should be tailored to the tenant's use. For example, if solvents are used, it may be appropriate to perform inspections of the drainage system upon lease surrender. If radioactives are used, then the space must be completely decommissioned before it is deemed "surrendered" and most leases will say a tenant is in holdover until the space is cleared for unrestricted use.
- Landlord ability to access the premises When and under what conditions the landlord and its agents can enter the premises is critical, especially areas which are used for scientific experiments, specialized lab or manufacturing purposes.
- **Parking** life sciences parking regulations vary far more than office uses so when working on these deals, parking can be an important factor and negotiating point for both sides.
- **Restoration** because of the high level of capital investment, this is heavily negotiated. Specialized equipment is often built into the space in some manner and who owns what at the end of the lease will be very important to negotiate up front. From a landlord's perspective, some specialized uses (e.g., vivariums) are not likely to be usable by future tenants so having the tenant restore these items at the end of the lease will be preferable, although restoration is expensive so tenants will try to minimize this expense.
- **Repair and Maintenance** life sciences tenants have many more specialized systems than an office user and who repairs and maintains such systems (and who owns them upon lease expiry) are critical negotiation points. Remedies in the event of a delay or failure to repair are also heavily negotiated.
- Capital Improvements who performs the construction work to prepare a space for occupancy is often more negotiated by sophisticated life sciences users, and how specialized systems are integrated with the building management system and other building systems needs to be negotiated and understood

clearly. Life sciences buildings are far more integrated than a general office building and the systems tend to be more complicated. More sophisticated tenants often want to control the build out, which creates special concerns for a landlord, particularly in a multi-tenant building or project. Commissioning of systems is also critical to ensure that they are properly functioning as designed and integrated with the overall building systems.

*On March 14, 2016, a similar version of this article appeared on Law360 and can be viewed here.

Authors

