

COMMON ISSUES IN TENANT SIGNAGE

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*“Signs, signs, everywhere there’s signs
Blockin’ up the scenery, breakin’ my mind
Do this, don’t do that, can’t you read the sign”*

Introduction

The Five Man Electrical Band may have decried the proliferation of signs, but signs are an important component of a successful retail development. Retail tenants will pay a premium for visibility. Distinctive, informative or simply big signs enhance tenant visibility. However, too many signs create visual clutter and “ugly” signs may deter shoppers and new tenants. Regardless of how many signs, their content or their size, poorly maintained signs will also detract from the value of a retail center.

Sophisticated landlords and tenants deal with signage issues in their lease negotiations and often include sign provisions in their “letters of intent.” Typical sign-related issues contained in a commercial lease include:

- Location
- Type
- Maintenance
- Local governmental approval
- Temporary removal

Landlords may have “sign-criteria” that they attach to every letter of intent and lease and require that each tenant comply. These sign criteria should be technically detailed and could include the type and quality of paint, the method of attaching the sign and the construction material of the sign. Conversely, many national tenants have their own sign-criteria that include their own “trademarked” names in which they have invested heavily and will insist on using. Landlords must plan ahead to ensure that their signage requirements will accommodate the right mix of tenants and their signs.

What is a “Sign”

Generally the Landlord wants uniformity in the location and size of signage. Landlords want the absolute right to consent to any tenant sign and if that is not possible, then the parties must negotiate for clear sign control rules. Many landlords define the term “sign” to include traditional signs as well as banners, pennants, window lettering and other decorations. Many retail tenants want to exclude temporary banners, flags or window graphics from the definition of signs that require landlord approval so that they have flexibility in seasonal sales or other temporary advertising campaigns. However, such temporary signs can be the most visually offensive type of sign due to their lower quality of construction and often garish “attention-grabbing” colors. Clearly defining what constitutes a sign and therefore what is subject to landlord control is the first step to avoiding subsequent disputes.

Type

Negotiated sign criteria attached to the letter of intent and the lease should address the type, size, material and location of the sign. With respect to type, the sign criteria should address whether the sign may be illuminated and if so how. The landlord should restrict visible electrical wires and require that illuminated signs be turned on during all business hours. Maintenance of illuminated signs may be more important than maintenance on other types of signs. Faulty bulbs or neon detract from the appearance of the center. The tenant should also be required to pay for the electrical cost of an illuminated sign.

Location Control

Most landlords do not concern themselves with interior signage. Instead they focus on maintaining some type of exterior uniformity and quality. The lease should regulate signage “visible from the exterior of the premises.” The typical strip shopping center restricts signage to a central monument or pylon sign that contains the name of every tenant in the center. If space on the pylon sign varies, the spaces are often assigned to tenants according to the amount of square footage they have leased. Landlords may need to reserve the right to rearrange individual signs if a new large tenant takes space. The Landlord must also decide if each sign will have uniform colors and fonts or if each tenant can submit the trademark version of its name for the sign. On the shopping center itself the landlord may restrict signage to particular locations, such as the front fascia of the roof, or the side of the building for end cap space. Allowing additional signage for the end cap may increase the value of such space.

Maintenance

Unless the landlord requires the tenant to purchase the sign from it and pay for maintenance as part of common area maintenance, the landlord typically requires the tenant to maintain its signage in a good condition at all times. The landlord should also require that the sign comply with all requirements of the landlord’s insurance carrier. As mentioned earlier, electric signs may require additional maintenance.

Governmental Approval

The landlord should require that all tenant signage comply with all state, local and federal law, including local zoning and sign ordinances. Many local governments have sign ordinances that control the size, location and appearance of signs. In addition to governmental approval, there may

be restrictions contained in the local real estate records that control the size, type and location of signs on the subject real estate. A "Bill of Assurance," "Easements, Covenants and Restrictions," the original conveying deed or similar documents often contain such restrictions. A quick review of the landlord's title policy and related Schedule B-1 title exception documents will tell whether such restrictions affect the property.

Temporary Removal

The landlord should retain the right to temporarily remove or cover a tenant's signage in order to make repairs to the building. The tenant should negotiate to require the landlord to pay for the cost of removal and reinstallation of the sign and for the right to install a temporary sign somewhere else on the center or premises to identify the tenant's space.

Model Lease Clause

Tenant's primary marquis or sign shall be produced and displayed in accordance with **Schedule "___"** attached hereto. Tenant may, at its cost and expense, install and maintain a panel in the size and position of Landlord's choosing, on Landlord's pylon sign located on the Shopping Center. Tenant will not place or suffer to be placed or maintained on the exterior of the Premises any sign, advertising matter or any other thing of any kind, and will not place or maintain any decoration, letter or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's prior written approval and Tenant will, at its sole cost and expense, maintain such sign, decoration, lettering, advertising matter or other thing as may be permitted hereunder in good condition and repair at all times. Under no circumstances shall Tenant be permitted to place hand-lettered advertising on the exterior of the Premises or any glass of any window or door of the Premises.

Tenant will not paint or decorate any part of the exterior of the Premises, or any part of the interior visible from the exterior thereof, without first obtaining Landlord's written approval. Tenant will install and maintain at all times, subject to the other provisions of this Section, displays of merchandise in the show windows (if any) of the Premises. All articles, and arrangement, style, color and general appearance thereof, in the interior of the Premises, including, without limitation, window displays, advertising matter, signs, merchandise and store fixtures, shall be in keeping with the character and standards of the improvements within the Shopping Center, as determined by Landlord. Landlord reserves the right to require Tenant to correct any non-conformity.

All of Tenant's marquis or signs shall comply with all laws, statutes, ordinances, requires and codes of all applicable stated, federal and local government and regulatory authorities. Copies of all permits and other governmental approvals shall be promptly delivered to Landlord.

Landlord shall have the right to temporarily remove any Tenant signs in connection with any repairs in or upon the Premises or the Shopping Center.

Sample Sign Criteria:

The following is a sample set of sign criteria. It exemplifies the types of things contained in typical sign criteria.

SHOPPING CENTER SIGN CRITERIA

1. **COPY PERMITTED**
Sign copy shall be limited to the name under which tenant is doing business.
2. **TYPE SIGNS PERMITTED**
Only individual illuminated metal letters with pigmented acrylic faces and trimcap retainers are permitted on the front of the building (see drawing 1 and 2). These letters are to be mounted only to the Unistrut per Section XI.
3. **LOGOS AND TRADEMARKS**
When Tenant has a logo or trademark which is used in conjunction with tenant's name, he may seek Landlord's approval for the use of the logo in conjunction with his sign, provided logo meets size and illumination specifications under the criteria (no product logos are permitted).
4. **COLOR**
 - A. The acrylic face color of all letters and approved logos shall be approved prior to fabrication. Sample chip must be submitted with drawings. Note: No two adjacent signs shall be the same color.
 - B. Trimcap: 1" Black Jewelite
 - C. Channel exterior: Black Andoic finish or "Awlgrip" black urethane paint (H 2008)
 - D. Channel Interior: White
5. **STYLE OF LETTERS**
Most any style Tenant prefers will probably be allowed, but Tenant must secure Landlord's prior written approval. A minimum 1/2" stroke must be maintained on all letters.
6. **ILLUMINATION**
All illumination shall be with 15mm and 30 MA neon tubing and shall be #4500 white or #6500 white. Neon shall not be noticeable as a source of light when sign is illuminated. Only illuminated signs of

the type described in Section II are permitted. All letters with a stroke greater than 4" must be double stroked neon.

7. **SECONDARY WIRING**
No secondary wiring running between letters shall occur outside the façade.
8. **TRANSFORMERS**
Transformers shall be all copper would "France" or "Jefferson" transformers. No transformers shall be loaded with more than the maximum linear footage of neon allowed by the manufacturer. All transformers shall be installed behind fascia. No raceways permitted.
9. **SIZES OF LETTERS**
The letters shall be uniformed 5" deep. The letter height is minimum 18" and maximum 36". The length of the sign shall not exceed 75% of the storefront. Only one line of copy is permitted.
10. **LETTER CONSTRUCTION**
Only galvanized steel (minimum 22 gauge) or aluminum (Minimum 0.063") are to be used in the fabrication of the letters. Trimcap screws will be painted to match black trimcap. Drain holes will be placed in letters.
11. **INSTALLATION**
All letters shall be individually attached to unistrut with non-corrosive fasteners and bottom justified. No letters shall be directly attached to the building in any manner. All letters shall conform to U.L. Standards. Absolutely no fascia penetrations will be permitted. Under no circumstances are ladders to be leaned against facade, only free standing ladders are to be used. Tenants will be responsible for any damages to facade.
12. **PERMITS**
All required permits from government agencies and approvals from Landlord are required prior to sign fabrication.
13. **SUBMITTAL FOR APPROVAL**
Three sets of drawings showing complete sign with dimensions, color chips specifications and installation details along with complete contractor information including name, address, phone number and current insurance certificate must be submitted to Landlord at Landlord's address in Article _____. Any incomplete submittals will not be reviewed until complete.
14. **WINDOWS AND DOOR SIGNS**
Permanently painted or attached door signs are not permitted. All other permanently painted window signs shall be approved by Landlord prior to installation.
15. **SERVICE DOOR SIGNS**
Copy shall be limited to Tenant name and suite only. Letters shall be white Helvetica style, and 3" in height. The top of letters spelling Tenant's name shall be placed 5'6" from the bottom of the door and beginning 6" from the left edge of the door. Number of tenant's suite shall be placed beginning 2" beneath the previous line, also beginning 6" from the left edge of the door.
16. **DIMENSION VERIFICATION**
Tenant's sign company shall field verify all measurements herein stated prior to fabrication of sign.
17. **TENANT RESPONSIBILITIES**
 - A. All primary wiring and junction boxes are to be paid for by Tenant.
 - B. The removal of signs and patching of mounting holes in the unistrut joints by the mounting of signs are the responsibility of each Tenant.
 - C. The Tenant is responsible for damage to building as a result of fire caused by secondary wiring in sign or caused by neon inside sign. Tenant should have some understanding regarding damage done as a result of sign defect with sign company that constructed sign.
 - D. The landlord will consider any variance to these criteria, however, acceptance or rejection is at the landlords sole discretion.
 - E. The tenant is fully responsible for the compliance with these criteria. Do not make final payment to sign company until a Landlord representative reviews and approves the installed sign.
 - F. Compliance with any local, county, state or federal code will take precedence over this criteria and is the responsibility of the tenant and contractor.

Conclusion

A well drafted, consistently applied sign provision in the lease, along with detailed sign criteria crafted with the help of the architect and engineer should ensure the quality appearance of a retail development. Addressing issues of location, type, maintenance, local governmental approval and temporary removal early in the letter of intent process will prevent delay and enhance the quality of the project.

Daniel Goodwin is a shareholder and director of Gill Elrod Ragon Owen & Sherman, P.A., Little Rock, Arkansas, and is member of the firm's Real Estate Development Group.