

## CHAPTER SEVEN

### GREEN LEASING: WHAT IS IT, AND WHAT'S HAPPENING ON THE GROUND?

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## I. INTRODUCTION

The phrase “green leasing” intimates that much of the leasing in commercial real estate is not, in fact, green. While overall that statement is likely true, times are changing, and there are a number of owners and occupiers in Washington state that are not only building green buildings/building out green premises, but also greening their leases. Section II below is a discussion of what “green” means in a leasing context and why green initiatives are being made in the leasing realm. Section III explores how leasing provisions both familiar and new are being used to encourage sustainable practices in the commercial and retail arenas, including, in Appendix A, provisions owners and practitioners are using today to achieve green goals. Finally, Appendix B lists a number of available resources that promote a more detailed understanding of sustainability issues in the leasing realm. Throughout this chapter, owner/landlord will be used interchangeably, as will occupier/tenant.

## II. WHAT IS “GREEN,” AND WHY IS IT IMPORTANT?

### A. What is “Green”?

The Merriam-Webster Dictionary defines green, in part, as: (1) of the color green . . . (4) youthful, vigorous . . . (6) marked by a pale, sickly or nauseated appearance . . . (10) *often capitalized*: relating to or being an environmentalist political movement. “green,” *Merriam-Webster Online Dictionary* (March 2011), <http://www.merriam-webster.com/dictionary/green?show=0&t=1302635700>. It is a word heard increasingly in the commercial real estate context, and it can mean many things, from a general desire to implement environmentally sustainable policies within an office environment, to building with the intent to achieve a particular LEED® certification. For this chapter, we will use the word “green” to mean any policy, initiative or built environment that includes one or more of a spectrum of energy efficiency objectives or features.

### B. How Green is Quantified

The LEED® Green Building Rating System, launched in March 2000, seems ubiquitous these days. LEED is an acronym for “Leadership in Energy and Environmental Design” and the rating system is promulgated by the U.S. Green Building Council, a private nonprofit organization based in Washington, D.C. U.S. Green Building Council, *Intro - What LEED Is* (March 2011), <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988>. The LEED rating system is one of many systems used to quantify green efforts worldwide (see also, EnergyStar, Green Globes, Australia’s Building Greenhouse Rating), and is perhaps the most widely-adopted system in the United States. The LEED system recognizes, via a number of certifications, interiors, buildings and communities designed and built using strategies aimed at improving performance in energy savings, water efficiency, CO<sub>2</sub> emissions, indoor air quality, and resource stewardship. Almost any built environment may be LEED certified, depending on how closely it hews to LEED’s guidelines. Certifications may be achieved by owners (LEED for New Construction and Major Renovations, LEED for Existing Buildings Operations & Management,

LEED for Core & Shell, LEED for Neighborhood Development) or by occupiers (LEED for Interior Design & Construction, LEED for Retail: Commercial Interiors).

The quantification of green has become an income-generating business, and not just for the U.S. Green Building Council. LEED certification is expensive to achieve and maintain, and there are all manner of materials, consulting services, and design services an owner or occupier may purchase to assist its efforts to green its premises, or its lease. In recognition of this fact, one large tenant in the Seattle area plans to build its first phase of occupancy in a new building to a LEED Gold for Commercial Interiors standard, and apply for certification of the same. Remaining phases will be built to the same standard, but not certified, as certification is a significant initial and ongoing cost, with no additional boost to sustainability. While quantifying how green a building/premises is through a third party standard may be important for recognition within the business, the market, or the community, quantifying the increased efficiency of building systems and the positive effects that efficiency may have in the office environment or the world at large, regardless of certification, seems paramount.

### C. Environmental Impact of Buildings in U.S.; Impact of Green Initiatives

If quantifying and certifying the green status of built environments, and paying professionals to incorporate those values into the project, costs more, then why go to the trouble? In the United States, buildings account for 13% of total water consumption, 39% of total carbon dioxide emissions, 39% of total energy use, and 72% of total electricity consumption. Building-related construction and demolition debris totals approximately 160 million tons per year, accounting for nearly 26% of total non-industrial waste in the United States. U.S. Environmental Protection Agency, *Buildings and their Impact on the Environment: A Statistical Summary* (April 22, 2009), <http://www.epa.gov/greenbuilding/pubs/gbstats.pdf>. Residential buildings account for a slim majority of that amount, but commercial buildings have a significant impact on the environment as a whole.

According to the Environmental Protection Agency (among others), green buildings have many benefits. On the economic side, green buildings reduce operating costs for owners, improve occupant productivity and optimize life-cycle economic performance. They also result in enhanced occupant comfort and health, minimized strain on local energy infrastructure, and improved overall quality of life. U.S. Environmental Protection Agency, *Why Build Green?* (March 2011), <http://www.epa.gov/greenbuilding/pubs/whybuild.htm>. In addition, buildings that have earned LEED certification command higher rent premiums, and sell for more per square foot than non-LEED certified buildings. Norm Miller, Ph.D, *Does Green Still Pay Off?* Journal of Sustainable Real Estate (June 2010), <http://www.costar.com/josre/pdfs/DoesGreenStillPayOff.pdf>. Further, a portfolio of buildings with a significant percentage of green square footage may allow the owner of the portfolio to better market to institutional lenders.

Building green does not necessarily require significant additional expenditures for owners or occupiers. A 2004 General Services Administration study estimates the increase in construction costs for LEED certified (the lowest level of certification), Silver and Gold status to be an average of 1.75%, 3.65%, and 8%, respectively, for office building modernization, and less than 1%, 3.5% and 4.75% for new construction. Steven Winter Associates, Inc., *GSA LEED*

*Cost Study Final Report* (October 2004), <http://www.fypower.org/pdf/gsaleed.pdf>. As the methods and materials for LEED certification become more widely used, costs will generally fall, so given the age of this study, these numbers likely overstate the increased costs. That said, in an economy like the one we've weathered recently, those extra costs are no doubt a strike against building or improving sustainably.

Beyond the positive impact sustainability initiatives in commercial real estate may have on the environment, on workplace health and efficiency and on the marketability of an owner's portfolio, American business in general values sustainability. Interest by corporations in sustainability, especially as it relates to corporate social responsibility, is steadily growing. A Jones Lang LaSalle/CoreNet study released in 2008 found that in a global survey of over 400 corporate occupiers, 44% of North American respondents believe sustainability is a critical issue to corporate real estate now, and 35% believe it will be a critical issue within one to two years. Jones Lang LaSalle/CoreNet, *Global Trends in Sustainable Real Estate; An Occupier's Perspective*, February 2008, [http://www.joneslanglasalle.com/csr/SiteCollection Documents /Global\\_Sustainability\\_Feb08.pdf](http://www.joneslanglasalle.com/csr/SiteCollectionDocuments/Global_Sustainability_Feb08.pdf). In short, the majority of businesses who are, or who may be, your clients see sustainability in corporate real estate as a critical issue. Understanding how you can incorporate these issues into the leasing process is therefore critical to your business.

### III. WHERE IS GREEN LEASING IN THIS PICTURE?

#### A. **Why Must Leases Change to be Green?**

Just as most buildings in the market today are not designed to be green, the leases owners use to fill them are not necessarily green, either. As more buildings are retrofitted, renovated and built with higher efficiency objectives, there is more desire on the part of owners to include leasing provisions that incentivize – and protect – their green efforts. As more occupiers prioritize a sustainably built-out work space, they will require owners to recognize their desire to use green/reclaimed materials, implement modular wall systems, handle their construction and demolition waste sustainably, etc. A new approach to existing leasing terms, as well as new terms, fosters the green interests of both parties.

#### B. **Using Standard Leasing Provisions to Promote Green Efforts**

There are a number of terms present in most leases that may be used by owners and occupiers to promote increased efficiency in the building as a whole, and the premises in particular. Owners are not enemies of efficiency, but as discussed below, pass through operating expense provisions aren't always the best incentive to keep operating costs low. Here are some examples of provisions found in most commercial leases that can be utilized by owners and occupiers, as applicable, to promote sustainable goals. Where I have interacted parties in the current market using sustainably-oriented language, I have included the same in Appendix A.

1. *Term*. Longer terms mean less turnover, and less turnover reduces waste and the energy expenditures required with moving, build-outs, etc. One point may be gained under the LEED rating system for a term of ten years or more.

2. *Hours of Operation.* If building hours are clear and after-hours charges significant (and enforced), it may cause tenants to use their hours in the building more efficiently. This is a challenge for the landlord as tenant conduct is unlikely to change unless after-hours charges are significant, and significant after hours charges will either be negotiated down by a tenant's broker or attorney, or a tenant who foresees significant after-hours use will look elsewhere for space. See Appendix A, Section 1.
3. *Operating Expenses.* A traditional way to address a tenant using more than its proportionate share of water or electricity is to submeter that tenant's premises. This is an old school answer to efficiency issues, but a cost-sensitive tenant who pays for what they use is less likely to use more than necessary. Further, many leases allow a landlord to pass through capital expenditures incurred with the intent of lowering operating costs, increasing efficiency, etc., as long as such costs are amortized over the improvement's useful life. See Appendix A, Section 2. For a discussion of ways to approach the operating expense issue that promote sustainability-oriented capital expenditures, see Section III.C.4 below.
4. *Tenant's Work.* There are some landlords who require tenant improvements to be certified, or certifiable, under LEED or other standards. One owner with a nationwide portfolio requires tenants in its LEED-certified buildings to meet minimum sustainable design standards. See Appendix A, Section 3.
5. *Insurance.* There are myriad new insurance products for owners of green buildings, as standard coverage will not reimburse an owner for any extra costs involved in rebuilding and recertifying a certified/certifiable building, recycling debris, etc. Both parties should look to these policies to ensure full reimbursement of rebuilding to the standard achieved prior to a casualty, and a tenant with leverage may want to require such a policy of the landlord if the green status of the building is a priority.
6. *Rules and Regulations.* No landlord wants to constantly monitor its tenants. That said, stating clearly in the rules what is expected of tenants gives a landlord a basis to complain, and perhaps the ability to default, if a tenant is not in compliance. See Appendix A, Section 4.
7. *Modifications to Common Areas.* Landlords should have a high degree of control over common areas, assuming a tenant's use of its premises is protected. Tenants generally care most about common areas in retail settings, when ingress/egress or parking is an issue. In a recent negotiation, we were able to get a retail tenant comfortable with the landlord's right to reconfigure the parking lot by pointing out that the landlord intended to put electric car charging stations in the lot and would need to reconfigure the lot to do so. Sometimes, sustainable objectives make otherwise unpalatable provisions easier to accept.
8. *Utilities.* Either the landlord or the tenant may want to control the utility supplier, especially if a facet of that party's sustainability plan is purchasing green power. This

is also a provision where excess usage may be addressed, including the issue of server rooms. See Appendix A, Sections 5 and 6.

9. *Relocation.* If a tenant's premises are certified in any way, the tenant will want to ensure that if relocation cannot be avoided, the landlord will bear the cost of improving and certifying the new premises to the same standard as the original premises. Further, the landlord should reimburse the tenant for any unused portion of the term of the certification on the original premises.
10. *Access.* A landlord may add to its bases for access to a tenant's premises inspection for compliance with any practices required for the tenant's or the landlord's green certification.
11. *Default.* Landlords who rely on their certification for tax or carbon credits, insurance eligibility, or any other significant benefit may want to make certain tenant acts – or omissions – that materially threaten such certification events of default, and vice versa for tenants. This is a tricky area generally, and the model green leases are helpful in understanding the issue. See the differences between the 2008 and 2009 REALpac leases on this topic. See Appendix B, Resources. Remedies present other challenges: Mediation? Fines? Actual damages requirement? The parties negotiating these terms must be able to communicate the effect a green default will have, which may require some education of the other party, sharing of cost projections, etc. Default provisions have generally been one-size-fits-all, but the issues raised by certification, de-certification, and the high costs of each make this area one for discussion.
12. *Surrender.* As with tenant improvements, Landlord may require that removal of the same be subject to sustainability guidelines. The parties will likely negotiate who bears any additional costs related to such requirements.

### **C. New Leasing Tools and Perspectives that Promote Green Efforts**

Reading a model green lease, or a green leasing guide, is an efficient way to become familiar with the general concepts as well as specific language that is growing up around green leasing. See Appendix B, Resources. Listed below are concepts new to the leasing milieu, even if they are applied to existing ideas.

1. *Statement of Sustainability Objectives.* If either party to a lease has a vital interest, financial or otherwise, in the sustainability requirements, objectives or incentives set forth therein, then the lease should state that fact expressly. These statements may be made in an Environmental Management Plan (see below), the building maintenance provisions, or wherever it makes sense to the parties. See Appendix A, Section 6.

Without a statement of these objectives, enforcing the green terms of the lease may be difficult, especially if the green version of the remedy costs more than the standard, less-sustainable version. Recovering damages that cover the additional cost of

sustainability, to the extent there is additional cost, may be particularly difficult without this language. The sample language provided is landlord-oriented, but a joint statement as to the intentions of both parties regarding a sustainable co-existence provides a more powerful statement for the tenant.

2. *Environmental Management Plan (EMP)*. This plan is usually an exhibit to the lease and is a landlord's synthesis of all sustainability-related requirements, set to a timeline, with responsibility assigned. An EMP is included in the REALpac lease, and is worth reviewing. These plans may address: current and expected green certifications, including maintenance thereof; the sharing of performance data for premises-specific systems; building-wide and premises-specific efficiency targets for water, electricity and HVAC use; use of carbon offsets or green energy; how the EMP will be implemented and at whose cost; and how compliance with the EMP will be determined.
3. *Waste Management*. While it may be included in an EMP, a lease without an EMP may be improved from a sustainability perspective by including a provision with specific requirements for sorting trash and landlord's remedies for tenant's failure to comply with the recycling program. The BOMA lease guide includes such a provision, and reserves landlord's right to "refuse to collect or accept from Tenant any waste that is not separated and sorted as required by law, and to require Tenant to arrange for such collection at Tenant's sole cost and expense . . . ". Building Owners and Managers Ass'n, Int'l, *Guide to Writing a Commercial Real Estate Lease* (2008), §6.4.
4. *Operating Expenses*. If the overall goal of a green lease is to promote sustainable efforts by the parties, a shift in approach to operating expenses is in order. While there is much ground to be gained in the "low-hanging fruit" of building ownership and management (maintaining equipment to maximize efficiency, low flow faucets, etc.), much greater gains come with an investment in upgraded building systems and substantial renovations (new HVAC system, replacing all windows, etc.). These investments are generally considered capital expenditures and are largely excluded from operating expense pass throughs. But should they be? There are three traditional ways to approach operating expenses: triple net (base rent plus a pro rata pass through of taxes and operating expenses), gross lease (base rent with no pass through of taxes and operating expenses) or gross lease plus pro rata pass through of increases over base year costs. Of these three approaches, reasonable minds differ as to what system best promotes green practices by landlord and tenant.

- a. Triple Net

In a triple net lease, a landlord has little incentive, beyond keeping overall rents low, to make a significant investment in green, efficiency-promoting improvements, as (1) all operating expenses are passed through to the tenant; and (2) 'costs of ownership' (e.g., capital expenditures) may be difficult to recover from tenants via operating expense pass throughs. As discussed

above, many leases allow a landlord to pass through capital expenditures incurred with the intent of lowering operating costs and increasing efficiency, as long as such costs are amortized over the improvement's useful life, generally 20 years or more. Amortizing a sustainability-promoting improvement over its useful life provides little incentive to or ability for a landlord without significant reserves to make such improvements, as costs are recovered quite slowly. But if a tenant is sustainably-minded, there are ways a landlord may recover costs spent on green improvements via different approaches to the amortization of such improvements. For example:

- The improvements could be amortized over the landlord's investment recovery period. This period would track the term of the financing of such improvement, thereby allowing the landlord to service its related debt.
- The improvements could be amortized on an accelerated basis agreed to by the parties, rather than a straight-line basis, again, giving the landlord the ability to recoup costs over a shorter period of time.
- Finally, the improvements could be amortized over the term of the lease, again shortening the period of time over which landlord is able to be reimbursed for the costs of the improvement.

Why would a tenant agree to such terms? The landlord would argue that upon implementation of the improvement, the tenant immediately benefits from the increased efficiency the improvement provides in the form of lower operating expenses (i.e., the "split incentive" problem). In fact, a tenant might insist that accelerated amortization of any form – or even the pass through of such green capital expenditures at all – may only occur to the extent the improvement actually *does* increase efficiency. But if a landlord is willing to work with the tenant to manage these costs, by capping them or otherwise, and the tenant is willing to financially support the landlord's sustainable efforts, a deal may be struck.

b. Gross Lease

Some commentators argue that the gross lease promotes sustainability best, as it incentivizes the landlord – the only party to the lease who may implement building-wide systems – to operate the building as efficiently as possible. However, under a gross lease tenants have no incentive to use resources wisely, as they pay the same rent regardless of how much energy they use. This may be mitigated with after-hours use charges, but the overall issue remains.

c. Gross Lease Plus Increases over Base Year

In this world, tenants pay, on a pro rata basis, for increases over the costs of the established base year. While the incentives remain under this system for

the landlord to maximize efficiency, the expenses over base year may not be significant enough to incentivize tenants to monitor their consumption. A twist on this approach is to add the amortized cost of green improvements (whether straight-lined, accelerated, etc.) after the base year calculation, allowing the landlord to recover faster its investments in sustainability.

All in all, how operating expenses are handled will be a function of landlord's standard practice, the relative leverage of each party, and how sustainability-minded (and cost-sensitive) each party is.

5. *Site Selection.* This may seem like a factor outside the lease, but it is certainly not outside the leasing process. There are some tenants who will only want to locate their business in a green certified building, and some tenants who will want to build out a green certified space. Many in the design, construction and broker communities are working with tenants, via the RFP process or otherwise, to be thoughtful and deliberate about where to negotiate their leases. There is more driving tenants in the current market than size, location and price, and as the economy improves, this fact will become true for an increasing number of tenants. See Appendix A, Section 7.

#### IV. IDEAL(S) VS. REALITY

As is evident from the examples set forth in Appendix A, there are a number of owners in this market using green provisions in their leases, with a notable few leading the way nationally in this realm. They are the minority. While most owners and occupiers have green goals for their business, rarely do those goals make it into the lease. This is not to say it's impossible for a building without a green lease to be green. To the contrary, a LEED certified mixed use project right here in Seattle has virtually no green language in its lease. Why? Because the owner controls completely all variables upon which it relies for its LEED status, including the tenant build-out process.

There are passionate members of the leasing team – tenants, owners, architects, designers, planners, consultants, brokers and attorneys – all over the state driving sustainability for their immediate environments, and the environment at large. Clearly there is a robust discussion at the national and international level regarding the need to incorporate sustainability incentives and provisions in the leasing process. That said, to date, at least here in Washington, much of the discussion remains theoretical. To paraphrase the view of many professionals, “the more we, the leasing team, work together to promote an owner or occupier's sustainability goals, the more we will ensure they are met.” So take the members of the leasing team with whom you have the privilege to do business out for coffee (bring your own cup, of course), and talk about sustainability. You, and your clients, will be glad you did.

## Appendix A – Sample Language

Please note that names, and some wording, have been changed at the request of those providing the information to maintain confidentiality.

### 1. Hours of Operation Provision:

#### a. *Excerpt from Lease for Office Space, Noncertified Building:*

Landlord shall use commercially reasonable efforts to provide HVAC to the Premises during Non-Business Hours subject to (a) the payment by Tenant of Landlord's standard charge, as determined by Landlord from time to time, in Landlord's sole discretion, for Non-Business Hours HVAC (the "Non-Business Hours HVAC Charge") and (b) Tenant providing to Landlord at least one (1) business day's advance written notice of Tenant's need for Non-Business Hours HVAC. As of the date of this Lease, and subject to future increases, the Non-Business Hours HVAC Charge is \$35/hour, per HVAC zone. The Non-Business Hours HVAC Charge applies to each HVAC zone in the Building that Non-Business Hours HVAC is provided to and Non-Business Hours HVAC is charged in minimum increments of two (2) consecutive hours. Tenant shall pay to Landlord all Non-Business Hours HVAC Charges within ten (10) days after Landlord bills Tenant for said charges.

### 2. Operating Expense Provisions:

#### a. *Excerpt from Lease for Retail Space, LEED Certified Building:*

. . . capital improvements as Landlord may install from time to time to comply with governmental regulations or rules (such as disability laws or energy consumption regulations) or undertaken in good faith with a reasonable expectation of reducing operating costs or insurance premiums and deductibles, amortized in accordance with generally accepted accounting principles . . .

#### b. *Excerpt from Lease for Office Space, Noncertified Building:*

. . . costs incurred (capital or otherwise) in order for the Project, or any portion thereof, to apply for, obtain or maintain a certification pursuant to the United States Green Building Council's Leadership in Energy and Environmental Design ("LEED") rating system, or other applicable certification agency, in connection with Landlord's sustainability practices for the Project and all costs of maintaining, managing, reporting and commissioning the Project or any part thereof that was designed and/or built to be sustainable and conform with the LEED rating system (or other applicable certification standard) . . .

[Note: Another approach is to exclude costs of the building's initial certification from operating cost pass throughs, but include costs of maintaining the certification.]

### 3. Tenant Work Standards and Requirements:

a. *Excerpt from Tenant Improvement Requirements Manual, LEED Certified Building:*  
Owner developed this Tenant Improvement Manual to foster sustainable best practices throughout its real estate portfolio. The Manual states the minimum design standards and construction practices required of all tenant improvements, in addition to more stringent, and recommended standards to consider, where practicable, in the TI process. . . . Where possible, owner has identified products representative of the sustainability criteria owner requires, though owner does not require a specific product be used so long as the stated requirements for sustainability are met.

[Note: Under five categories, including water use and indoor air quality, the Manual tells tenants what design specifications are required, as well as how much cost it will likely add to the build-out relative to the market average, how much effort is required to achieve the specification relative to the market average, and how the specification affects different LEED certifications.]

b. *Excerpt from Lease for Office Space, LEED Certified Building:*

Tenant agrees that Tenant Alterations must be designed and built consistent with Landlord's sustainability practices and those Green Ratings determined by Landlord, in Landlord's sole discretion. Tenant further agrees to engage a LEED Accredited Professional or similarly qualified party to execute the design and construction of the Tenant Alterations. Tenant agrees that Tenant will (a) apply for LEED for Commercial Interiors certification for the Tenant Alterations to the Premises, and (b) register the Premises with the U.S. Green Building Council prior to completion of the Plans and Specifications. Unless Landlord agrees otherwise in writing, Tenant Alterations must conform to the LEED Requirements set forth in Exhibit . Tenant shall make no changes to the Plans and Specifications without the consent of Landlord.

Tenant Alterations that affect at least fifty percent (50%) of the Premises will be performed in accordance with Landlord's sustainability practices, (as amended from time to time) and any Green Ratings (as amended from time to time). Tenant further agrees to engage a qualified third party LEED Accredited Professional or similarly qualified party during the design phase through execution of any Tenant Alterations covered by the preceding sentence, in order to review all specifications, material procurement, demolition, design, construction, and debris and waste management procedures to ensure they conform to Landlord's requirements, and Tenant agrees to apply for and maintain LEED for Commercial Interiors certification for such Tenant Alterations. The parties agree that Landlord is reviewing the Tenant Alterations plans and specifications for Landlord's own benefit, and Landlord's approval of the same does not constitute any representation or warranty regarding the compliance with laws of the same. Tenant shall indemnify, defend and hold harmless Landlord and Landlord's Agents from any claims arising as a result of any defect in design, material or workmanship of any Tenant Alterations.

#### **4. Rules and Regulations**

a. *Excerpt from Lease for Retail Space, LEED Certified Retail Center:*

Tenant shall not waste electricity, water, heat, or other utilities or services, and agrees to

cooperate fully with Landlord and comply with any laws to assure the most effective and energy-efficient operation of the Center.

Tenant shall use in the Premises cleaning products with minimal environmental impact, both in packaging and composition (e.g., products certified by Green Seal).

Landlord will administer, and Tenant will comply with, the trash and recycling accounts for the Center. Landlord will handle pick-up issues, will maintain and clean the trash room, and will charge Tenant back for these services as part of Operating Expenses.

## **5. Utilities**

### *a. Excerpt from Lease for Office Space, Noncertified Office Building:*

(a) Tenant shall not use electricity in excess of the Maximum Use, nor use other Building utilities in excess of those used by a typical tenant for ordinary office use. Tenant shall only install in the Premises the type and amount of office equipment that a typical office tenant would install, and Tenant shall not install office equipment, lighting fixtures or the like which generate above average heat, noise or vibration, or which will affect the temperature maintained by the HVAC system. If Landlord believes Tenant is using electricity in excess of the Maximum Use, Landlord shall have the right, in addition to any other rights or remedies it may have under this Lease, to (i) at Tenant's expense, install separate metering devices at the Premises to measure Tenant's electrical usage, (ii) require Tenant to pay to Landlord all costs, expenses and damages incurred by Landlord as a result of such excess usage, and/or (iii) require Tenant to stop using electricity in excess of the Maximum Use.

(b) The Premises contains a server room serviced by a separate HVAC unit (a "HVAC Unit"). Tenant shall pay the entire cost of all electricity used by the HVAC Unit (the "HVAC Unit Cost"). No portion of the HVAC Unit Cost shall be paid by Landlord, and Tenant shall not be entitled to receive any credit towards HVAC Unit Costs for electricity used by the HVAC Unit during Business Hours. Landlord shall determine the HVAC Unit Cost by installing, at Landlord's expense, a separate metering device. Tenant accepts the existing HVAC Unit in its "as is" condition. Tenant shall pay, at Tenant's sole cost and expense, the entire cost of maintaining, repairing and, when necessary, replacing the HVAC Unit. Tenant shall continuously maintain, at Tenant's sole cost and expense, maintenance contracts for all HVAC Units, using maintenance contract forms and with companies approved by Landlord, in Landlord's sole discretion (the "Maintenance Contracts"), providing copies of the Maintenance Contracts to Landlord within ten (10) days after the Commencement Date, and within ten (10) days after such contracts are modified or renewed.

## **6. Statement of Sustainability Objectives**

### *a. Excerpt from Lease for Office Space, LEED Certified Office Building:*

Sustainability; Certification. The Building may become certified under a Sustainability Certification (as hereinafter defined) or operated pursuant to Landlord's sustainable practices, as the same may be in effect or modified from time to time. Landlord's sustainable practices

address, without limitation, whole building operations and maintenance issues including indoor air quality, energy efficiency, water efficiency, chemical use, recycling programs, exterior maintenance programs, and systems upgrades in an effort to meet sustainable energy, water, indoor air quality, and lighting performance standards. The cost of any improvement or modification of Tenant's Premises or the Building in order to achieve a Sustainability Certification will be paid solely by Landlord and shall not be charged back to Tenant in any way. Landlord reserves the right to change utility providers for the Building at any time upon no less than sixty (60) days' advance written notice to Tenant and to purchase renewable energy provided such providers are (i) competitively priced and (ii) will not adversely impact Tenant's systems that utilize such utilities. Tenant agrees to make commercially reasonable efforts to comply with Landlord's sustainable practices and with the standards and specifications as outlined by the Sustainability Certification in addition to all Governmental Requirements in connection with all construction, maintenance and repairs to be made by Tenant to the Premises. Where economically feasible, Tenant shall exercise commercially reasonable efforts to use sustainable measures within the Premises, including energy efficient bulbs; use of lighting controls; daylighting measures to avoid overlighting interior spaces; closing shades on the south side of the Building to avoid over-heating the space; and turning off lights and equipment where feasible at the end of the work day. As used herein, "Sustainability Certification" means any one or more of the following ratings, as the same may be in effect or amended or supplemented from time to time: the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, LEED EBOM (existing buildings operations and maintenance), the Green Building Initiative's Green Globes for Continual Improvement of Existing Buildings (Green Globes-CIEB), the U.S. EPA's Energy Star rating and/or Design to Earn Energy Star, and any applicable substitute third party or government-mandated rating systems.

b. *Excerpt from REALpac National Standard Green Office Lease for Single-Building Projects 1.03-2010:*

1.1 Context

The provisions of this Environmental Management Plan have been designed to encourage and promote the implementation of certain environmental objectives on the part of each of the Landlord and the Tenant.

1.2 General Objectives

(a) The Tenant acknowledges the Landlord's intention to operate the Building so as to provide for:

- (i) a comfortable, productive and healthy indoor environment;
- (ii) reduced energy use and reduced production, both direct and indirect, of Greenhouse Gases;
- (iii) reduced use of potable water and the use of recycled water where appropriate;
- (iv) the effective diversion of construction, demolition, and land-clearing waste from landfill and incineration disposal, and the recycling of tenant waste streams;

- (v) the use of cleaning products certified in accordance with EcoLogo<sup>™</sup> (Canada), Green Seal<sup>™</sup> (United States) or equivalent standards;
- (vi) the facilitation of alternate transportation options for individuals attending at the Building; and
- (vii) the avoidance of high-VOC emitting materials, furniture and improvements within the Building and individual tenant premises.

## 7. Site Selection

### a. *Excerpt from RFP for Law Firm:*

[Prospective law firm tenant] understands that what they do collectively as a firm to become more sustainable can have a tremendous impact – both on the world and their business. The concept of sustainable business is one that they strive for on a daily basis, as they work to balance people, profits and planet.

Therefore, [law firm] is requesting that the Respondent to the RFP communicate the benefits your leased space provides regarding a sustainable building through design, construction and operation. The sustainable design should encompass the following broad topics:

- efficient management of energy and water resources
- management of material resources and waste
- enhancement and protection of health and indoor environmental quality

Additionally, please describe the Landlord's commitment to sustainable design and development standards that comply with LEED as established by the U.S. Green Building Council. Is this project being developed to meet a LEED designation of Silver, Gold or Platinum rating as defined by the U.S. Green Building Council? Please provide additional narrative in this regard.

## Appendix B – Resources

### Green Leases Toolkit

*California Sustainability Alliance (2008), [www.sustainca.org](http://www.sustainca.org), free*

The focus of the toolkit is to provide resources to both landlord (e.g., green work letter) and tenant (green lease provisions database).

### Model Green Reference Guide

*Corporate Realty, Design & Management Institute (2009), <http://www.squarefootage.net/>, \$90*

A model green lease developed by leading attorneys, brokers, tenants and owners, as well as green building consultants. Landlord-oriented, and lacking commentary, but informative regardless.

### REALpac Office GREENLEASE National Standard Lease for Single-Building Projects 1.03-2010

*Real Property Association of Canada (2010), [www.realpac.ca](http://www.realpac.ca), free with registration*

The best thing about this resource, other than its price, is that a redline of the green lease versus the standard lease is available for download. It is a quick way to get a sense of what REALpac, at least, believes to be the differences between a standard lease and a green lease.

### Green Office Guide: Integrating LEED Into Your Leasing Process

*U.S. Green Building Council (2009), [www.usgbc.org](http://www.usgbc.org), \$50 for nonmembers*

This publication guides the tenant through a green leasing process, from site selection to lease negotiation to build out. Checklists and sample provisions of all sorts. Useful for landlords as well, as gives detailed insight into tenant process.

### The Guide to Writing a Commercial Real Estate Lease

*Building Owners and Managers Association International (2008), [www.boma.org](http://www.boma.org), \$69 for non-members*

As you might suspect, this lease guide is written from an owner's perspective and provides a form lease, form sublease, and form guaranty. Green provisions are included, and footnotes provide discussion on green issues and others.

### The Internet

*Various authors, various dates, mostly free*

If you type “green leasing” into your favorite browser, you will have more information at your disposal than you might imagine. Not all of it is accurate or good, but some of it is, and nearly all of it is thought-provoking. Please contact me if you find a particularly helpful resource in your explorations.