



Green Leasing

An Effective Tenant/Landlord Strategy for Energy Efficiency

DECEMBER 2014



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A Better City improves the economic competitiveness and quality of life of the Boston region by advancing and providing leadership on significant transportation, land development, and environmental policies, projects, and initiatives related to the business and institutional community.



The Boston Green Ribbon Commission is a group of business, institutional and civic leaders in Boston working to develop shared strategies for fighting climate change in coordination with the city's Climate Action Plan.



ABC's Challenge for Sustainability engages Boston's commercial real estate sector and businesses to adopt best practices in sustainability and energy efficiency through a platform of benchmarking and a peer support network to reduce their carbon footprint.

For additional copies of this report please visit ABC's website at: www.abettercity.org/about/publications.html.

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COVER PHOTOS

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Executive Summary

Commercial properties are a significant contributor to energy use and greenhouse gas emissions in the City of Boston. Unfortunately, in many buildings, lease structures give property owners and tenants little incentive to invest in energy saving technologies. Given this, green leasing has increasingly become an important tool for landlords and tenants to align incentives and meet sustainability goals. There are many potential definitions for green leases, however, at its most basic, a green lease is *a lease which contains sustainability or environmental provisions as part of a landlord-tenant agreement*. Increased landlord-tenant collaboration is not only important for meeting Boston's Climate Action Plan goals, but also for driving energy and water reductions for the Building Energy Reporting and Disclosure Ordinance (BERDO).

Areas of opportunity to increase the sustainability of leases include:

- Energy efficiency cost pass-through clauses,
- Operational clauses,
- Sustainable purchasing clauses,
- Reporting Clauses.

This report provides model green lease language that has been used by tenants and landlords in the United States, Canada and the U.K. With the adoption of energy disclosure ordinances by major cities across the United States, there has been an increase in local and national efforts to encourage green leasing adoption. Recently, A Better City (ABC), in partnership with the Boston Bar Association, hosted a Green Lease Forum targeted at Boston-area lawyers and property managers. This forum reviewed barriers to green lease implementation in the Boston market and pathways to encourage the growth of green leasing. Nationally, the Institute for Market Transformation's Green Lease Leaders program is working to establish green lease standards and recognize property owners and landlords, brokers, and tenants who are pursuing green leasing. Guest experts and forum attendees agreed that the Boston market has a strong environment to support green leasing given the number of institutional investors and national commercial real estate players active in the area.

The group also identified barriers to wider green lease implementation. These include:

- A lack of knowledge of potential green lease clauses,
- Brokers and lawyers being unfamiliar with green leasing practices.

Both these barriers can complicate lease negotiations. Forum participants identified several important next steps including engagement with utilities around tenant fit-outs, integrating green leasing with BERDO outreach, targeting outreach to area brokers and real estate training programs, and sharing best practices and case studies. This report includes two case studies and an annotated bibliography. These resources are provided to support landlords and tenants who may be interested in pursuing green leasing in the Boston area.

With the adoption of energy disclosure ordinances by major cities across the United States, there has been an increase in local and national efforts to encourage green leasing adoption. This report provides model green lease language that has been used by tenants and landlords in the United States, Canada and the U.K.

Introduction and Purpose

Green leasing has gained attention across the United States as a tool to achieve sustainability goals and emissions reductions in the commercial sector. In the 2010 Boston Climate Action Plan, green leasing was included as an emissions reduction strategy for the large buildings and institutions sector. The Boston Climate Action Plan is currently being updated, and further emission reductions will be needed from this sector to achieve the City's 25 percent emission reduction target by 2020.

The recent passage of the BERDO ordinance presents an opportunity for landlords and tenants to engage in dialogue around energy usage. There is also increasing interest from utilities in using green leasing as a strategy to support more efficient tenant build-outs. Finally, the Institute for Market Transformation (IMT)—a national

non-profit that supports energy efficiency efforts in cities across the country—launched a national green lease recognition program this year in partnership with the US Department of Energy. During its first year, the Green Lease Leaders Program recognized 14 property owners and tenants who have implemented innovative leasing practices. These and other factors make this a unique time to evaluate new, focused green leasing efforts that will drive increased implementation across Boston. In 2013 Boston was recognized as the most energy-efficient city in the United States, and continued policy and program innovation will be necessary to reach the City's aggressive 2020 emission reduction and efficiency targets.

This report builds on research completed by A Better City (ABC) on behalf of the Boston Green Ribbon

Commission's Commercial Real Estate Working Group in 2013 and 2014. A Better City's research led to an event in May 2014, which was co-hosted by the Boston Bar Association. This event convened tenants, lawyers and property managers for a discussion about green leasing in Boston and potential ways to encourage more green leasing in the city. Model language from the Boston Bar Association's green lease guidance is also included in the appendix to this document.

This report will provide a background and introduction to green leasing, including findings from ABC's initial research and Boston-area priorities identified during the May Green Lease Forum. The report also includes model language from guidance documents and case studies and best practices from around the United States.

Green Leasing Primer

Over the past several years, many interested parties have developed model green leases and several groups have attempted to create more formal definitions for green leases. At its most basic, a green lease is a lease which contains sustainability or environmental provisions as part of the landlord-tenant agreement. Developing green leases can be an iterative process, and any lease can be made greener through additional clauses or lease addendums. Memorandums of understanding and building rules and regulations also offer avenues to formalize sustainability practices outside of the lease renewal process.

During ABC's research into available green lease resources, several areas of focus emerged where landlord

and tenants have drafted and implemented clauses to support sustainability in their spaces.

- **Passthrough Clauses**—Lease amendments which allow passthrough of energy efficiency investment costs to tenants.
- **Operations Clauses**—Lease sections which allow the building to operate more efficiently and/or reduce environmental impacts.
- **Sustainable Purchasing**—Establishing rules about the types of materials which can be purchased in tenant and common-area spaces.
- **Reporting**—Sharing data on building energy use and progress towards goals through benchmarking or other systems agreed on between the landlord and tenant.

These clauses can formalize commitments to efficiency and sustainability within a space. Even if tenants and their associated behavior patterns change, formalizing language in lease documents provides a consistent building-wide standard. For building owners, an additional benefit of green leasing is attracting sustainably-minded, high-quality tenants to building spaces (See Appendix I for case examples). A number of studies, including research completed by the Rocky Mountain Institute and the Institute for Market Transformation, have found that green building practices have also been associated with lower tenant turnover. The following section provides more information on various green lease clause types and also provides specific lease language that has been previously used to support sustainable leasing practices.

Energy Efficiency Passthrough Clauses

Commercial spaces can be governed by a variety of different lease structures. Two of the major types of leases are triple net leases and gross leases. In a triple net lease, tenants pay for rent, property taxes, insurance and building operating expenses. This type of lease is very common in Boston, and tenants are typically charged on a square footage basis. In gross leases, landlords assume responsibility for building operating expenses. In some modified gross leases, tenants may pay for a proportional share of utility bills.

In the case of unmodified gross leases and net leases, the impacts of energy efficiency investments are not directly accessible by the investors. In a net lease, landlords are disincentivized from making energy efficiency improvements since they do not pay for monthly utility bills. In a gross lease, tenants are disincentivized from making efficiency improvements in their spaces if the savings are not directly reflected in monthly utility bills. This disconnect is known as the split incentive.

Addressing the split-incentive was an early focus area for green leasing. Energy efficiency passthrough clauses can address the split incentive by allowing capital cost passthrough from efficiency investments to tenants. This enables cost-recovery for building owners. Typically, this can be justified if the capital cost investment has the impact of reducing operating expenses. In modified gross leases or triple net leases, this capital cost passthrough might be incorporated into tenants' monthly operating expenses.

The most advanced energy efficiency passthrough clause is New York City's Energy Aligned Clause* developed by Wilmer Hale and the Natural Resources Defense Council. The clause requires

an engineering estimate for major upgrades to calculate a payment schedule for tenants in which the additional cost to tenants would not exceed their expected savings. Detailed information and model language can be found in the bibliography. The clause is currently used for all new City of New York leases and at least two Class-A commercial spaces in Manhattan.

Two of the major types of leases are triple net leases and gross leases.

In a triple net lease, tenants pay for rent, property taxes, insurance and building operating expenses. In gross leases, landlords assume responsibility for building operating expenses.

Passthrough Clause Example

Model Energy Efficiency Passthrough Clause

"Cost of any capital improvement to the Building that reduces Building Operating Costs, the costs of such improvements to be amortized over the minimum period acceptable for federal income tax purposes, and only the yearly amortized portion thereof shall be treated as a Building Operating Costs. In no event shall this charge for yearly amortization be more than the actual reduction in the Building Operating Costs."

Source: May 2014 Green Lease Forum, Deborah Howitt Easton's Legal Language Presentation

Green Operational Clauses

Operational clauses are used to set operational parameters for buildings. These clauses can be used to support both tenant and landlord sustainability goals. Example clauses from the literature include establishing recycling and waste practices and setting formal building operating hours and temperature ranges. The latter may require sub-metering to be monitored and enforced. Some of these items may also be appropriately listed in the building rules and regulations instead of in the formal lease document.

Operations Clause Examples

Operating Hours

The Landlord shall provide HVAC in quantities and at temperatures required to maintain conditions within a reasonable temperature range in the Premises during Business Hours. [Optional: HVAC and lighting supplied to the premises outside of Normal Business Hours requested by the Tenant shall be at the Tenant's cost at the rate equal to the then prevailing rate for such service or utility plus the Landlords 15% administration fee.]

Source: Real PAC Model Green Lease, Canada

Waste Management

Landlord shall set up a building-wide infrastructure for materials recycling and supply a "Single Stream" bin to Tenant for paper, metals, and plastics. Landlord shall also provide electronics disposal bins for computers, etc.

Tenant shall use best efforts to recycle by separating waste stream into Single Stream (paper, plastic, metals), and dispose of all electronic items (cell phones, computers, etc.) in designated bins.

Source: Boston Bar Association Green Lease Guidance, USA

* http://www.nyc.gov/html/gbee/downloads/pdf/eac_&_overview.pdf

Sustainable Purchasing Clause Example

Sustainable Purchasing Requirements

Landlord and Tenant shall comply with the following Environmentally Preferable Purchasing Policy when procuring furniture, fixtures, carpeting, materials, supplies appliances, and equipment to be brought into the Building and Premises, which requires that each use, when reasonably practical:

- Energy STAR-qualified office equipment, electronics, appliances including refrigerators,
- Products containing pre-consumers and post-consumer materials,
- Products containing rapidly renewal material,
- Products containing Forest Stewardship Council-certified wood,
- Products harvested or processed, or extracted and processed within 500 miles of the Building,
- High-efficiency, low mercury-content lamps that maintain an overall average of less than 90 picograms of mercury per lumen hour of light output,
- Compact Fluorescent Lamps that comply with the National Electric Manufacturers Association,
- Low-or no VOC furniture, furnishing or composite wood products that contain no urea-formaldehyde,
- Low or no VOC paints, adhesives, solvents or other such materials meeting Green Seal Standard GS-11 or equivalent. The use of sprayed paint is prohibited,
- Salvaged, refurbished or reused materials, furniture.

Source: New York University Green Lease Guidance

Green lease clauses have been developed and used to support the purchasing of certified materials for common-area spaces and tenant build-outs, which may be important for buildings or tenants seeking to maintain environmental certification.

Sustainable Purchasing Clauses

Green lease clauses have also been developed and used to support the purchasing of certified materials for common-area spaces and tenant build-outs. These purchases may include green cleaning supplies and requirements, VOC-free paints for fit-outs and maintenance, and ENERGY STAR certified electronics and appliances. Such purchases may be important for buildings or tenants seeking to maintain environmental certification.

Reporting Clauses

In order to track progress towards building energy and sustainability goals, some landlords and tenants have created reporting or benchmarking agreements. This may take the form of short reports to show building energy and water performance. When sub-metering is available, tenant energy use could be placed in context. In Portland, Oregon, tenants in the Commonwealth Building owned by the firm Unico receive quarterly ENERGY STAR benchmarking results for their building. Since all large commercial buildings in Boston are required to use ENERGY

STAR as part of the BERDO ordinance, this may be an area where buildings may be able to pioneer new reporting practices.

Reporting and Data-Sharing Example

Reporting and Data Sharing Clauses

The Landlord and the Tenant will share the Environmental Performance Data they hold relating to the Premises and/or the Building. This Environmental Performance Data will be shared on a regular basis [but not less frequently than monthly/quarterly/annually] with each other, with the Managing Agent and with any third party who the Landlord and the Tenant agree needs to receive such data. Save where they are under a statutory obligation of disclosure, the Landlord and the Tenant will keep confidential the Environmental Performance Data shared under this clause, and will only use such data for the purposes of:

- a. monitoring and improving the Environmental Performance of the Premises and/or the Building and/or
- b. Measuring the Environmental Performance of the Premises and/or the Building against any agreed targets. The Landlord will procure that the Managing Agent is placed under a similar obligation to that set out in clause [] to keep any shared data confidential and to use it only for the purposes listed in that clause.

Where the Landlord or Tenant discloses any shared data to a third party, they will procure that that third party is placed under a similar obligation to that set out in clause [] to keep any shared data confidential and to use it only for the purposes listed in that clause.

Source: Better Buildings Partnership, United Kingdom

State of Green Leasing

The following sections discuss the current state of green leasing in the national and local contexts. The information below is derived from discussions which took place during the Green Lease Forum, hosted in May 2014 by A Better City and the Boston Bar Association. The forum featured guest speakers Adam Sledd from the Institute of Market Transformation and Deborah Howitt Easton, a local real estate lawyer and LEED-certified professional. The forum was held in order to discuss and move green lease implementation forward in Boston.

National Context

In spite of ongoing discussions, resource availability and interest, there has been limited documented implementation of green leases in the United States. The implementation of green lease clauses is subject to several complexities. A major barrier identified during the Green Lease Forum is limited education and awareness of green lease practices from key stakeholders, such as lawyers and brokers. During lease negotiations, lawyers are likely to be averse to clauses with which they are unfamiliar. Similarly, brokers do not know which qualities to value or consider when evaluating new spaces and are typically unfamiliar with sustainability-related building attributes.

Tenant lease timing is an additional challenge to implementing comprehensive, building-wide green leases. Multiple tenants with different lease renewal schedules can complicate coordination of establishing building-wide practices. As previously mentioned, memorandums of understanding and building rules and regulations can offer possible workarounds to this barrier.

Another area of potential difficulty discussed at the forum relates to enforcement, monitoring and verification of green lease clauses. While green



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Given local successes in implementing passthrough clauses, Boston may have an interest in focusing on two other areas of interest related to green leasing: tenant build-outs and energy data sharing.

lease provisions may be important to both landlords and tenants, violations of these clauses can create enforcement challenges as neither tenants nor landlords likely have an interest in voiding a building lease in the event that green provisions are not met.

In spite of these complications, many leading property management firms have been able to incorporate green lease clauses into their standard

leases. An area of significant progress has been the adoption and awareness of the need for energy efficiency passthrough clauses. Recent survey research from Boston-area utilities indicates that about a third of the surveyed commercial property owners in Boston have added some type of efficiency cost sharing clause to their recent leases, while many more had general capital cost passthrough clauses that could be applied towards efficiency investments.

Given local successes in implementing passthrough clauses, Boston may have an interest in focusing on two other areas of interest related to green leasing: tenant build-outs and energy data sharing. The Institute for Market Transformation noted that tenant energy use is an emerging issue for property owners, with building owners expressing concern that high tenant energy use could jeopardize green certifications earned by their buildings. In an effort to increase energy efficiency in tenant spaces, the national green

lease conversation has shifted towards including sub-metering, data-sharing and high-efficiency tenant build-outs into green lease best practices. Data-sharing, in particular, may be an area where tenants and landlords have significant disagreements. Anecdotal evidence from property owners shared with the Institute of Market Transformation at the 2014 Better Buildings Conference supports the point that tenants have concerns about sharing energy use data with landlords and that these green lease provisions have been stricken from a number of leases during negotiations.

This shift in the national conversation led the Institute for Market Transformation to establish efficiency passthrough clauses, sub-metering, data-sharing and tenant build-outs

Tenant Improvement Example

Tenant Build-Out Clause

Any and all Tenant Improvement Work and/or Alterations will be performed in accordance with Landlord's sustainability practices that NYU has accepted as part of the lease agreement, including any agreed upon third-party rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time. Tenant further agrees to engage a qualified third party LEED or Green Globe Accredited Professional or similarly qualified professional during the design phase through implementation of any Tenant Improvement Work and/or Alterations to review all plans, material procurement, demolition, construction and waste management procedures to ensure they are in full conformance to Landlord's sustainability practices, as aforesaid.

Source: NYU Green Lease Guidance

as the basic requirements to be recognized as a green lease in United States.

Moving Green Leasing Forward in Boston

The Boston property market is a strong environment for green leasing. Participants in the forum identified that institutional investors and national real estate players are active in the Boston market. These players tend to hold properties longer and green leasing could help enhance and preserve the value of their assets. As well, these property owners are more likely to have corporate sustainability goals that fit well within a green lease structure. Additionally, Boston has many long-term or large tenants with significant negotiating power, who have the ability to bring sustainability and energy concerns into their leasing conversations. Longer-term tenants also have a heightened interest in promoting energy efficiency, since they will directly benefit from energy investments with returns captured over longer periods of time. Nevertheless, there has been limited uptake of green leases in the Boston market.

Boston's Building Energy Reporting and Disclosure Ordinance (BERDO) provides a unique opportunity to intro-

Boston has many long-term or large tenants with significant negotiating power, who have the ability to bring sustainability and energy concerns into their leasing conversations.

duce energy use into the lease negotiation processes of major institutional players. There is also support and awareness from the City of Boston and utilities in green leasing. Given this, a number of next steps and recommendations were identified from our research to move implementation in Boston forward.

Broker education and outreach

The Boston brokerage market is made up of a relatively small number of major regional and national firms, which are engaged in a significant portion of lease transactions. By working directly with these firms to educate their brokers and identify barriers to implementation, the region could see a greater adoption of green leases in the near term. ABC and the CREWG of the Boston Green Ribbon Commission should continue to look for opportunities to lead these efforts in partnership with other stakeholders.

Additional outreach to real estate lawyers

ABC's forum provided a great first step in outreach and information gathering from members of the real estate law community, but it was clear from the conversations that were had, sustained outreach and education must take place to ensure greater acceptance and familiarity of green lease language.

Joint BERDO and green lease outreach

BERDO can also be integrated into compliance of law provisions, which exist in every lease, as a first "greening" step. Green lease practices can be integrated into marketing and outreach programs as a potential tool for efficiency improvements.

Engage large property managers directly

Boston is home to many large commercial



real estate firms and major institutions, which control a large portion of the City's building stock. By identifying opportunities with these owners, green lease adoption could increase significantly. ABC will continue outreach on green leasing through its Challenge for Sustainability, and will also seek to include large Class B portfolios into the leasing conversation.

City or state buildings as models

To demonstrate the importance and feasibility of green leases, the City and state could act as first movers in utilizing green lease clauses. This is similar to the approach taken by the City of New York and the energy aligned clause.

Increase collaboration in tenant build-outs and encourage landlord-tenant cooperation

Tenant build-outs represent an opportunity for increased coordination between architects and utilities to design the most-efficient spaces possible, while maximizing incentives. Boston-

Boston has included an increased green leasing effort in its draft of the 2014 Climate Action Plan. These actions will continue to drive dialogue around green leasing in Boston.

area utilities have demonstrated an interest in green leasing, and are working to achieve commercial-sector efficiency targets. This represents a potential area for collaboration to address energy use, while increasing the value of tenant spaces. Furthermore, build-outs provide an opportunity for landlords and tenants to discuss maintaining the sustainability of the space, and different ways to monitor and share information about building-wide energy usage, tenant expectations and energy goals and local regulations for the space.

Showcase case studies

Participants suggested that case studies would demonstrate the feasibility of implementation. Several case studies have been included in the first appendix to highlight several of the key aspects of this report including landlord-tenant collaboration, broker engagement, reporting and implementation. These case studies include a tenant-led green leasing effort in the Commonwealth Building in Portland and a portfolio-wide green leasing effort by Kilroy Realty Corporation.

As an identified strategy within the City of Boston's Climate Action Plan to reduce greenhouse gas emissions 25% by 2020, the adoption of Green Leasing will need to advance significantly in a relatively short period of time. Ongoing coordination between the City of Boston, the commercial real estate sector, lawyers, brokers, and other stakeholders will be needed to work on these recommendations and drive implementation. Furthermore, the Institute for Market Transformation will soon release a report quantifying the benefits of green leasing from awardees of its Green Lease Leaders program, which can be used to further refine the Boston area's approach.

In the appendixes, two case studies showcase pioneers in green leasing. Following the case studies, model clauses are available, and grouped according to thematic area in the second appendix. Large property owners will continue to be engaged in conversations on green leasing through the Boston Green Ribbon Commission, Commercial Real Estate Working Group. Finally, the City of Boston has included an increased green leasing effort in its current draft of the 2014 Climate Action Plan. These actions will continue to drive dialogue around green leasing in Boston.

Annotated Bibliography

General

Australian Procurement and Construction Council. [National Green Leasing Policy: Elements of an Environmental Management Plan](#). Online. 2010.

- Guidance from the government of Australia on key elements to include in an environmental management and performance plan for a building. This is meant to tie-in with Australia's national green lease policy for government spaces.

California Sustainability Alliance. [Green Lease Provisions](#). Online. 2010.

- The California Sustainability alliance provides step-by-step guidance on incorporating sustainability principles into the built environment, including samples of green lease provisions for a variety of topics including transportation and water use.

Better Buildings Partnership. [Green Lease Toolkit: Working Together to Improve Sustainability](#). London. 2010.

- The United Kingdom's Better Buildings Partnership produced a green lease toolkit, which outlines green leasing principles, summarizes best practices and provides model green leasing language and memorandums of understanding.

Boston Bar Association. [Green Lease Guide: Issues, Sample Clauses, Leases and Links](#). Boston. August 2012.

- This guide produced by the Boston Bar Association reviews the green leasing literature and offers insights into the tax and legal implications of green leasing provisions and green building. In addition, it offers key guiding questions to consider for lease negotiations, and offers links to model leases.

Institute for Market Transformation. [Green Lease Library and Green Lease Leaders Program](#). Online. 2014.

- Online repository for model green leases and case studies from the United States and Europe. The Institute for Market Transformation updates the site with additional resources and manages the Green Lease Leaders national recognition program.

Regional or Local

New York University Center for the Sustainable Built Environment. [NYU Green Leasing Practices](#). Online. 2009.

- Model green lease guidance which was developed by faculty and staff at New York University and targeted to spaces that the university leases. The lease guidance was later institutionalized.

Seattle Office of Sustainability and Environment. [Green Tenant Improvement Guides](#). Seattle. Online. 2013.

- The Seattle Office of Sustainability and Environment developed a step-by-step guidance document for pursuing sustainable tenant improvement projects. The guides include considerations and checklists for evaluating leases and sites, as well as potential design options.

U.S. Department of Energy. [Brandywine Realty Trust Overcomes the Split Incentive and Obtains Tenant Utility Data](#). [Building Technologies Program](#). Online. October 2011.

- A case study which showcases a multi-tenant office space, which was able to negotiate energy efficiency passthrough and data-sharing clauses. The Brandywine Realty Trust now incorporates efficiency passthrough clauses in all leases.

The case study provides lease language and letters to tenants.

Reale, P. [Energy Aligned Clause Presentation](#). Urban Green Council. New York City. Online Video. September 2012.

- Detailed overview of New York's Energy Aligned Clause, including cost models for a sample energy efficiency improvement, which illustrates how costs would be passed to tenants.

Carmichael, C. et. al. [Barriers and Breakthroughs for Multi-Tenant Developments](#). Rocky Mountain Institute. 2008. Online.

- Research paper outlining opportunities for transformation in building energy practices for landlords and tenants through legal practices and construction processes.

Premium Resources

Building Owners and Management Association International (BOMA). [Commercial Lease: Guide to Sustainable and Energy Efficient Leasing for High-Performance Buildings](#). Online. 2010.

- A full green lease model developed by BOMA, available for a small fee. REALpac also offers a full green lease document, but the leasing language is targeted for Canadian properties.

To view the hyperlinks above, open the electronic version of this publication at www.abettercity.org/about/publications.html.

Tenant Pushes Landlord to the Next Level of Sustainability Green Leasing in the Commonwealth Building



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Description

In 2010, the Northwest Energy Efficiency Alliance (NEEA) needed new office space in Portland, Oregon. They were interested in finding a space which aligned with their organization's mission. The NEEA approached their brokers at Colliers International with their concerns. Colliers worked with them to identify landlords and properties with established sustainability reputations. Their brokers were experienced working with sustainability and energy, and were aware of progressive firms in the city who might be open to integrating NEEA's energy goals into a lease. Colliers worked with NEEA to identify properties which met NEEA's specifications. The NEEA ultimately selected Unico Properties LLC's Commonwealth Building. Unico agreed to add a number of energy and sustainability provisions to NEEA's lease and supporting construction documents. In addition, Unico and the Commonwealth Building's property manager agreed to establish a building-wide tenant sustainability committee, and provide quarterly ENERGYSTAR benchmarking data to tenants. The NEEA's energy use profile is 15% lower than similar tenants in the building. A second tenant, Green Building Services (GBS), also moved into the building during the same time period and negotiated green lease clauses for its space by working in partnership with its broker, Cushman & Wakefield. The building has also attracted other innovative and

sustainability-minded tenants including the National Fish and Wildlife Foundation and Element Power. NEEA and GBS occupy 20,000 and 10,000 square feet, respectively. Unico Properties was recognized as a Green Lease Leader in 2014.

Summary of Green Lease Clauses

- Turnkey Tenant Improvements to a LEED-CI Standard
- Quarterly ENERGYSTAR Benchmarking Reports
- Sub-metering
- Efficiency costs passthrough with itemized energy costs on utility bills
- Adjusted building operating hours
- Recycling provisions
- Sub-metering
- 10-year triple net lease

Further Resources

Better Bricks NEEA-Unico Case Study Profile
http://www.betterbricks.com/sites/default/files/Office/bb_article_greenestlease.pdf

Green Real Estate Law Article on NEEA and GBS Leases
<http://www.greenrealestatelaw.com/2010/07/portland-tenants-sign-green-leases-at-unico-properties-commonwealth-building>

Article on Unico's Green Lease Leaders Designation
<http://www.bizjournals.com/portland/blog/real-estate-daily/2014/05/whats-a-green-lease-unico-knows.html>

Colliers International-Portland, Sustainability Training Program Information
<http://www.colliers.com/en-us/portland/about/socialresponsibility/sustainability>

ENERGYSTAR, Successes in Sustainability: Landlords and Tenants Team up to Improve Energy Efficiency
http://www.energystar.gov/buildings/sites/default/uploads/tools/EPA_ES_Tenant_Report_508.pdf

Kilroy Realty Green Lease Clause Standardization

Portfolio-Wide Standards for Tenants



Kilroy's Portfolio

Description

Kilroy Realty Corporation is based in Los Angeles, California, and has a growing portfolio of buildings across the West Coast. 41% of Kilroy Realty Corporation's properties are LEED certified and 55% are ENERGYSTAR certified. Kilroy saw green leasing as a way to manage energy efficiency and energy use before problems arose. Kilroy established standard language to recover the costs of energy efficiency investments from tenants, and was thus able to pursue a number of projects such as HVAC upgrades, and window film treatments. California's Assembly Bill 1103, which is an energy disclosure requirement, provided an opportunity for Kilroy's sustainability team to incorporate additional standard language into its leases with the company's legal team. AB 1103 created a legal foundation to require utility bill disclosure as a standard clause for tenants. Kilroy recently used data disclosed by one of its tenants, Bridgepoint Education, to identify and finance a major lighting retrofit opportunity.

Additionally, Kilroy leveraged its work on incorporating AB 1103 into its leases to standardize several additional green lease clauses including requiring the completion of tenant surveys for LEED-EB, increasing the sustainability of its standard tenant improvement guidelines, and sub-metering. Kilroy also developed negotiable clauses around green cleaning programs and recycling, and has had success implementing this program in tenant spaces.

Summary of Standard Green Lease Clauses

- Sub-metering
- Green TI Guidelines
- Utility data-sharing
- LEED survey compliance
- Green cleaning, maintenance and recycling
- Energy efficiency cost passthrough

Further Resources

Los Angeles Better Buildings Challenge Webinar, Are You a Green Lease Leader? Aligning Tenants and Landlords on Saving Energy

<https://attendee.gotowebinar.com/recording/3612634926865304578>

Clean Technica Article on Kilroy Realty Corporations Sustainability Accomplishments

<http://cleantechnica.com/2014/06/02/possibly-west-coasts-premier-landlord>

ENERGYSTAR, Successes in Sustainability: Landlords and Tenants Team up to Improve Energy Efficiency

http://www.energystar.gov/buildings/sites/default/uploads/tools/EPA_ES_Tenant_Report_508.pdf

Motley Fool Article on Kilroy Realty Corporation and its Green Lease Leader Recognition

<http://www.fool.com/investing/general/2014/06/02/how-you-can-save-the-world-by-investing-in-this-re.aspx>

Appendix II — Model Lease Language

The following table contains sample clauses from model green lease documents from thought leaders in the United States and Britain. These clauses are meant to foster discussion and ideas for actions which may work in Boston. Topic areas include:

- Energy Efficiency Cost Passthrough
- Operating Procedures
- Waste Management
- Sustainable Purchasing
- Data Sharing
- Tenant Improvements and Build-outs
- Memorandums of Understanding

Energy Efficiency Cost Passthrough	Model Language
Example Clause A	<p>Energy Aligned Clause, NYC</p> <p>Landlord may include the costs of certain Capital Improvements in Operating Expenses pursuant to Section 1.1(a)(v)(16) in accordance with the following:</p> <p>(i) Capital Improvements Intended to Improve Energy Efficiency. In the case of any Capital Improvement that the Independent Engineer certifies in writing will, subject to reasonable assumptions and qualifications, reduce the Building’s consumption of electricity, oil, natural gas, steam, water or other utilities, and notwithstanding anything to the contrary in Section 1.1(a)(v):</p> <p>A. The costs of such Capital Improvement shall be deemed reduced by the amount of any government, utility or other incentives for energy efficiency improvements actually received by Landlord to defray the costs of such Capital Improvement, and shall further be reduced by any energy efficiency tax credits or similar energy-efficiency-based tax incentives actually accruing to Landlord as a result of such Capital Improvement.</p> <p>B. For the purposes of this Section 1.1(b)(i), “simple payback period” means the length of time (expressed in months) obtained by dividing (x) the aggregate costs of any such Capital Improvement, by (y) the Projected Annual Savings. By way of example: If the aggregate costs of such Capital Improvement are \$2,000,000 and the Projected Annual Savings are \$500,000, then the simple payback period for such Capital Improvement is forty-eight (48) months.</p> <p>C. Commencing with the first Comparison Year following the year in which such Capital Improvement is completed and placed in service, and continuing for the duration of the Adjusted Payback Period (as hereinafter defined), Landlord may include in Operating Expenses a portion of the aggregate costs of such Capital Improvement equivalent to eighty percent (80%) of the Projected Annual Savings, so that the aggregate costs of such Capital Improvement will be fully amortized over one hundred twenty-five percent (125%) of the simple payback period (such period of time, the “Adjusted Payback Period”). By way of example: If the aggregate costs of such Capital Improvement are \$2,000,000, the Projected Annual Savings are \$500,000 and the simple payback period for such Capital Improvement is forty-eight (48) months, then Landlord may include \$400,000 of the aggregate costs of such Capital Improvement (i.e., an amount equivalent to 80% of the Projected Annual Savings) in Operating Expenses for five consecutive Comparison Years (i.e. sixty (60) months or 125% of the simple payback period).</p>

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Energy Efficiency Cost Passthrough	Model Language
Example Clause B	<p>RealPAC Model Green Lease includes the following as operating costs to be passed on to the tenant:</p> <p>d) Costs of:</p> <p>ii) Providing, installing, modifying and upgrading energy and water conservation equipment and systems, life safety and emergency response systems, materials and procedures and telecommunication and broadband systems and equipment if any.</p> <p>iii) Making Alterations, replacements or additions to the Building intended to reduce operating costs, utility consumption, and/or greenhouse gas emissions, improve the operation of the building and the systems, facilities and equipment serving the building, or maintain their operation.</p>

Operating Procedures and Scheduling	Model Language
Example Clause A	<p>RealPAC Model Green Lease</p> <p>a) The Landlord shall provide HVAC in quantities and at temperatures required to maintain conditions within a reasonable temperature range in the Premises during Business Hours. [Optional: HVAC and lighting supplied to the premises outside of Normal Business Hours requested by the Tenant shall be at the Tenant’s cost at the rate equal to the then prevailing rate for such service or utility plus the Landlords 15% administration fee].</p> <p>Optional addition: The Tenant shall not permit the use of, within its premises any stand alone energy intensive equipment designed to modify indoor air temperature or humidity, such as portable air conditioners, space heaters, humidifiers or dehumidifiers.</p>
Example Clause B	<p>NYU Green Lease Guidance</p> <p>During [normal business hours], Landlord will provide heating, ventilation and air conditioning (HVAC) in accordance with the applicable ASHRAE Environmental Standards, including ASHRAE Standard 55-2006 Thermal Environmental Conditions for Human Occupancy, ASHRAE Standard 62.1-2004 Ventilation for Acceptable Indoor Air Quality, as well as meet or exceed applicable NYC codes and NYU Design Guidelines.</p>
Example Clause C	<p>BBA Green Lease Guidance</p> <p>Tenant shall:</p> <p>c) Use best efforts to help meet building-wide energy use reduction goals and minimize unnecessary use of electricity, water, heating, and air conditioning, including recommended use of window shades and curtains to keep out summer heat and keep in winter warmth.</p>

Waste Management/ Recycling	Model Language
Example Clause A	<p>BBA Green Lease Guidance</p> <p>Landlord shall:</p> <p>1) Set up a building-wide infrastructure for materials recycling and supply a “Single Stream” bin to Tenant for paper, metals, and plastics. Landlord shall also provide electronics disposal bins for computers, etc.</p> <p>Tenant shall:</p> <p>(a) Use best efforts to recycle by separating waste stream into Single Stream (paper, plastic, metals), and dispose of all electronic items (cell phones, computers, etc. in designated bins.</p>
Example Clause B	<p>RealPAC Model Lease</p> <p>Schedule C: Rules and Regulations, 3. Operation of Premises:</p> <p>a) The Tenant shall place all refuse and recyclables in the receptacles provided by the Tenant in the Premises or in the receptacles (if any) provided by the Landlord for the Building, and shall otherwise keep the Lands and the Building and the sidewalks and driveways outside the Building free of all refuse.</p> <p>...e) The Landlord shall be entitled to refuse to collect refuse and recyclables if not properly sorted into the appropriate recyclable container, and the Landlord shall be entitled to charge the Tenant for any costs it incurs as a result of the Tenant’s failure to comply with the building recycling program.</p>

Purchasing	Model Language
<p>Example Clause A</p>	<p>BBA Green Lease Guidance</p> <p>Landlord/Tenant Shall:</p> <p>1) Protect purchase Energy Star or comparably efficient appliances for the building and/or unit.</p> <p>Landlord shall:</p> <p>1) Protect indoor air quality by using low-VOC paints and carpets and requiring office cleaners to use “green” and non-toxic cleaning products and providing appropriate plants in common areas.</p>
<p>Example Clause B</p>	<p>NYU Green Lease Guidance</p> <p>Landlord and Tenant shall comply with the following Environmentally Preferable Purchasing Policy when procuring furniture, fixtures, carpeting, materials, supplies appliances, and equipment to be brought into the Building and Premises, which requires that each use, when reasonably practical:</p> <ul style="list-style-type: none"> • Energy STAR-qualified office equipment, electronics, appliances including refrigerators • Products containing pre-consumers and post-consumer materials • Products containing rapidly renewal material • Products containing Forest Stewardship Council-certified wood, • Products harvested or processed, or extracted and processed within 500 miles of the Building • High-efficiency, low mercury-content lamps that maintain an overall average of less than 90 picograms of mercury per lumen hour of light output • Compact Fluorescent Lamps that comply with the National Electric Manufacturers Association • Low-or no VOC furniture, furnishing or composite wood products that contain no urea-formaldehyde • Low or no VOC paints, adhesives, solvents or other such materials meeting Green Seal Standard GS-11 or equivalent. The use of sprayed paint is prohibited • Salvaged, refurbished or reused materials, furniture

Data Sharing/ Reporting	Model Language
<p>Example Clause A</p>	<p>BBA Green Lease Guidance</p> <p>Landlord shall:</p> <p>Publish an annual report on Green Lease and sustainability measures. This shall include monthly measurements of building energy and water use, and shall include annual targets for those measures.</p> <p>Tenant shall:</p> <p>Give Landlord access to data on unit energy and water use for annual reports.</p>
<p>Example Clause B</p>	<p>NYU Green Lease Guidance</p> <p>Tenant shall deliver to Landlord the following data and documentation relating to the Premises and the Premises occupants upon Landlord’s request, but not more than once per year, such that Landlord may determine optimal Building operations, compliance with the Environmental Standards and for completion of an annual Environmental Performance Report. Landlord shall provide an annual Environmental Performance Report to Tenant, which shall include the following information regarding the Building’s performance:</p> <p>Annual Benchmarking for both building and leased premises shall include (building owner shall comply with NYC 2010 legislation requiring benchmarking of buildings of 50,000 square feet):</p> <ul style="list-style-type: none"> • Energy Consumption (including electrical, gas and other) using ENERGY STAR energy performance rating or other agreed upon system • Estimate of carbon and other greenhouse gas emissions • Water Consumption • Total gross waste generated by the Building, total gross waste sent to landfills or incineration facilities, total gross waste diverted from landfills or incineration facilities • Environmental Characteristics (landscaping, bike rack, shading) • Cost and Benefits Allocation of any shared sustainability related projects • Additional Funding Received

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Data Sharing/ Reporting	Model Language
<p>Example Clause C</p>	<p>Better Buildings Partnership (UK)</p> <p>The Landlord and the Tenant will share the Environmental Performance Data they hold relating to the Premises and/or the Building. This Environmental Performance Data will be shared on a regular basis [but not less frequently than monthly/quarterly/annually] with each other, with the Managing Agent and with any third party who the Landlord and the Tenant agree needs to receive such data. Save where they are under a statutory obligation of disclosure, the Landlord and the Tenant will keep confidential the Environmental Performance Data shared under this clause, and will only use such data for the purposes of:</p> <p>(a) Monitoring and improving the Environmental Performance of the Premises and/or the Building and/or</p> <p>(b) Measuring the Environmental Performance of the Premises and/or the Building against any agreed targets. The Landlord will procure that the Managing Agent is placed under a similar obligation to that set out in clause [] to keep any shared data confidential and to use it only for the purposes listed in that clause.</p> <p>Where the Landlord or Tenant discloses any shared data to a third party, they will procure that that third party is placed under a similar obligation to that set out in clause [] to keep any shared data confidential and to use it only for the purposes listed in that clause.</p>

Tenant Improvements	Model Language
<p>Example Clause A</p>	<p>NYU Green Lease Guidance</p> <p>Any and all Tenant Improvement Work and/or Alterations will be performed in accordance with Landlord’s sustainability practices that NYU has accepted as part of the lease agreement, including any agreed upon third-party rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time. Tenant further agrees to engage a qualified third party LEED or Green Globe Accredited Professional or similarly qualified professional during the design phase through implementation of any Tenant Improvement Work and/or Alterations to review all plans, material procurement, demolition, construction and waste management procedures to ensure they are in full conformance to Landlord’s sustainability practices, as aforesaid.</p>

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Tenant Improvements	Model Language
<p>Example Clause B</p>	<p>RealPAC Model Lease</p> <p>The Tenant agrees to conduct its operations in the Building and within the Premises in accordance with the following provisions:</p> <p>...ii) The Tenant shall ensure that all work done within the Premises by the Tenant or its representatives shall be undertaken in accordance herewith and with the Tenant Construction Manual. Notwithstanding the foregoing, the Tenant shall specify that all paints, sealants, and adhesives used or to be used within the Premises meet EcoLogo, Green Seal, South Coast Air Quality Management District regulations, MPI Green Performance Standards or equivalent so as to ensure no or low emissions of VOCs within the Building. Landlord may from time to time conduct tests to measure VOCs within the premises.</p>
<p>Example Clause C</p>	<p>Better Buildings Partnership (UK)</p> <p>Before making any alterations to the Premises or to the plant, equipment or services within and serving the Premises which alterations [may/will] adversely affect the Environmental Performance of and/or any EPC rating of the Premises and/or the Building the Tenant shall:</p> <p>(a) Provide sufficient information to the Landlord in writing and wait a reasonable period before commencing the works so as to enable the Landlord to assess the potential adverse effects of the proposed alterations.</p> <p>(b) Consider [and, where reasonable, implement] any [reasonable] suggestions which the Landlord makes to [avoid/minimize] any such potential adverse effects of the proposed alterations.</p>

Memorandums of Understanding

For ongoing leases, building owners can consider drafting a memorandum of understanding (MoU) with tenants to encourage further collaboration and establish important building considerations. A memorandum of understanding could be important to issue in advance of BERDO implementation. Lease clauses supporting agreed upon principles could be embedded during the lease renewal processes. Alternatively, building rules and regulations can also serve as a platform to formalize energy and sustainability priorities.

Key considerations for inclusion are:

- Utility data-sharing
- Forum for dialogue on building-wide sustainability priorities
- Waste and recycling policies, including electronic waste
- Sustainable grounds and building management
- Sustainable purchasing in common areas and tenant spaces
- Water conservation and water use
- Building operating hours and expectations

Setting expectations with tenants and making them more conscious of building-wide goals, is likely to increase acceptance of lease terms and encourage conservation-based behavior.

Green Leasing

An Effective Tenant/Landlord Strategy for Energy Efficiency

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