



# Green Leasing Overview

**Presentation for IGBG Meeting**

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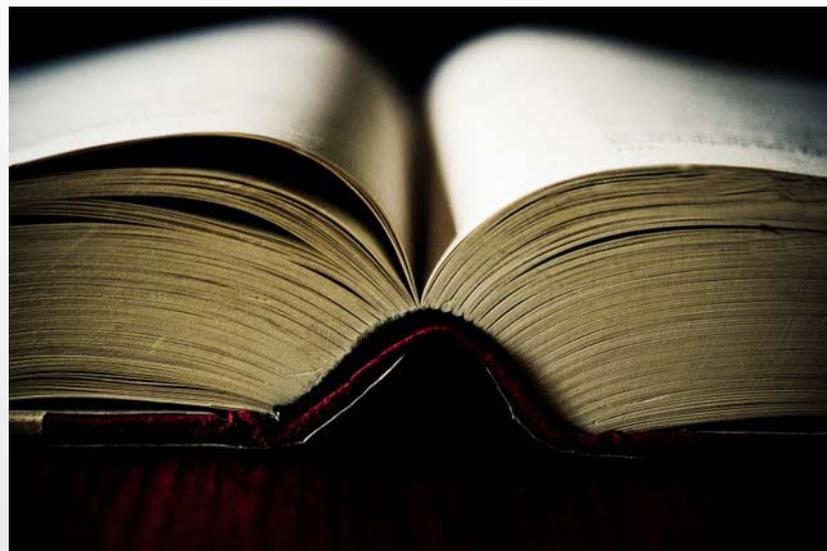
**Institute for Market Transformation**

October 13, 2011

## Basic Definition:

A lease in which landlord and tenant agree to include sustainability concepts, and assign costs and benefits of sustainability improvements.

The goal is to align “split incentive”.



*Courtesy of Flickr user: Bob AuBuchon*



# Why “Green” the Lease?

1. Standard commercial leases contain no language regarding sustainability issues.
2. Modified gross and net leases often divide who pays for efficiency improvement and who benefits.
3. 3<sup>rd</sup> party certification systems (LEED, Energy Star) contain requirements such as energy data reporting that should be addressed in the lease.
4. Federal, state, and local regulations increasingly require sustainability/efficiency measures and energy consumption reporting.

Can extend to most sections,  
but typically include:

- Building use
- Operating Expenses
- Maintenance & Repairs
- Alterations & Improvements
- Utilities & Services
- Insurance
- Assignment & Subletting
- Rules & Regulations
- Workletter

## **Dispute resolution for green clauses:**

- “Best Efforts”
- Mediation/Arbitration
- Standard default remedies

Example: What if tenant causes building to lose required 3<sup>rd</sup> party certification?

## **Case against enforceable language:**

Landlords and tenants typically try to avoid adding lease clauses that impose requirements, especially any that can lead to default.

- **Operations and Improvements**
  - All maintenance and repairs made according to sustainability plan
- **Assignment of Costs and Benefits**
  - Assign benefits of any carbon or tax credits related to building improvements
- **Energy and Data Issues**
  - Separate or sub-meter utilities where possible

# Sample Clauses

(b) Capital Improvements.

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:

(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):

A. The costs of such Capital Improvement shall be deemed reduced by the amount of any NYSERDA or similar government 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.

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.

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%)<sup>1</sup> 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%)<sup>2</sup> 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).

## PlaNYC / REBNY clause:

Landlord may pass through 80% of projected savings annually until improvement is paid off.

Landlord recovers cost quickly, tenant nets additional savings after payback.

Meant for use with sub or separately metered spaces.

## NRDC Energy Efficiency Lease Guidance

- 1.3 Landlord should perform a Retro-commissioning Study of Base Building systems that consume energy or water every \_\_\_\_ years. The Retro-commissioning study should identify improvements of three types:
- No cost improvements: improvements that require a change in practice or redeployment of existing resources such that neither Landlord nor Tenant incur additional out-of-pocket expenditure;
  - System recalibration: system adjustments that may require modest out-of-pocket expenditure by Landlord or Tenant rather than substantial new installations;
  - System upgrades: new installations that may have significant associated expenses.
- 1.5 All installations of resource-consuming equipment or systems in the Base Building and in Tenant space should meet \_\_\_\_ standard whether they are installed by Tenant or Landlord. This provision should apply to fit-out of new space as well as replacements in currently leased space.
- 3.6 Tenant should annually report to Landlord any electric, gas, steam or water usage in Tenant space that is directly metered by the distributor of the commodity, i.e. that does not flow through Landlord's meter.

- In response to EISA 2007 and E.O. 13423
- GSA must lease Energy Star buildings (with exclusions)
- Regular updates to sustainability requirements
- Full service leases with T.I. built into base rent

# Obstacles To Green Leasing In The Marketplace

- Energy efficiency concepts and benefits not well understood by all four stakeholder groups (Landlords, Tenants, Brokers, Lawyers).
- Even among landlords/tenants with sustainability goals, knowledge is not filtering down to those responsible for leasing efforts.
- When green clauses are inserted into lease, lawyers negotiate out key points and slow down the process.



*Photo courtesy of Flickr user: Michael W. May*

[www.imt.org/green-leasing](http://www.imt.org/green-leasing)

Have links up for most publicly available green lease forms

Most widely used forms include:

BOMA model lease

RealPAC office lease

Model Green Lease (Alan Whitson)