

THE HIGH PERFORMANCE PORTFOLIO:

10 GOALS FOR GREEN LEASING



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Bottom line thinking on energy.

SUMMARY

As more and more building owners, managers and tenants begin incorporating environmental stewardship and sustainability into their real estate operations, the concept of “green leasing” continues to move into the mainstream. Green leasing is a natural extension of the green building movement, which seeks to provide healthy, resource-friendly buildings that are operated efficiently with regards to energy and water use as well as waste disposal.

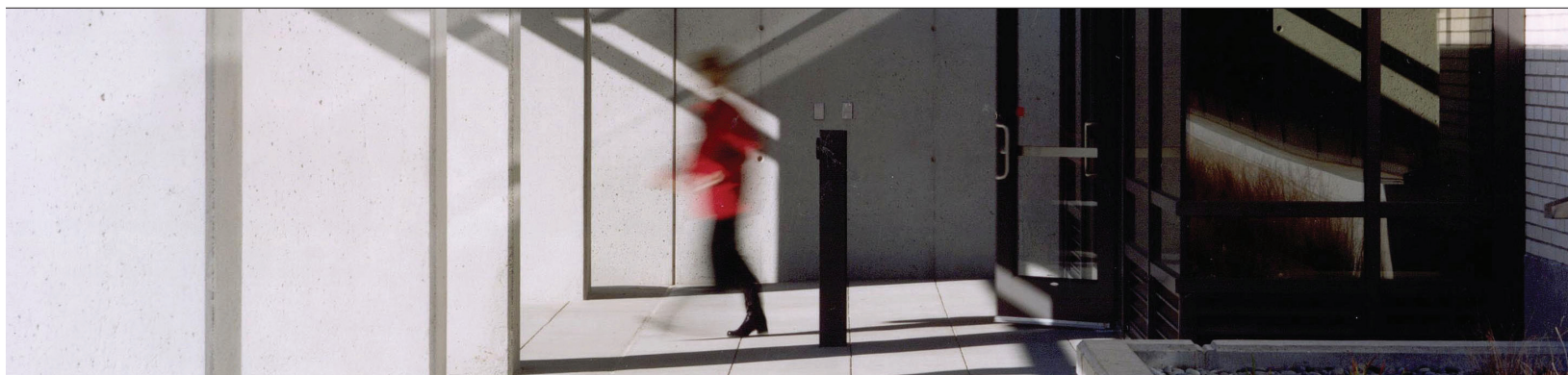
In many cases, raising environmental performance levels can be more challenging for a landlord than for an occupant. The landlord must reach consensus with its tenants not only on which green initiatives to pursue, but also on who will bear the cost of doing so – now and for the duration of each lease.

Green leasing is a way to formalize this consensus within the context of a normal lease process, placing additional boundaries and rules guiding how the sustainability efforts of the building are pursued, managed, and measured. Whether utilizing a standard green lease template, or designing a brand new process, the following list details 10 goals that can guide the use of leases to enable sustainability efforts.

GOAL#1: CLARIFY THE RATIONALE FOR SUSTAINABILITY

Why exactly is building ownership pursuing environmental initiatives? It may be a simple question, but modifying and changing lease practices without a clear vision of the business case for sustainability will confuse tenants, and potentially disrupt business relationships. Are the owners pursuing sustainability for personal environmental reasons? Cost savings? Building marketability? Risk management? All of the above?

Because green leasing formalizes the meaning of sustainability between the owner and tenants, the process should begin with a transparent understanding of why this is good for both parties. The logic of sustainability may not be explicitly stated in the lease itself, but it should be defined and communicated prior to any modifications to the leasing process. Additionally, a clear sustainability vision allows for better definition of the scope of the sustainability program, key metrics, and monitoring and enforcement protocols.



GOAL #2: REACH CONSENSUS FROM ALL STAKEHOLDERS

Many parties contribute to the success of sustainability in commercial buildings – owners, asset managers, property management teams, brokers and tenants all play vital roles. All parties must work together to define expectations, balancing the ideal with the practical and incorporating the flexibility needed to cope with difficult leasing and capital markets. Even though a general vision for sustainability may exist, the leasing process can promote further buy-in and participation by stakeholders, and act as a touchstone for all parties. Of course, as the number of tenants involved in this consensus-building exercise grows, so does the need for high-quality and truly bilateral communications between landlord and tenants.

Think ahead. What will happen if you or one of your tenants misses a target after having advertised it to the building's lender, brokers, or other tenants? There are financial implications in performance levels of the building – in terms of cost savings or even appraised value. If consensus is not reached regarding the sustainability efforts of the property and one or more parties does not fully embrace the initiative, this could potentially damage other parties' financial expectations or reputations when performance levels are not met. Thus, it's particularly important to obtain consensus regarding which of the building's green policies, requirements and attributes will be made public, and what should happen if the building's green performance falls short of expectations.

GOAL #3: DEFINE THE BOUNDARIES OF THE SUSTAINABILITY PROGRAM

The ideal green leasing approach is ambitious enough to satisfy the sustainability vision of landlord and tenants without being so aggressive that it becomes a barrier to leasing space. A green lease should be a framework for achieving the goals the landlord and tenants share on these issues, rather than an overly strict document that could become a barrier to tenant attraction and retention. As sustainability increases in importance in markets across the country, expect to see landlords and tenants alike opting for broader and deeper manifestations of green in the spaces that they own or occupy.

Some landlords take a comprehensive view – the full complement of energy- and water-sensitive design and operating practices; environmentally preferred products and services; high standards for ventilation, air quality, natural light and noise mitigation; integrated waste management practices and more. It may make sense to target a subset of these initiatives, focusing on the ones that are the most practical or cost-effective to implement in your building. A careful assessment of your local market's present and future demand for green attributes will help inform your own sustainability program.

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The next issue to address is how significantly you hope to influence your tenants' behavior. Will you set green standards for fit-out materials, energy consumption, waste disposal, etc.? And if you do, how strictly will you enforce them? Some landlords simply provide green interior and exterior common areas and then encourage their tenants to make environmentally appropriate decisions as they select their own fit-out materials, office equipment and the like. Other landlords use lease language (and perhaps supporting appendices) to outline a broad range of environmentally friendly building practices and then give their front-line staff the information and authority needed to support and enforce them.

GOAL #4: MOVE THE LEASES TOWARD COMMON GROUND

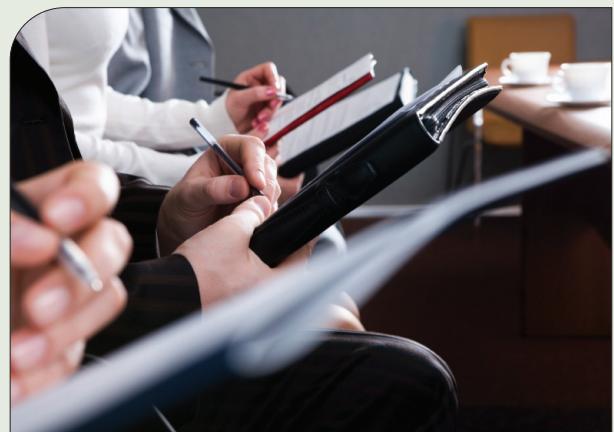
The concept of green leasing can be applied to either existing or new buildings, with established tenants (and leases) that have been in place for years or in expectation of tenants yet to come. In either setting, it helps to begin with an entirely new lease template – adding green components or making amendments to an existing lease document can prove cumbersome and limit your flexibility. If circumstances make wholesale updating of existing tenant leases impractical, a phased approach may be required. Each current tenant should be surveyed regarding its interest in specific sustainability initiatives, and provisions added to each existing lease with that tenant's input and consent.

In both existing and new buildings, each lease's green clauses should be evaluated in the context of all other leases in the building. Any lease that imposes requirements on building square footage or activities that take place outside that tenant's own space should be evaluated carefully prior to signing. In some situations, one tenant's lease may contradict or prohibit the sustainability goals of another tenant. Identifying and actively managing these conflicts - and striving for consistency in lease language wherever possible - can help prevent friction or disappointments among the building's occupants.

GOAL #5: ASSEMBLE A GREEN DOCUMENT SET

The term "green lease" is a bit of a misnomer. It implies that a single document can address each and every one of the following topics effectively:

- The landlord and tenant's intentions and goals in the area of sustainability
- How those goals will be implemented at tenant fit-out and throughout the course of the lease
- Mechanisms for setting and tracking sustainability metrics over time
- Dispute resolution protocols
- Remedies in the case of non-compliance
- Useful resources and links for more information on specific topics



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In reality, the decision-making dynamics of landlord/tenant settings make it unrealistic to assume that any single green lease or green lease addendum can cover all these bases, especially when you consider how much of a building's sustainability profile is determined by the day-to-day decisions that tenants make equipping and conducting their own operations.

A much better approach is supplementing the lease itself with the following exhibits or appendices. These materials are similar to the "Building Rules and Regulations" document that is typically drafted by building management rather than the real estate attorneys:

- Guidelines for materials and procedures related to tenant fit-outs
- A tenant primer that extends the concept of green to office equipment, recycling, travel and day-to-day practices (e.g., the proper use of operable windows in air-conditioned spaces)
- Procurement guidelines that reinforce the building's goals of resource-efficiency, indoor air quality, etc.

This integrated set of materials provides greater detail than any single document could. Moreover, this approach distinguishes items that are within the landlord's control and enforceable under the terms of the lease (e.g., requiring the installation of motion sensors to control lighting) from ones that may be just as important to the building's sustainability profile but depend on the tenant's voluntary compliance (e.g., enabling power-saving settings on all office equipment or using window shades to reduce cooling loads).

GOAL #6: QUANTIFY REQUIREMENTS AND SET ENFORCEMENT PROTOCOLS

A green lease should facilitate the achievement of mutually agreed upon levels of sustainability. While certain requirements can be described qualitatively (e.g., when banning incandescent lamps or mandating the composting of food waste), goals should be specific and quantifiable wherever appropriate. Both landlord and tenant need to understand what a good job looks like, how their respective performances will be tracked, and how failures to meet standards will be identified and remedied. If either party utilizes a leasing broker to represent its interests, that broker must be knowledgeable enough about green leasing principles to make them part of the lease negotiation.

Before obligating either party to any green standard, practice or reporting protocol, be sure it is both attainable and cost-effective. Remember that a lease is a legal document. You'll need to decide whether the lease will contain green provisions that bind both the landlord and tenant. Who will be responsible for what? Who will have audit rights, and will those audits be conducted by an authoritative and unbiased third-party? What will constitute a default of the lease? And will there be multiple definitions of default, cure periods, remedies and dispute resolution processes – perhaps one set for violating a green provision and a more onerous set for breaching other more conventional lease terms?

GOAL #7: INCORPORATE INCENTIVES FOR COLLABORATION

The ideal green leasing arrangement is one where the landlord forms a collaborative rather than a paternalistic relationship with its tenants. Clearly delineated mutual goals and transparency in reporting are two key elements of this collaboration. And make sure your lease form defines “who pays for” and “who benefits from” greening investments where appropriate. You don't want split incentives to stymie the implementation of an otherwise well conceived sustainability program.

Mechanisms that facilitate the sharing of best practices and recognition for a job well done are also important, especially given that many green behaviors occur within the tenants' space and cannot be governed by the building's lease form. Adhering to recycling protocols, turning off unnecessary lighting, and encouraging environmentally friendly commuting options for employees are just a few examples of how tenants can favorably influence a building's overall environmental impact.

GOAL #8: ESTABLISH A COMMITMENT TO MANAGE THROUGH MEASUREMENT

Ambiguous terms, such as “best practices,” “first-class operations,” “industry standard,” “commercially available” and “reasonable landlord” are not useful in leasing. Both landlord and tenant must understand and agree on realistic, quantitative targets for all metrics worth measuring, such as resource efficiency, waste minimization, and indoor air quality. Objectively measuring progress -- quantitatively where appropriate -- helps keep all parties working together to reach their shared sustainability goals. It also makes it easier to meet the reporting obligations of whatever rating systems are embraced by the building.

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Reporting is critical to the success of any green program. Your green leases should delineate the type of reporting that you intend to request and provide. Establish upfront which data sets will be exchanged, at what frequency and at what cost, in order to satisfy the reporting needs of the landlord or any tenant. Keep in mind that some tenants could have sustainability reporting

requirements that are more rigorous than your own. Each party needs to understand what level of reporting will be required – and agree to allocate the dollars and human capital needed to deliver data in a timely fashion.

Considering that the relentless pursuit of energy efficiency is perhaps the most significant step that a commercial building can take on its path to sustainability, any green lease should include a clause that requires the cooperation of landlord and tenants in benchmarking the building's energy performance with EPA's ENERGY STAR Portfolio Manager tool. The simple step of updating energy use, occupant and personal computer counts, operating hours, etc. on a monthly basis will yield an independent and reliable view of the building's ongoing energy performance.

GOAL #9: DEFINE THE CERTIFICATION STRATEGY AND FREQUENCY

Once you decide to pursue a sustainability program for your building, you need to investigate whether you (and/or your tenants) are willing to invest the time and money necessary to secure third-party validation of its sustainability. The US Green Building Council's Leadership in Energy and Environmental Design® (LEED®) has numerous systems that can apply to a single tenant space (LEED CI), a building envelope (LEED CS) or an existing building's operations (LEED EBOM). Other widely recognized systems include the Green Building Initiative's Green Globes®, and the US Environmental Protection Agency's ENERGY STAR® program. The decision to pursue one or more environmental or energy performance certifications should be made in context of a building's specific goals, as well as local market preferences and regulations.

The costs vary for each of these certifications, as does the level of rigor in the verification that the standards have been met. Using LEED or Green Globes requires the payment of one or more fees. Using EPA's online benchmarking tool is free; however, if your building qualifies to receive the ENERGY STAR label, actually obtaining that label would require the services of a professional engineer. If significant costs are to be incurred for certification, these should be included in cost allocation clauses in the leases, defining the extent to which landlords and/or tenants will fund the fees.

Lastly, you need to decide if you're simply seeking a one-time certification or are willing to commit to tracking and certifying your building's performance over the long term. The latter choice should not be made casually – you'll need to stay up-to-date as green standards and rating systems evolve. You'll also need to budget the human and financial capital necessary to maintain (or perhaps improve) your building's standing over time.

GOAL #10: ESTABLISH THE ALLOCATION OF GREENING EXPENSES

Retrofits that enhance the building's energy efficiency; engineering and other assessments related to various building certifications; and, higher insurance premiums that entitle you to have damaged portions of your building rebuilt to green standards (and recertified as such) are just a few examples of the cost of greening a building. A green lease should clearly reference these expenses and describe how they will be allocated between landlord and tenant. Some tenants may insist on setting a limit on the amount of green expenses that they will be asked to shoulder in any given year.

THE BOTTOM LINE:

- Establishing consensus between landlord and tenants on how a particular building's configuration and operation should support sustainability is the first step toward a successful green leasing agenda.
- The ideal green leasing document set not only delineates sustainability goals but also describes specific landlord and tenant behaviors that support them.
- Declaring a commitment to manage through measurement is vital to any successful green leasing agenda. Quantitative metrics and sensible reporting protocols allow all parties to track their progress toward sustainability and make adjustments when necessary.

USEFUL LINKS:

The High Performance Portfolio
www.betterbricks.com/office/framework

Energy Transparency and Reporting
www.betterbricks.com/office/briefs

Leasing & Energy: Allocations
www.betterbricks.com/office/briefs

BOMA Green Lease Guide
www.boma.org/news/pressroom/Pages/presso62208-3.aspx

California Sustainability Alliance Green Lease Toolkit
http://sustainca.org/green_leases_toolkit



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