

Building Momentum for Green Leases

They Make Good Sense for Landlords and Tenants Alike

BY DENNIS G. EGAN JR.

By now, most people are familiar with the term 'going green' and the concept of green building, but many people may not be familiar with green leasing.

While there is, as yet, no working definition of the term, green leasing generally integrates concepts such as recycling, sustainable-development principles, energy and water conservation, alternative-energy usage, and hazardous materials (usually cleaning materials) use and disposal, with the standard leasing language involving operating expenses, rent structure, and tenant build-out costs.

Most green leases include provisions for the reduction of energy usage through such simple measures as energy-efficient fixtures and equipment, turning off lights, motion sensors, and increased rent for 'after-hours' business operations. These leases also contain clauses requiring recycling programs, sustainable buildout materials, air-quality standards, and reduced water usage.

Just as green leasing lacks a standard definition, there is also no single certification given to identify a lease as a 'green' lease. Instead, there are a number of different certifications that can be attained by builders, developers, and landlords seeking to label leases as green leases. For example, some seek certification pursuant to the Leadership in Environment and Energy Design (LEED) standards set forth by the U.S. Green Building Council, which awards points based on building specifications. In the case of existing buildings, LEED certification for commercial interiors (LEED-CI) is often sought. LEED-CI awards points (a) if the lease is for a term of 10 years or more; (b) if the leased space is located in a LEED-certified building; and (c) if the leased space is located in a building that contains certain green equipment, including but not limited to water- and energy-conservation fixtures.

Another certification sought is Energy Star for commercial buildings, which is a gov-

ernment program administered by the U.S. Environmental Protection Agency and the U.S. Department of Energy. Energy Star's goal is to reduce the use of energy through the use of energy-efficient practices and products. Energy Star also uses a points-based system that awards points on a scale of 1 to 100. Buildings that receive a score of 75 or more receive the Energy Star rating.



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So, it's logical to conclude that green leasing equates to increased construction and operating costs. While there are without doubt costs associated with green leasing that are not found in traditional leases, if crafted properly, green leases can actually result in an overall increase in net operating income through the inclusion of requirements affecting the use of energy, regardless of prevailing energy prices.

In the context of a net lease arrangement, this can be accomplished through the inclusion of green-building capital expenditures, repairs, and maintenance in the definition of common-area maintenance (CAM) and/or operating expenses. In a gross-lease context, this can be accomplished through the adoption of green rules and regulations that require all tenants to adopt green standards, thereby eliminating the possibility that tenants who have adopted green practices, and therefore incurred such associated costs, are paying a pro-rata share of energy expenses with tenants who have not adopted such practices, and are therefore responsible for a dis-

proportionately large percentage of overall energy consumption.

In addition, more and more companies and government entities are now demanding green lease space. For example, in 2007, the Energy Independence and Security Act of 2007 (EISA) was enacted, which set forth goals and standards for the reduction of energy use in federal buildings (including all

buildings in which the federal government leases space), including the use of energy-efficient lighting fixtures and bulbs and a prohibition against federal agencies leasing space in buildings that do not earn an Energy Star label. As such, landlords who seek federal government tenants will be forced to attain Energy Star certification.

Additionally, many companies have enacted sustainability statements that, in addition to other provisions, require that leases entered into by the company contain at least some green language. These mandates,

along with a growing and continuing trend toward green building and green initiatives in general, are beginning to force landlords and tenants to rethink lease arrangements in order to meet the goals of both parties.

While green leasing is a relatively new concept, the number of green buildings being built, and the number of companies and government agencies requiring green leases, continue to increase. As with most new concepts, those who lay the groundwork now for preparing and/or negotiating green leases will be well-positioned when this new concept becomes an accepted reality. This positioning requires both landlords and tenants to reconsider the approach the other takes when negotiating lease arrangements. ■

Dennis G. Egan Jr. is an associate with the regional law firm Bacon Wilson, P.C., who specializes in business and corporate law; (413) 781-0560; degan@baconwilson.com