This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute (2019)) (LPDD). For background information on the project, see https://lpdd.org.

Model State Legislation: Green Commercial Lease Provisions[1]

Model Green Lease Provisions

Section 1. Purpose and Intent

(a) The purpose of this statute is to develop recommended Green Lease provisions to assist commercial landlords, tenants, and other parties-in-interest in drafting provisions that comply with state and local Green Building Code requirements and support energy efficiency and sustainability in the commercial building sector. This law also promotes environmental justice by incorporating provisions that support occupant health and well-being and reduce energy costs.

(b) The model provisions herein are intended to affect leases of commercial buildings that are at least [for example, 25,000, using New York Local Law 97 parameters] square feet or more.

(c) The provisions are recommended as voluntary to assist with compliance, energy, water efficiency, and sustainability objectives, and not to regulate commercial leases or local municipalities.

Section 2. Definitions

For the purpose of this Act, the following terms have the following meanings unless otherwise provided therein:

(a) "Embodied Carbon" means carbon emissions associated with the whole lifecycle of a building, including the material extraction, transport to site or sites if manufacturing occurs in multiple locations (but excluding transport to end of life), manufacture, construction, and use of material, and excluding operational carbon.[2]

(b) "Green Building Code" means any state or local building code(s) aimed at reducing GWP, GHG, or Embodied Carbon in buildings, or that otherwise is aimed at achieving Net-Zero, and all related or applicable laws and regulations.

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[1] This model state legislation was prepared by Jessica M. Simon, Ballard Spahr, LLP (2024), serving as a pro bono volunteer for LPDD.

[2] World Green Building Council, *Bringing Embodied Carbon Upfront (2019)*, PDF of *Coordinated action for the building and construction sector to tackle embodied carbon*, p.5, (World Green Building Council & Ramboll 2019), available at https://worldgbc.org/advancing-net-zero/embodied-carbon/ (last visited February 7, 2024) (definition modeled after definition of embodied carbon provided herein).

(c) “Green Building Initiative” means the “international nonprofit organization and American National Standards Institute (ANSI) Accredited Standards Developer dedicated to improving the built environment’s impact on climate and society,” founded in 2004 and the global provider of Green Globes and federal Guiding Principles Compliance building certification and assessment programs.[3]

(d) “Green Globes” means a certification program for sustainable operation and management of travel & tourism worldwide.[4]

(e) “GHG” means greenhouse gas emissions.

(f) “Green Lease” means a legal agreement between owner/landlord and tenant outlining the obligations each party has or will undertake under the lease to promote energy and water efficiency and sustainability objectives.[5]

(g) “Green Lease Leaders” means the three year recognition program for landlords, tenants, and teams who integrate green leasing into their standard practices.[6]

(h) “GWP” means global warming potential.

(i) “HVAC” means heating, ventilation, and air conditioning.

(j) “Landlord Sustainability Practices” means those practices [set forth on Exhibit [A] to the Lease][7] designed to reduce GWP, GHG, and/or Embodied Carbon in a building, including compliance with any Third-Party Rating Systems or Sustainable Practice Guidelines.

(k) “LED” means a light-emitting diode.

(l) “LEED” means Leadership in Energy and Environmental Design, which is a certification program that provides a framework for healthy, efficient, and cost-saving green buildings.[8]

(m) “Operating Expense” means [insert typical lease language], including any expense associated with increasing energy efficiency and/or reducing GWP or GHG at the Building

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[3] *See About Green Building Initiative*, at https://thegbi.org/ (last visited July 26, 2024).
[4] *See* Green Globes, at https://www.greenglobe.com/ (last visited February 7, 2024) (definition provided by description of Green Globes).
[5] Law Insider, *Green lease* definition, at https://www.lawinsider.com/dictionary/green-lease (last visited February 7, 2024) (providing the definition used herein).
[6] Green Lease Leaders, *Green Lease Leaders program overview*, at https://www.greenleaseleaders.com/green-leasing/ (last visited January 19, 2024) (providing the definition used herein).
[7] Example Landlord Sustainability Practices are set forth on Exhibit A hereto.
[8] USGBC, LEED rating system, *LEED-certified green buildings are better buildings*, at https://www.usgbc.org/leed (last visited February 7, 2024) (modeled after the description of the program providing that “LEED certification provides a framework for healthy, highly efficient, and cost-saving green buildings, which offer environmental, social and governance benefits”).

as set forth herein, including installation, maintenance, monitoring, and reporting, complying with rating systems and certifications, insurance endorsements applicable to green buildings,[9] and any related expenses.

(n) "Sustainable Practice Guidelines" means any guidelines, programs, instructions, standards, rules or regulations that govern sustainable practices in commercial buildings.

(o) "Tenant Improvement Work" means [insert language], including any build-outs or leasehold improvements, conducted either by Landlord or Tenant in compliance with the terms set forth in the Lease and Landlord Sustainability Practices, applicable Green Building Code requirements, and any other law or regulations aimed at reducing GWP, GHG, Embodied Carbon, or related Net-Zero goals.

(p) "Third Party Rating Systems" means LEED, Green Lease Leaders, or Green Globes, or any other third party ratings systems or certifications related to sustainable practices in commercial buildings, as may be modified from time to time.

(q) "Permitted Use" means [insert the permitted use], and Tenant (or any assignee or sublessee) shall use or operate at the Premises in compliance with Landlord Sustainability Practices, applicable Green Building Code requirements, and any other law or regulation aimed at reducing GWP, GHG, Embodied Carbon, or related Net-Zero goals, and shall not alter, impair, or otherwise harm the Building's [Third Party Rating Systems].

(r) "Net-Zero" means a reduction of GHG to as close to zero as possible, with a particular emphasis in Green Lease provisions on reduction of carbon emissions for commercial buildings.

(s) "USGBC" means the U.S. Green Building Council, which is a "non-profit organization dedicated to supporting prosperous, healthy and resilient communities" and the developer of LEED.[10]

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[9] *See* BOMA, *Green Lease Guide: A Guide for Landlords and Tenants to Collaborate on Energy Efficiency and Sustainable Practices*, p. 19, at https://www.boma.org/GreenLeaseGuide (listing as Annual Operating Charges: "insurance endorsements applicable to green buildings, including (without limitation) coverage in order to repair, restore, replace and re-commission the Building for certification or recertification in accordance with standards applicable to the U.S. Environmental Protection Agency's ENERGY STAR rating, the Green Building Initiative's Green Globes for Continual Improvement of Existing Buildings (Green GlobesTM CIEB), the USGBC's then-current version of the LEED Green Building Rating System, the Building Owners and Managers Association (BOMA) International's 360 Performance Program or the Building Owners and Managers Association of Canada's Building Environmental Standards ("BOMA BESt") or any comparable rating, certification or performance program now or hereafter in existence (collectively, "Third Party Sustainability Standards") (without hereby obligating Landlord to seek such certification) or support achieving energy and carbon reduction targets") (last visited February 5, 2024).

[10] *See* USGBC, *Mission and Vision*, at https://www.usgbc.org/about/mission-vision (last visited July 31, 2024); *see also USGBC, Green Building Leadership*, at https://www.usgbc.org/ ("LEED is the world's most widely used green building program, created by USGBC as a leadership standard defining best practices for healthy, high-performing green buildings.") (last visited July 31, 2024).

Section 3. Model Provisions.

Section 3.1. Pass-Through Clause for Energy Efficiency and Potable Water Reduction.

a. "Landlord may include certain capital improvement costs intended to improve energy efficiency and potable water reduction as an Operating Expense. In any one year, the amount of capital improvement costs that Landlord may pass on to Tenant shall not exceed the prorated capital improvement costs based on the expected lifecycle of that improvement, and shall not exceed [80%] of the amount of anticipated operating expenses that Tenant saves by that improvement. Interest for such capital improvement costs can be included. Any capital improvement costs shall be reduced by any state or federal incentive programs, including but not limited to government, utility, or tax-credits for the time that a Tenant was obligated for the same. All capital improvement costs passed through to Tenant shall cease at the end of the lifecycle of that improvement."[11]

b. "Such costs of improvements may include, but are not limited to:

1. Providing, installing, modifying, upgrading, and replacing energy and water conservation equipment and systems, including by way of example, but not limited to, HVAC, mechanical systems, windows, insulation, LED lighting, solar and other systems, onsite non-potable water reuse and/or use of gray water, and life safety and emergency response systems, submetering costs, telecommunications and broadband systems and equipment;

2. Making alterations, additions, or replacements to the Building intended to reduce operating costs, utility consumption (including without limitation energy and water usage), and/or greenhouse gas emissions, improve the operation of the building and systems, facilities and equipment serving the building, or maintaining their operations."[12]

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[11] Modeled after, with modifications to, provisions in the Institute for Market Transformation ("IMT"), *Green Lease Language Examples* (January 2020), *Pass-through Clauses: Operating Expenses vs. Capital Expenses,* p. 5, at https://www.imt.org/resources/green-lease-language-examples/ (last visited February 9, 2024) (modification to the *Landlord language*, source "GSA," which provides "Landlord may include the costs of certain capital improvements [intended to] [that] improve energy efficiency in operating expenses. The amount passed through by Landlord to Tenant in any one year shall not exceed the prorated capital cost of that improvement over the expected life cycle term of that improvement [and shall not exceed in any year the amount of operating expenses actually saved by that improvement]. Interest/the cost of capital can be included.").

[12] *See Green Lease Language Examples, Pass-through Clauses: Operating Expenses vs. Capital Expenses,* p. 7 *supra* n. 11 (modification to the *Landlord language*, source "A Better City," which provides "Costs of: (i) 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. (ii) Making Alterations, replacements or additions to the Building intended to reduce operating costs, utility consumption,

Comments:

- By simple illustration, if the cost of the capital improvement is $100,000.00, and the expected lifecycle of the improvement is 10-years, then Landlord could pass $10,000.00 annually or $833.33 per month to its Tenant. If anticipated annual energy savings are $15,000.00, then Landlord would not be exceeding 80% of operating expense savings ($12,000.00) and the entire $10,000.00 could be passed through to Tenant. If the anticipated annual energy savings are $12,000.00 (or under), Landlord would be capped at 80% of those energy savings to pass-through, for example, $9,600 (80% of $12,000.00) or $800 per month. This ensures that Landlord receives reimbursement for all or the majority of the capital improvement costs, incentivizing the Landlord to make the capital improvements where it otherwise may have little incentive absent the cost-sharing. In addition, this would improve the Building and saving energy costs to the Landlord during times when the Building remains unoccupied or in cases of a gross lease. (Decreasing energy use also may assist with compliance of applicable Green Building Codes.) This also ensures that the Tenant's annual energy cost savings will exceed the amount of the pass-through payments by at least 20% to provide a financial benefit to the Tenant.
- The foregoing amounts in this simple illustration do not include other costs such as interest, or offsets through state or federal incentive programs, which would require additional consideration when negotiating this provision.
- Each lease should be considered and negotiated separately based on a variety of considerations, including among other things the lifecycle of the improvement, anticipated energy and/or water savings during that lifecycle, Green Building Code requirements, the type of lease (triple net or gross), state or federal incentive programs, and benefits to each party, and a party's leverage in the transaction.

Section 3.2. Pass-Through Clause for Construction and Build-Outs.

"Landlord may include certain capital improvement costs as a component of Rent from the construction, build-out, alteration, addition, or replacement of or to the Building, amortized over the expected lifecycle of the capital improvement using generally accepted accounting principles (GAAP), or a successor or equivalent, and prorated for each operating year,[13] including but not limited to costs of any environmental product declarations, whole building life cycle assessments, or reuse of any structural components including labor costs. Tenant accepts such costs as part of and as a material term to the Agreement."

Section 3.3. Operations & Utilities.

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and/or greenhouse gas emissions, improve the operation of the building and the systems, facilities and equipment serving the building, or maintain their operation.").

[13] *See* BOMA, *Green Lease Guide,* Annual Operating Charges, Section 4.2, pp. 19-20 *supra* n. 9 (including under Annual Operating Charges amortization over the useful life of the capital improvement in accordance with GAAP principles, attributing portions to an Operating Year, and including a discussion in fn. 92 about inclusion of such capital improvement language, with a common compromise to charge only for capital costs required to comply with laws).

a. “Landlord shall provide Building services and utilities required by this Lease during the specified business hours of operations, except that Landlord shall have the discretion and control to reduce, limit, or turn off those Building services and utilities if the Premises remains unoccupied for [insert a mutually agreed upon number of days] days as a result of a mandatory shut-down by any state, county, municipality, governing authority, department, commission, agency or board, or upon written consent by the Tenant which shall not be unreasonably withheld. Once the Premises is reoccupied, Landlord shall provide all Building services and utilities in accordance with terms of the Lease and local law.”[14]

b. “During [normal business hours], if Landlord is required to provide heating, ventilation and air conditioning (HVAC), it [should/shall] be provided 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, and meet or exceed applicable [codes and Design Guidelines].”[15]

c. “Tenant shall comply with Landlord Sustainability Practices, and use best efforts to help meet Building-wide energy and water use reduction goals and minimize non-utilized electricity, water, heating, and air conditioning, including installing programmable thermostats to limit heating and cooling and use of window shades and curtains to keep out summer heat and keep in winter warmth.”[16]

Section 3.4. Metering & Data Sharing.

a. “At Landlord’s option, Landlord may install a direct meter/submeter/smart meter or check meterto service the Premises to measure the consumption of electricity, water, gas, steam or other utility in the Premises. If installation is made, Landlord shall have access to the Premises as is reasonably necessary to accomplish such installation. Landlord may include any costs of any meter installation as an Operating Expense. If such a meter is installed, Tenant shall pay for the consumption shown on the meter plus any fee applicable to reading the meter, either directly to

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[14] This clause is intended to address the September 2020 Johnson Controls study, as cited and set forth in the associated memorandum, that found that, even when building occupancy fell to historic lows in 2020 (as much as 95%) as a result of the COVID-19 pandemic, “building energy use dropped by just 10% to 20%.” Citations to the study may be found in the accompanying memorandum.

[15] *See Green Lease Language Examples, HVAC, Temperature Setting & Use of Stand Alone Energy Intensive Equipment*, p. 8, *supra* n. 11 (this language modifies the language provided under HVAC, *landlord language*, source “A Better City,” in terms of providing room for discretion (“should/shall” instead of just “will”) and to recognize situations where a landlord does not provide HVAC). The original language provides: “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 [codes and Design Guidelines].” *Id.*

[16] *Id.* at p. 8 (this language is a modification to the *Tenant language*, source “A Better City,” which provides “Tenant shall: 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.”)

the third-party utility provider in the case of a direct meter or to Landlord in the case of a submeter or check meter, and Tenant shall report to Landlord, upon request, Tenant's usage as measured by the meter. Tenant shall cooperate with any reporting requirements or Landlord requests for any energy, water, gas, steam or other utility metering usage information, and provide such information to Landlord, including, without limitation, providing Landlord with any such information within fourteen (14) days after Landlord's request therefor. If such a meter is installed, Tenant shall thereafter not be charged as an Operating Expense for any other tenant's use of that utility from other tenant's premises, but shall still be charged for its pro rata share for the consumption of that utility in any part of the Building that is not leased to another tenant."[17]

b. "Landlord and Tenant shall share any environmental performance data, or data related to the consumption of electricity, water, gas, steam or other utility relating to the Premises. Tenant shall share data with Landlord when requested by Landlord and/or with any third party identified by Landlord (which may include, without limitation, to a third-party rating agency). Except for a statutory or legal obligation of disclosure, Landlord and Tenant shall keep any such data confidential, and will only use such data for the purposes of:

1. Monitoring and improving the environmental performance or sustainability of the Premises and/or the Building; and/or
2. Measuring the environmental performance or sustainability of the Premises and/or the Building against any agreed targets.

c. The confidentiality provisions shall apply to any of Landlord's agents or property managers, and Landlord shall take reasonable efforts to ensure their compliance with the same. If any data is shared with a third party, unless statutorily or legally obligated to share, the party responsible for sharing that information likewise shall take reasonable efforts to ensure that the

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[17] This language is a combination of language provided in *Green Lease Language Examples*, *Submetering, Energy Consumption*, p. 15, *supra* n. 11 (modification to *Landlord language*, source "GSA"); BOMA, *Green Lease Guide, Sustainability*, Section 15.2(c), pp. 60-61 *supra* n. 9. The original language in IMT's *Green Lease Language Examples, Submetering, Energy Consumption* provides: "Landlord shall install an electric meter/submeters to service the leased premises to measure the consumption of electricity in the leased premises. Where Tenant does not occupy the entire building or an entire floor, the partial floor or leased premises shall be separately metered." The original language in BOMA's *Green Lease Guide* provides: "Landlord may, at any time, install separate metering for the Premises or for any specific use within the Premises (including, without limitation, Tenant's datacenter, server rooms, or other information technology equipment) for electricity, water, gas, steam, or other utility usage. Landlord shall have access to the Premises as is reasonably necessary to accomplish the installation set forth in this paragraph. Such separate metering may be a direct meter, a submeter, a check meter. Any meter so installed may, at Landlord's option, be a "smart meter". The cost of installation shall be a capital expense that is included in Operating Charges on an amortized basis over the expected useful life of the meter. If such a meter is installed, Tenant shall pay for the consumption shown on the meter plus any fee applicable to reading the meter, either directly to the third-party utility provider in the case of a direct meter or to Landlord in the case of a submeter or check meter, and Tenant shall report to Landlord Tenant's usage as measured by the meter. If such a meter is installed, Tenant shall thereafter not be charged as an Operating Charge for any other tenant's use of that utility in the other tenant's own premises, but shall still be charged its pro rata share for the consumption of that utility in any part of the Building that is not leased to another tenant."

third party is placed under a similar obligation to keep any shared data confidential and to use it only for the purposes listed in [insert pertinent clause].”[18]

Section 3.5. Green Building Code Compliance.

a. “Landlord may be required to comply with Green Building Codes or other applicable code or law and/or from time to time, decide to develop, maintain and/or operate the Building in accordance with third-party accreditations, ratings or certifications that relate to sustainability issues, energy efficiency or other comparable goals, including the Landlord Sustainability Practices, and Tenant shall cooperate with Landlord’s efforts relating thereto. Such cooperation shall include, without limitation, providing Landlord with information within fourteen (14) days after a request is made relating to Tenant’s occupancy, including, without limitation, staffing levels, hours of operation, utility or energy usage including data, commuting patterns (to the extent reasonably determinable), cleaning methods, build-out materials and techniques, furniture, fixtures and equipment inventories, and other purchasing information. The foregoing provisions shall apply whether or not Landlord affirmatively seeks an accreditation, rating or certification and thereafter maintains the same, is required to comply by a Green Building Code or other law, or operates voluntarily.”[19]

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[18] *See Green Lease Language Examples, Data Sharing/Disclosure, Energy Consumption*, pp. 29-30, *supra* n. 11 (this language is a modification to *Landlord and tenant language*, source “A Better City,” which provides: ““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 (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 [insert page number of clauses outside of the lease document] to keep any shared data confidential and to use it only for the purposes listed in that clause.”)

[19] *See* BOMA, *Green Lease Guide, Sustainability*, Section 15.2(a), pp. 59-60, *supra* n. 9 (modeled after BOMA’s draft provision, with minor modifications, which provides in full: “Landlord may be required to comply with code and/or, from time to time, decide to develop, maintain and/or operate the Building in accordance with third-party accreditations, ratings or certifications that relate to sustainability issues, energy efficiency or other comparable goals, including (without limitation) Third Party Sustainability Standards. Should Landlord make such a decision or applicable code require Landlord to develop, maintain and/or operate the Building accordingly, Tenant shall cooperate with Landlord’s efforts in that regard. Such cooperation shall include, without limitation, providing Landlord with information within fourteen (14) days after a request is made about Tenant’s occupancy as may be required by any such third-party agency, such as staffing levels, hours of operation, utility usage, commuting patterns (to the extent reasonably determinable), cleaning methods, build-out materials and techniques, furniture, fixtures and equipment inventories, and other purchasing information. The foregoing provisions shall apply whether Landlord affirmatively seeks an accreditation, rating or certification under a Third Party Sustainability Standard and to thereafter maintain the accreditation, rating or certification, or to operate voluntarily in accordance with some or all of such Third Party Sustainability Standards but without formally obtaining the accreditation, rating or certification.”)

b. “Landlord and Tenant further agree to comply with all mandatory [and voluntary] energy, water, gas, steam or other utility recycling or other conservation controls or requirements applicable to the Building issued by the federal, state, county, municipal or other applicable governments, or any public utility or insurance carrier including. Any terms or conditions of this Lease that conflict or interfere with compliance by Landlord or any rating agency with such requirements shall be suspended for the duration of such requirements. It is further agreed that compliance with such requirements shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement, offset, or reduction of any rent payable hereunder.”[20]

Section 3.6. Tenant Improvement Work.

a. “Any and all Tenant Improvement Work and/or alterations, additions, or replacements shall be performed in accordance with any Green Building Code or other applicable law or Landlord Sustainability Practices, which the Tenant has accepted as part of this Agreement. Any Tenant Improvement Work shall not alter, impair, or otherwise harm the Building’s Third Party Rating Systems. Tenant shall maintain records reasonably acceptable to Landlord to substantiate compliance and provide such records to Landlord upon request.”[21]

b. “Prior to commencing any Tenant Improvement Work and/or alterations, additions or replacements that may adversely affect the environmental performance rating, or sustainability of the Building, the Tenant must obtain Landlord’s prior written consent, which consent shall be at Landlord’s sole and absolute discretion. When seeking Landlord’s consent in writing, Tenant shall:

1. Provide sufficient notice and information to Landlord of the Tenant Improvement Work and/or alterations, additions or replacements to be conducted, and reasonably and timely comply with Landlord’s requests for further information;
2. Wait a reasonable period of time before commencing the Tenant Improvement Work and/or alterations, additions, or replacements of not less than [__] days after

[20] *See* BOMA, *Green Lease Guide, Sustainability,* Section 15.2(b), p. 60, *supra* n. 9 (mirroring draft language provided, with minor modifications, which provides in full: “The parties hereto agree to comply with all mandatory and voluntary energy, water, recycling or other conservation controls or requirements applicable to office buildings issued by the federal, state, county, municipal or other applicable governments, or any public utility or insurance carrier including, without limitation, controls on the permitted range of temperature settings in office buildings or requirements necessitating curtailment of the volume of energy consumption or the hours of operation of the Building. Any terms or conditions of this Lease that conflict or interfere with compliance by Landlord with such controls or requirements shall be suspended for the duration of such controls or requirements. It is further agreed that compliance with such controls or requirements shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement or reduction of any rent payable hereunder.”)

[21] *See Green Lease Language Examples, Sustainable Practices,* p. 19, *supra* n. 11 (the first sentence of this provision is a modification to the *Landlord and tenant language*, source “A Better City.”); BOMA, *Green Lease Guide, Sustainability*, Section 15.2(l), p. 63, *supra* n. 9 (the latter two sentences of this draft provision incorporate draft language from BOMA, with minor modifications).

providing Landlord with the foregoing notice and information to provide Landlord with an opportunity to assess the potential adverse effects of the proposed Tenant Improvement Work and/or alterations, additions, or replacements and, if required, to comply with any Green Building Code or other applicable law or Landlord Sustainability Practice;

3. Cooperate with Landlord to provide additional time, if necessary, to comply with any Green Building Code or other applicable law or Landlord Sustainability Practice, and to consider and reasonably implement any compliance needs or reasonable suggestions by the Landlord to avoid or minimize any such potential adverse effect."[22]

c. "Tenant and Tenant's contractors shall abide by Landlord's Contractor Rules and Regulations attached hereto as Exhibit [B][23] and any modifications thereto."[24]

Section 3.7. Recycling and Waste Management.

"Tenant covenants and agrees, at its sole cost and expense, to: (1) comply with any Green Building Code, Landlord Sustainability Practices, including any recycling policy, or any other state, county, municipal, or federal law or mandatory requirements by other governing authorities, departments, commissions, agencies or boards, regarding the collection, sorting, separation, composting and recycling of garbage, trash, rubbish, refuse or waste, and (2) that Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant for Tenant's failure to comply with the provisions of this Section."[25]

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[22] *See Green Lease Language Examples*, *Sustainable Practices*, p. 20, *supra* n. 11 (modeled after the *Landlord and tenant language*, with modifications, source "A Better City," which provides in full: "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: (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. (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.")

[23] For an example Exhibit, *see* BOMA's Exhibit D (Construction Rules and Regulations) in its *Green Lease Guide*, pp. 95-102, *supra* n. 9.

[24] *See* BOMA, *Green Lease Guide*, *Alterations*, Section 10.2(c), p. 48, nn. 230-31, *supra* n. 9 (modeled after the exact language of BOMA's Section 10.2(c), with a modified exhibit reference only). Fn. 231 provides that the Contractor Rules and Regulations could include use of "low-VOC materials," no "toxic chemicals," "protect[ing] indoor air quality," "recycle[ing] waste material," "buy[ing] energy-efficient and water-efficient fixtures, furniture and equipment, etc."). *Id.* BOMA provides a sample Exhibit D for Landlord's Contractor Rules and Regulations.

[25] *See* BOMA, *Green Lease Guide*, *Recycling and Waste Management*, Section 6.3, p. 34, *supra* n. 9 (incorporating a modified and shortened version of BOMA's Recycling and Waste Management provision, which provides in full: "Tenant covenants and agrees, at its sole cost and expense: (a) to comply with all present and future laws, orders and regulations of the Federal, State, county, municipal or other governing authorities, departments, commissions, agencies and boards regarding the collection, sorting, separation, composting and recycling of garbage, trash, rubbish and other refuse (collectively, "trash"); (b) to comply with Landlord's recycling policy, if any, as part of Landlord's sustainability practices where it may be more stringent than applicable law; (c) to sort and separate its trash and recycling into such categories as are provided by law or Landlord's sustainability practices; (d) that each separately sorted category of trash and recycling shall be placed in separate receptacles as directed by Landlord; (e) that Landlord reserves the right to refuse to collect or accept from Tenant any trash that is not separated and sorted as required by

Section 3.8. Maintenance & Cleaning.

a. "Any maintenance and repairs shall comply with any Green Building Code requirements and/or Landlord Sustainability Practices that the Tenant has accepted as part of this Agreement."

b. "[Landlord] [Tenant] [Landlord and Tenant] [Landlord and all tenants of the building] shall use [and require that all janitorial services use] cleaning products (including but not limited to general purpose cleaners, floor cleaners, hand soap, etc.) that meet, are equivalent to, or exceed the emission standards and requirements in Green Seal Standard for Commercial and Institutional Cleaning Services, GS-42 and/or contain the following certifications or labels: UL ECOLOGO or US EPA Design for the Environment (DfE) and use environmentally sustainable paper products [when price, quality, and availability are comparable or reasonably similar to conventional products].[26] [Landlord] [Tenant] [Landlord and Tenant] [Landlord and all tenants of the building] shall ensure that any cleaning contracts entered into by it require the cleaning contractor to comply with provisions of this section. The same shall ensure that any cleaning contractor properly understands and is trained in the maintenance of specialized green facilities. [If Tenant contracts for a cleaning contract, Landlord reserves the right to approve, acting reasonably, any Tenant cleaning contractor or cleaning contract, but without liability on the part of Landlord.]"[27]

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law or by Landlord's own sustainability practices, and to require Tenant to arrange for such collection at Tenant's sole cost and expense, utilizing a contractor satisfactory to Landlord; and (f) that Tenant shall pay all costs, expenses, fine, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Section. Tenant shall provide Landlord annually or at such other times as Landlord may reasonably request with waste manifests for all waste that left the Building under Tenant's control, including, without limitation, of-site paper shredding and electronic waste [AND IN RETAIL LEASES ADD: and cardboard, glass, plastics, metals and food][IN INDUSTRIAL LEASES ADD: and pallets].")

[26] *See Green Lease Language Examples, Building Cleaning and Maintenance,* pp. 34-35 *supra* n. 11 (this language is a modification to *Landlord and tenant language*, source "GSA," which provides: "[Landlord] [Tenant] [Landlord and Tenant] [Landlord and all tenants of the building] shall use only cleaning products (including general purpose cleaners, floor cleaners, hand soap, etc.) that meet, are equivalent to, or exceed the following emission standards and requirements. Product content information shall be submitted to the [tenant] [landlord]," and provides a table of the standard requirements and applicable certifications/labels); BOMA, *Green Lease Guide, Services and Utilities,* Section 15.1, p. 56, *supra* n. 9 (this provision also incorporates a modified version of the following language: "The janitorial service shall use environmentally preferable janitorial paper products and trash bags when price, quality and availability are comparable to conventional products.")

[27] BOMA, *Green Lease Guide, Sustainability,* Section 15.2(e), p. 61, *supra* n. 9 (this language is substantially the same as the last three sentences found in the BOMA draft provision, with minor modifications, which provides in full: "Tenant shall ensure that any cleaning contracts entered into by it require the cleaning contractor to comply with elements of any environmental management plan adopted by Landlord. Tenant shall ensure the cleaning contractor properly understands and is trained in the maintenance of specialized green facilities. Landlord reserves the right to approve, acting reasonably, any Tenant cleaning contractor or cleaning contract, but without liability on the part of Landlord.")

c. “Landlord shall use to treat pests Integrated Pest Management techniques, as specified in the GSA Environmental Management Integrated Pest Management Technique Guide (E402-1001), to minimize the use of toxic pesticides and other harmful chemicals.”[28]

Section 3.9. Air Quality.

“Ventilation in general should meet [or exceed] the most recent ASHRAE standard for indoor air quality, including ASHRAE 55-2010 (Thermal Conditions for Human Occupancy) and 62.1-2010 (Ventilation for Acceptable Indoor Air Quality), and procedures shall be established during any Building renovations to ensure proper ventilation and indoor air quality standards for other Building occupants, including the use of MERV 13 filters to block pollutants.”[29]

Section 3.10. Lighting.

a. “Implement lighting controls, including daylight dimming controls such as automatic dimmer switches for at least [50%] of lighting load and occupancy/vacancy sensors for at least [75%] of connected lighting load, which may include manual overrides. This measure is to be implemented if the simple payback period is demonstrated to be [five] years or less based on projected savings and estimated cost subject to Building management team’s review. Design and build to optimize daylight and views for occupants, which may be achieved through a design that includes interior rather than perimeter offices, or perimeter offices with glass fronts if perimeter offices are a design requirement.”[30]

b. “[Landlord] [Tenant] [Landlord and Tenant] [Landlord and all tenants of the building] shall provide individual control of task lighting for all occupants within offices or workstations, which shall use energy efficient fixtures (e.g. LED), close window shades that face

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[28] *See Green Lease Language Examples*, *Building Cleaning and Maintenance*, p. 34 *supra* n. 11 (using the language for *Landlord language*, source: GSA, with the inclusion of “may/shall” and the addition of further language from BOMA); BOMA, *Green Lease Guide, Sustainability*, Section 15.2(s), p. 65, *supra* n. 9 (incorporating further language on “minimizing the use of toxic pesticides and other harmful chemicals”).

[29] *See Green Lease Language Examples*, *Air Quality*, p. 26, *supra* n. 11 (modeled after the *Landlord language* herein, source: NRDC, with the addition of the renovation language and specific ASHRAE references); BOMA, *Green Lease Guide*, *Sustainability*, Section 15.2(m), p. 63, *supra* n. 9 (incorporating specific ASHRAE references to 55-2010 and 62.1-2010 as set forth in draft provision).

[30] *See Green Lease Language Examples*, *Lighting*, p. 27, *supra* n. 11 (modeled after the Alternate language from source: GSA, which provides in full: “Implement lighting controls, including daylight dimming controls for at least 50% of lighting load and vacancy sensors for at least 75% of connected lighting load. This measure is to be implemented if the simple payback period is demonstrated to be five years or less based on projected savings and estimated cost subject to Building management team's review. Design and build to optimize daylight and views for occupants, which may be achieved through a design that includes interior rather than perimeter offices, or perimeter offices with glass fronts if perimeter offices are a design requirement.); BOMA, *Green Lease Guide*, Section 15.2(d), p. 61, *supra* n. 9 (incorporation of manual override point from draft provision, which provides: “Such sensors may be installed with manual overrides for areas that are normally occupied, such as individual offices and conference rooms.”).

the sun, and turn off such lights and equipment as feasible at the end of the work day unless lighting controls are in place."[31]

Section 3.11. Use of Renewable Energy, including Solar.

a. "Tenant may, with the consent of Landlord and subject to reasonable terms and conditions set by Landlord, which terms and conditions may include without limitation, additional insurance coverages, indemnifications, and structural roof supports, install solar equipment and panels on the Building, and Tenant is entitled to all benefits to be derived from such installation during Tenant's tenancy, including any incentives and credits and any revenues resulting from power generation, except as otherwise agreed upon in the Lease. Tenant acknowledges that, at the end of the lease term, the solar panels [shall/shall not] remain at the Premises unless otherwise agreed to in writing."[32]

b. "The solar equipment and panels and rooftop shall not be used for any purpose other than for Tenant's power generation without Landlord's written consent. Tenant shall bear all of the cost and expense of designing, purchasing, installing, operating, maintaining, repairing, removing and replacing the solar equipment and panels, and for repairing and restoring any damage to the Building or to Landlord's or any other person's or entity's property arising therefrom, unless otherwise agreed to in writing. The solar equipment and panels shall be installed and maintained by Tenant in a manner reasonably acceptable to Landlord. Nothing herein grants Tenant any right to access the roof of the Building unless accompanied by an employee of the Building Manager or other representative of Landlord, except that access shall be permitted in emergencies. Tenant's rights to place solar equipment and panels on the rooftop are non-exclusive."[33]

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[31] *See Green Lease Language Examples*, *Lighting*, p. 27, *supra* n. 11 (incorporating entire *Landlord and tenant language*, with slight modification, source: GSA); BOMA, *Green Lease Guide, Services and Utilities,* Section 15.1(d), p. 57, *supra* n. 9 (incorporating further points, in latter half of this provision after (e.g., LED) from draft BOMA language for energy reduction).

[32] *See Green Lease Language Examples, Purchase of On-Site Renewables* p. 36, *supra* n. 11 (modeled after *Landlord and tenant* language, with modifications, source "IMT," which provides: "Tenant may install solar panels on the building and Tenant is entitled to all benefits to be derived from such installation including any incentives and credits and any revenues resulting from power generation.").

[33] *See Green Lease Language Examples, Purchase of On-Site Renewables* p. 36, *supra* n. 11 (modeled after *Landlord and tenant* language, with modifications, source "IMT," which provides: "The Generating Equipment and rooftop shall not be used for any other purpose without Landlord's written consent. Tenant shall bear all of the cost and expense of designing, purchasing, installing, operating, maintaining, repairing, removing and replacing the Generating Equipment, and for repairing and restoring any damage to the Building or to Landlord's or any other person's or entity's property arising therefrom. The Generating Equipment shall be installed and maintained by Tenant in a manner reasonably acceptable to Landlord. Nothing herein grants Tenant any right to access the roof of the Building unless accompanied by an employee of the Building Manager or other representative of Landlord, except that access shall be permitted in emergencies. Tenant's rights to place Generating Equipment on the rooftop are non-exclusive.").

Section 3.12. Carbon Credits.

"Any carbon offset credits, renewable energy credits, tradable renewable credits, energy saving certificates, rebates, incentives, offsets, allowances and other similar entitlements, now or hereafter existing ("Renewable Credits") received by the Property or by Landlord and applicable to the Property shall belong to Landlord except to the extent, if any, to which (i) Tenant may be entitled to them under applicable law, in which event Tenant shall be entitled to the Renewable Credits to the extent required by law, (ii) the same arise directly from any action or activity undertaken by Tenant itself in the Premises that result in decreased consumption of natural resources by the Building or the avoidance of environmental impacts on air, soil or water, (iii) Tenant may have paid as an Operating Expense or contributed to a cost or program that obtained the Renewable Credits and Tenant is not compensated under preceding clause (i) of this subsection (i), in which event Tenant shall be entitled to an equitable share, as determined by Landlord in its reasonable discretion, after excluding the costs of participating in the carbon reduction program and/or of obtaining the credit, or (iv) as otherwise agreed in this Lease."[34]

Section 3.13. Irrigation & Landscaping.

"To the extent reasonably practicable, Landlord shall utilize irrigation technologies at the lowest rate required to keep plants healthy. Irrigation systems will be controlled by rain gauges moisture sensors to eliminate unnecessary irrigation during or after rain events. If any irrigation is necessary in or around the Building, the source shall be onsite non-potable water reuse, including captured rainwater, gray water, storm water, or on-site treated water, to the extent reasonably practicable."[35]

Section 3.14. Parking & Transportation.

a. "If any parking spaces associated with the Building are designated by Landlord for use by electric, low-emitting or fuel efficient vehicles, hybrid, alternative fuel, or high occupancy

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[34] *See* BOMA, *Green Lease Guide, Sustainability*, Section 15.2(j), p. 62, *supra* n. 9 (minor modifications to draft language provided, which provides: "Any carbon offset credits, renewable energy credits, tradable renewable credits, energy saving certificates, rebates, incentives, offsets, allowances and other similar entitlements, now or hereafter existing ("Renewable Credits") received by the Property or by Landlord and applicable to the Property shall belong to Landlord except to the extent, if any, to which (i) Tenant may be entitled to them under applicable law, in which event Tenant shall be entitled to the Renewable Credits to the extent required by law, (ii) the same arise directly from any action or activity undertaken by Tenant itself in the Premises that result in decreased consumption of natural resources by the Building or the avoidance of environmental impacts on air, soil or water, or (iii) Tenant may have paid as an Operating Charge or contributed to a cost or program that obtained the Renewable Credits and Tenant is not compensated under preceding clause (i) of this subsection (i), in which event Tenant shall be entitled to an equitable share, as determined by Landlord in its reasonable discretion, after fist netting out the costs of participating in the carbon reduction program and/or of obtaining the credit).").

[35] *See Green Lease Language Examples*, *Irrigation and Landscaping*, p. 24, *supra* n. 11 (modeled after *Landlord and tenant language*, with modifications, source "GSA," which provides in full: "Landlord shall utilize irrigation technologies at the lowest rate required to keep plants healthy. Irrigation systems will be controlled by rain gauges or soil moisture sensors to eliminate unnecessary irrigation during or after rain events."); BOMA, *Green Lease Guide, Sustainability*, Section 15.2(r), p. 65, *supra* n. 9 (incorporating further language from BOMA concerning source of non-potable water, which provides in full: "Irrigation systems shall be fed only with captured rainwater, grey water, or on-site treated water. Irrigation systems shall be controlled by rain gauges or soil moisture sensors to eliminate unnecessary irrigation during or after rain events.").

vehicles, Landlord may charge different rates for parking in such spaces, and to impose reasonable restrictions, rules, and regulations concerning the same."[36]

b. "Tenant and Landlord shall work together to implement [one or more] of the following provisions:

1. Tenant shall provide at least [$x] [$30] per month towards a transit pass or vanpool pass (or the full cost of a pass if it is less than $30) to each employee who commutes using transit or a vanpool. This credit may also be used with an alternative mobility company to enable alternative modes (such as a credit with Uber/Lyft), especially during peak times or adverse weather.
2. Tenant shall provide at least [$X] [$30] per month (in lieu of providing a parking spot) to each employee who leaves their car at home and commutes another way.
3. Landlord shall provide bicycle storage (racks) in or outside the Building and shower/locker room facilities in proximity to the bicycle storage location(s).
4. Landlord shall operate, maintain and secure the bike storage location(s) and shower/locker room facilities in first-class condition.
5. Landlord shall establish preferred parking programs for hybrid and alternative fuel vehicles [at a minimum of 3% of all parking stalls] in the building, and [install][study the feasibility of installing] electric car charging stations in the building for use by tenants and their visitors.
6. The costs for parking shall be charged/paid separately from each Tenant's rent [and shall be charged on a uniform or near uniform basis to all].
7. Tenant must offer access to an Emergency Ride Home program."[37]

Section 3.15. Assignment and Subletting.

"Any proposed assignee or sublessee shall comply with the Permitted Use, except as otherwise expressly agreed herein, and all Landlord Sustainability Practices set forth herein."[38]

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[36] *See* BOMA, *Green Lease Guide*, *Tenant's Rights to Park,* Section 7.1, p. 38, *supra* n. 9 (modeled after the last sentence in BOMA's Tenant's Rights to Park provision, with minor modification, and consideration of discussion in fn. 182).

[37] *See Green Lease Language Examples*, *Transportation*, pp. 39-40, *supra* n. 11 (modeled after *Landlord and tenant language*, with modifications, source "GSA," providing for implementation of "[one][three]" of eight provisions that follow).

[38] *See* BOMA, *Green Lease Guide, Assignment and Subletting, Landlord's Consent Required*, Section 8.1(a), p. 39, *supra* n. 9 (modeled after the last sentence of BOMA's Section 8.1(a) with modifications, which provides that a reasonable basis to withhold consent for assignment or subletting includes an assignee or sublessee "whose proposed use or operation in the Premises may or will cause the Property or any part thereof not to conform with the environmental and sustainability clauses in this Lease.".

Section 3.16. Disposal.

"At the conclusion of the lease term, Tenant shall dispose of any equipment, materials, furniture, fixtures, and equipment (FF&E), and any improvements, if applicable, in accordance with Landlord Sustainability Practices, including salvage, recycle or reuse."[39]

Section 3.17. Net-Zero.

"The Parties agree to incorporate all energy saving measures necessary to achieve net zero energy, with the understanding that net zero energy may not be achievable initially. On that basis, the parties agree to periodically (every x years) assess and review the incremental progress/movement towards net zero energy use as measured by the actual usage numbers. The Parties agree, in good faith, to discuss future potential lease amendments and distribution/assignment of cost savings, along with possible lease cost adjustments, based on the resulting information."[40]

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[39] *See* BOMA, *Green Lease Guide, Ownership and Removal at End of Lease Term*, Section 10.4 p. 49, *supra* n. 9 (incorporating disposal provision from BOMA's Section 10.4 as modified herein).

[40] *See Green Lease Language Examples, Net-Zero*, p. 39, *supra* n. 11 (modeled after the exact Alternate *Landlord and tenant language* provided, source "GSA," which provides: "Tenant shall dispose of in an environmentally sustainable manner any equipment, furnishings, or materials no longer needed by Tenant and shall recycle or re-use in accordance with Landlord's sustainability practices. Tenant is responsible for reporting this activity to Landlord in a format determined by Landlord.").

Exhibit A

Landlord Sustainability Practices

Landlord Sustainability Practices shall include [one or more of] the following practices, all of which are incorporated in the Lease:

1. "Establishing a Building-wide infrastructure for materials recycling, including establishing recycling stations with instructions, and supply designated bins to Tenant for paper, metals, plastics, composting, or recycling needs. As part of the infrastructure, Landlord shall periodically provide electronics disposal bins in an area designated by Landlord for computers and other electronics. Tenant shall use best efforts to collect, sort, and separate paper, metals, and plastics, and place them in the bins that Landlord provides, and compost any food items, and dispose of all electronic items in the designated bins. Tenant shall otherwise keep the Building and the sidewalks and driveways outside the Building free of all refuse."[41]
2. "Requiring that Tenant, and any contractor, use, when reasonably practical, [one or more of the] following when procuring FF&E, carpeting, materials, supplies, and appliances to be brought into the Building and Premises:
    a. Energy STAR-certified or labeled office equipment, electronics, and appliances including, without limitation, refrigerators, microwaves, and dishwashers;
    b. Products containing recycled materials, whether preconsumer (i.e., recycled material from the manufacturing process that did not reach a consumer) or post-consumer (i.e., recycled material discarded by consumers as waste);
    c. Products containing rapidly renewable material, which are typically harvested within a 10-year or shorter cycle[42] (such as bamboo flooring, wool carpeting, cork flooring, cotton batt insulation, straw bales, and lineoleum flooring)[43];
    d. Products containing Forest Stewardship Council labels (e.g., FSC 100%, FSC Recycled, or FSC Mix);
    e. Products harvested or processed, or extracted and processed, within 500 miles of the Building;
    f. High-efficiency, low mercury content lamps that maintain an overall average of less than 90 picograms of mercury per lumen hour of light output;[44]

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[41] *See Green Lease Language Examples*, *Waste Management/Recycling*, p. 35, *supra* n. 11 (this language is a modification to the *Landlord and tenant language* and *Tenant language*, source: A Better City and IMT, which incorporates provisions of both).

[42] USGBC, *Rapidly Renewable Materials*, https://www.usgbc.org/credits/new-construction-schools/v2009/mrc6 (last visited February 7, 2024) ("Rapidly renewable building materials and products are made from agricultural products that are typically harvested within a 10-year or shorter cycle.")

[43] Examples provided by Williams College, *Sustainability*, *Green Building Basics*, *Materials*, at https://sustainability.williams.edu/green-building-basics/materials/#:~:text=Rapidly%20renewable%20materials%20(those%20with,straw%20bales%2C%20and%20linoleum%20flooring (last visited February 7, 2024).

[44] See USGBC, *Sustainable purchasing – reduced mercury in lamps*, at https://www.usgbc.org/credits/existing-buildings/v2008/mrc42 (last visited February 7, 2024) ("Develop a lighting purchasing plan that specifies maximum levels of mercury permitted in mercury-containing lamps purchased for the building and associated grounds, including

g. Use of LED lighting or lightbulbs;
h. Low-or no VOC furniture, furnishing or composite wood products that contain no urea-formaldehyde;
i. Low or no VOC paints, finishes, adhesives, solvents or other such materials meeting Green Seal Standard GS-11 or equivalent. The use of sprayed paint is prohibited; and/or
j. Salvaged, refurbished, or reused materials and furniture."[45]

3. "The Tenant shall not, without Landlord's prior written consent, which consent shall be at Landlord's sole and absolute discretion, permit the use of, within its Premises, any standalone energy intensive equipment designed to modify indoor air temperature or humidity, such as portable air conditioners, space heaters, humidifiers or dehumidifiers."[46]
4. "For new installations and whenever plumbing fixtures are being replaced, all Tenant space fixtures, including faucets, shower heads, toilets, and urinals, must be low flow, high efficiency, or conform to EPA WaterSense. [Landlord shall abide by the same for all common area spaces]."[47]
5. "Tenant shall provide sensor or timer controls for all of its major office equipment, including personal computers and copiers/printer."[48]
6. "At least [50/100] percent of [the Building's] [Tenant's] electricity shall be purchased from renewable sources. Where direct green power purchasing is not available from the utility, utilize Renewable Energy Credits (RECs) or carbon offsets. For the purposes of this lease, 'renewable sources' [shall] [shall not] include nuclear-generated power."[49]
7. "Tenant shall unplug all non-essential equipment from outlets if the Premises remains unoccupied for [insert a mutually agreed upon number of days] days as a result of a mandatory shut-down by any state, county, municipality, governing authority, department, commission, agency or board, or upon receipt in writing of consent by the Tenant which shall not be unreasonably withheld."

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lamps for both indoor and outdoor fixtures, as well as both hard-wired and portable fixtures. The purchasing plan must specify a target for the overall average of mercury content in lamps of 90 picograms per lumen-hour or less."

[45] *See Green Lease Language Examples, Fit-Out and Building Requirements*, p. 18, *supra* n. 11 (this language is modeled after the *Landlord and tenant language*, with modifications, source "A Better City," which provides for Landlord's and Tenant's compliance with the same proposed list).

[46] *See Green Lease Language Examples, Temperature Setting & Use of Stand Alone Energy Intensive Equipment*, p. 8, *supra* n. 11 (modeled after the [Optional] language provided, source "A Better City," with a minor modification only to account for higher operating costs of standalone equipment).

[47] *See Green Lease Language Examples, Water Fixtures and Plumbing*, p. 22 (modeled after *Green lease language* and *Tenant Language*, with modifications, sources "GSA" and "IMT"). The GSA provision provides: "For new installations and whenever plumbing fixtures are being replaced, all [common space] [tenant space] fixtures must conform to EPA WaterSense or fixtures with equivalent flush volumes must be utilized." The IMT provision provides: "Tenant shall maintain maximum fixture water efficiency within the building to reduce the burden on potable water supply and wastewater systems. Faucets, shower heads, toilets, and urinals must be low-flow. The total water efficiency of all interior fixtures shall be at least 20 percent more efficient than the baseline set by the Energy Policy Act of 1992. When available, Tenant shall install products certified by the U.S. Environmental Protection Agency's WaterSense program."

[48] *See Green Lease Language Examples, Monitoring Energy Use*, p. 26 *supra* n. 11 (using the exact *Tenant language*, source "GSA").

[49] *See Green Lease Language Examples, Purchase of On-Site Renewables* p. 36, *supra* n. 11 (using the exact *Landlord language,* source "GSA)".

8. “Lit signs shall, when reasonably practicable, use energy efficient lighting or LED during normal business hours of operation. Landlord may display any third-party sustainability certification or recognition plagues or signage in or on the Building from time to time.”[50]
9. “Tenant shall not use any Styrofoam plates, cups, and utensils on the Premises, and, when price, quality, and availability are comparable or reasonably similar to conventional products, shall use supplies from recycled materials.”[51]
10. “Tenant shall, to the extent practicable, use rechargeable batteries on Premises.”[52]
11. “Tenant may use a standalone air purifier with a carbon filter or air filtration.”[53]
12. “Kitchens, bathrooms, appliances, and any supplemental air conditioning units in Tenant spaces shall be routinely inspected for leaks, mold, and/or other harmful microbes, with repairs timely made. If any supplemental air conditioning units are used, they shall not use hydro-chlorofluorocarbons.”[54]
13. “Tenant shall not install and/or shall remove any existing vending machines.”[55]
14. “Tenant shall dispose of any equipment, materials, and FF&E in compliance with Landlord’s recycling policy and instructions, related laws, or any county, municipality, governing authority, department, commission, agency or board requirement.”
15. Comply with any other reasonable sustainable practice(s) which Landlord implements after the Effective Date of the Lease.

[50] *See* BOMA, *Green Lease Guide, Signs*, Article 11, p. 50, *supra* n. 9 (modeled after provision in Article 11: Signs, with modifications, which provides in pertinent part: “Without limiting the foregoing, lit signs must comply with Landlord’s sustainability plan regarding light pollution, intensity and hours of operation,” and “Landlord shall display any ENERGY STAR or other third-party sustainability certification plaques the Building may have from time to time”).
[51] IMT’s *Making Efficiency Work for You’re a Guide for Empowering Landlord and Tenants to Collaborate on Saving Energy & Resources*, *Tenant Operations Guide*, at https://www.imt.org/wp-content/uploads/2018/02/Making_Efficiency_Work_for_You.pdf (last visited February 7, 2024) (incorporation of recommendation concerning Styrofoam and use of recycled materials).
[52] *Id.* (incorporation of recommendation concerning rechargeable batteries).
[53] IMT’s *Making Efficiency Work for You’re a Guide for Empowering Landlord and Tenants to Collaborate on Saving Energy & Resources*, *Tenant Operations Guide*, *supra* note 51 (incorporating recommendation of standalone air purifier with a carbon filter or air filtration in build-outs).
[54] IMT’s *Making Efficiency Work for You’re a Guide for Empowering Landlord and Tenants to Collaborate on Saving Energy & Resources*, *Tenant Operations Guide*, *supra* note 51 (incorporating recommendations for leak and mold inspection and ban of hydro-chlorofluorocarbons, which are a major contributor to ozone depletion).
[55] *Id.* (incorporating vending machine recommendation, which “can save 3,500 kilowatt hours of electricity which is equal to $350 each year”).