Retail Green Lease Primer

Objective: Identify those provisions in a standard lease agreement that can be modified to address both landlords' and tenants' goals, as well as the potential modifications to those provisions. These lease provisions can improve the environmental sustainability of retail properties AND reduce the costs associated with energy, water, waste, and other resources.

Components of a "greener" lease: Potential "green" lease modifications fall into five broad types, and seek to:

1. *Improve the base building and common area* – address improvements to the base building shell, including common areas.
2. *Improve interior tenant spaces* – address improvements to the tenant's space, consistent with the premises' permitted use.
3. *Align economic incentives to encourage "green" investments* – address mis-alignments between the party that is investing in property improvements and the party that receives the benefits.
4. *Increase access to information on resource use* – make the energy and water usage, and waste generation data visible to both parties.
5. *Clarify access and control of key areas of the property* – define which party(ies) have access to spaces, such as the rooftop, and who has the right to implement projects in those spaces.

Note: Not all of the examples can be combined in the same lease. For example, a fixed CAM lease could eliminate the need for other steps to align capital investments with financial benefits. Each company should assess the costs and benefits of each term before including in their contacts.

Lease Area of Focus	Potential Lease Modification	Type *	Example Lease Provision	Costs & Benefits	In existing leases?
1. Lease Term	**Lengthen the lease term.** A longer lease term conserves resources and reduces the waste associated with tenant build outs. It may also make the landlord and/or tenant more inclined to make energy efficiency improvements with longer payback periods.	1, 3	Adopt an initial lease term to 10+ years, with or without subsequent renewal options. See BOMA Commercial Lease Guide**, p. 8.	Additional rent and term obligations by the tenant. Landlord saves on transactions costs associated with replacing tenants. Tenants & Landlords are more likely to invest in efficiency upgrades to the building, and less waste will result from additional tenant build-outs. The LEED system awards a credit for lease terms of 10+ years.	☐
2. Lease Type	**Pursue alternative lease types that better align incentives.** Traditional **"**Triple Net" leases, as well as other leases where tenants are responsible for paying their own interior utility expenses directly, dis-incentivize landlord investments in efficiency since cost savings do not accrue to the investor.	1, 2, 3	Adopt a modified gross lease where rent is inclusive of interior utility consumption; or institute "Fixed CAM," where fees for common area utilities are pre-determined and do not change on the basis of actual consumption. The Fixed CAM may need to be adjusted in the case of material changes (e.g. 50% hike in rate caps in Texas).	Tenant benefits from a fixed, predictable operating cost, while landlord benefits through the certainty that savings from improvements in efficiency will accrue to the party investing in retrofits.	☐
3. Permitted Use	**Define allowable/restricted uses for the leased premises.** Tenant should limit use of the premises to operations consistent with any agreed upon processes or practices, promoting environmentally favorable activities.	2	For example, in the case of a dry cleaner, define the type of chemical cleaning process that is acceptable (e.g. non-perchloroethelyne).	Costs and benefits dependent upon the specifics of the allowances or limitations spelled out.	☐
4. Leased Premises	**Identify tenant build-out specifications.** Tenant build-out should meet mutually agreed upon sustainable building practices and/or material standards. This could include third-party certification or any other guidelines that the landlord and/or retailer may desire including recycling of waste materials during construction.	2	See BOMA Commercial Lease Guide, p. 83-90 and Pyramid Companies Green Leasing Case Study, p. 2 (green box). If additional costs will be required to attain certification or procure premium materials, such as low-VOC paints & finishes, responsibility for such costs should be defined.	Costs (or cost savings) are associated with materials procured. Benefits are consistent with documented green building practices, such as reduced operating expenses and improved indoor air quality.	☐
5. Capital Improve-ment Costs	**Allow landlord to amortize and recover capital costs associated with sustainable improvements to building and common areas.** Many retail leases do not allow the owner to recover capital improvement costs from tenants. Provisions can be added through which tenants agree to pay for a portion of capital costs for specific types of efficiency projects that can be proven to reduce operating costs (i.e. electricity).	1, 2, 3	Modify existing Common Area Rent section to allow for pass-through of amortized capital improvement costs for improvements that can be documented to reduce operating expenses such as electricity. See NYC's Energy Aligned Clause and BOMA Commercial Lease Guide, Article 4, p. 18.	Costs associated with efficiency improvements will be passed through to tenants, who benefit by way of reduced operating expenses. The most popular clause of this type follows the amortization schedule of the improvement, and is capped at the amount of energy savings. In that way, landlords are incented to invest and the retailers' costs are the same or lower as a result of utility savings.	☐
6. Operating Expenses	**Allow the landlord to pass through smaller efficiency project costs as operating expenses.** Smaller improvements such as building controls, water conservation measures, and installation of submeters could be included as operating expenses charged to tenant on a pro-rata basis through CAM.	1, 2, 3	If not specified in Common Area Rent section, detail efficiency and other measures that can be included as annual common area costs. See BOMA Commercial Lease Guide, p. 17-20.	Costs associated with these investments can be passed through to tenants based on a pro-rata share. For example, the cost of energy efficiency improvements may be recovered by utility savings, employee productivity and retention gains, and brand enhancement.	☐

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7. Tax Benefits and Other Incentives	**Align tax benefits and other monetary incentives for building improvements with the investing party.** Incentives of any type (government, utility, etc.) conferred to the building due to green improvements performed by the landlord will accrue to the landlord, excepting property tax reductions that reduce the tenant's proportional share of the property tax cost. Similarly, incentives of any type conferred to the building due to green improvements performed by the tenant will accrue to the tenant.	**1, 2, 3, 4, 5**	Modify existing Taxes section to incorporate language focused on tax or other government or utility incentives.	Benefits from reduction of tax costs or other incentives go to landlord and/or tenant.	☐
8. Utility Metering	**Install utility submeters.** If tenant space is not already separately metered, a submeter for electricity, water, and natural gas should be installed and landlord should bill tenant based on submeter readings, where state administrative code and utility tariffs allow it.	**3, 4**	Modify Utilities section to clarify that tenant spaces shall be individually metered by utility or submetered by landlord. Then the submeter will be the basis for any allocated utility charges from master meters. See BOMA Commercial Lease Guide, p. 53.	Utility billing based on actual consumption ensures that a tenant's investments in efficiency will pay back to the tenant. A RILA survey has shown that energy submeters reduce energy use by an average of 10%.	☐
9. Utility Data Sharing	**Share utility data for optimizing efficiencies.** If separately metered by the utility, the tenant will provide landlord with reporting of energy and water consumption, and the landlord will provide the tenant with quarterly or annual reports on the whole building's energy and water consumption.	**4**	Modify Utilities section to require reporting utility of data between landlord and tenant on regular intervals (similar to how sales reporting is defined in many retail leases). See BOMA Commercial Lease Guide, p. 43, 51.	Minimal costs associated with data sharing. Several large municipalities, including NYC, Washington DC, Philadelphia, San Francisco, Seattle, and Austin require building owners to report total building energy data.	☐
10. Tenant Maintenance	**Identify interior tenant maintenance specifications.** Maintenance by tenant or tenant's vendors to be performed according to agreed upon sustainable practices, or incorporating preferable materials.	**2**	Requirement that approved "green" cleaning practices and low VOC paints be used, and that light bulbs, ceiling tiles, and construction debris be recycled. High efficiency lighting and equipment must be used and maintained. See BOMA Commercial Lease Guide, p. 39.	There may be extra costs associated with maintaining space to sustainable standards. Benefits could include lower environmental impacts as well as improved indoor air quality, etc.	☐
11. Landlord Maintenance	**Specify common area maintenance practices.** Maintenance by landlord or landlord's vendors to be performed according to agreed upon sustainable practices, or incorporating preferable materials.	**1**	Requirement that approved "green" cleaning practices and low VOC paints be used, and that certain chemicals and pesticides not be used in landscaping practices or materials (e.g. treated mulch). High efficiency lighting and equipment must be used and maintained. See BOMA Commercial Lease Guide, p. 49 and 54.	Same as above.	☐
12. Trash & Recycling	**Define tenant obligations to participate in landlord waste recycling programs.** Identify whether the tenant will participate in landlord-provided trash, recycling and composting programs at the property.	**1, 3**	Modify Tenants Business Operations provision to outline obligation to participate in landlord provided waste services.	Landlords often provide trash, recycling, and other services to the property at a lower cost than individual tenants, due to bundling of volumes. Consolidated services for a shopping center reduce truck trips, emissions, and wear & tear on the common area.	☐
13. Rooftop/ Ground Access and Control	**Allow rooftop or ground access and control.** Landlord and tenant should determine which party(ies) will have the right to install energy generation systems or other features such as skylights.	**5**	Modify description of Leased Premises to clarify roof/ground control rights for the purposes of energy generation. Potential exists that Rent may be adjusted in the event that additional space is occupied beyond the leased premises.	The installation of such technologies typically requires significant investment cost, but the intent of this provision is to address the right to install such equipment – and does not address the cost component. Efforts can be made, through other provisions, to ensure that both landlord and tenant share in the economic benefits.	☐

Notes:

** "Green" lease language can address those issues mentioned above, namely: (1) improvements to the base building efficiency, (2) incentives alignment, (3) improvements to the tenant space, (4) fostering resource use transparency, and (5) clarification of the access and control of key spaces.*

***While not designed specifically for retail, the BOMA Commercial Lease Guide provides usable model language and explanatory footnotes that can be adapted for retail leases.*