

GREEN LEASE RIDER

Foreword

This Green Lease Rider is intended for use by building owners who would like to update their current form of lease to comply with emerging federal, state, and local green building laws, and to adopt current best leasing practices in the areas of energy efficiency and sustainable building management. This Rider's fundamental premise is that many buildings are in the process of becoming certified under LEED® for Existing Buildings 2.0, LEED® for Existing Buildings Operations and Maintenance or similar green building certifications or will be retrofitted in the future to seek a form of certification as competition or the law requires.* Accordingly, Tenant covenants are tied to standards established in green building certifications obtained or to be obtained for a particular building, as well as to sustainable practices actually adopted by the Landlord. Careful attention is also paid to the significant economic implications of green retrofitting and sustainable management practices, especially in the areas of building certification, alternative energy cost pass-throughs, and the impact of sub-metering on common area maintenance charges.

This Rider will need to be harmonized with the owner's form of lease, particularly with respect to the Owner's sustainability goals and inconsistent terms and provisions. For ease of review the Rider uses commonly defined lease terms on the assumption that they have been defined in the base lease. This Rider was drafted considering current federal, California, and San Francisco regulatory schemes, and will need to be updated as regulations evolve.

Although this Rider assumes a landlord-friendly position on most issues, landlords report greater success using a collaborative approach both with respect to cost sharing and implementation of sustainable building practices and policies.

* For example, as of December 31, 2008 [the most recent published data available as of the date of this Rider] 27 San Francisco buildings have been certified as either LEED®EB or LEED®EBOM, and approximately 47 others are seeking either LEED®EB or LEED®EBOM certification.

Rider to Lease ("Lease")
By and Between
[company], a [state] [corporate form] company ("Tenant")
And
[company], a [state] [corporate form] company ("Landlord")

Dated [month] [day], [year]

For the Premises comprising [x,xxx] (+/-) sq. ft., on the [xx] floor of the property located at: [address],
[city], [state].

All capitalized terms not otherwise defined in this Rider will have the same meaning given to them in the Lease. The provisions of this Rider are in addition to and supplement the provisions of the Lease. If any provision of this Rider is determined to be in conflict with the provisions of the Lease, the provisions of this Rider will prevail. Headings do not influence or affect the substantive provisions established in this Rider.

1. Definitions.

(a) **Building Certifications.** "Building Certifications" shall mean those Green Building Standards under which the Building (i) is currently certified, (ii) is in the process of becoming certified, or (iii) may in the future become certified.

(b) **Green Building Laws.** "Green Building Laws" shall mean any present or future federal, state, or local laws, regulations, ordinances or other governmental requirements applicable to the Building pertaining to energy, waste, water, or carbon reduction, or other sustainable practices.²

(c) **Green Building Standards.** "Green Building Standards" shall mean standards for the certification of environmentally sustainable, high performance buildings or aspects of their performance, including without limitation the US EPA Energy Star[®] rating, Green Building Initiative's Green Globes[™] for Continual Improvement of Existing Buildings (Green Globes[™]-CIEB), the US Green Building Council's Leadership in Energy and Environmental Design (LEED[®]) rating, and other similar certification standards.

(d) **Landlord's Sustainability Practices.** "Landlord's Sustainability Practices" shall mean Landlord's operations and maintenance practices for the Building, whether incorporated into the Building's Rules and Regulations, separate written sustainability policies or otherwise implemented by landlord, as they may be revised from time to time, addressing energy efficiency; water efficiency; recycling, composting, and waste management; indoor air quality; chemical use; and other best practices adopted by Landlord in connection with its Building Certifications.

² Green Building Laws would include (i) any federal legislation related to carbon reduction, offset, or trading, currently the American Clean Energy and Security Act of 2009, commonly referred to as the Waxman-Markey Bill, and (ii) any similarly purposed California legislation, including AB 1103; AB 32, California's landmark Global Warming Act; and the California Green Building Standards Code, which took effect Aug. 1, 2009.

[address], [city], [state]
[Landlord]/[Tenant]

Landlord's Initials

Tenant's Initials

2. **Mutual Covenant.** Landlord and Tenant shall cooperate to achieve and/or maintain the Building Certifications, to implement Landlord's Sustainability Practices, and to consider adoption of sustainable management practices proposed by either Party. Landlord and Tenant shall collaborate in the education of Tenant's employees about Landlord's Sustainability Practices and relevant Green Building Laws.

3. **Common Area Maintenance Charges³.** [Common area maintenance charges related to Green Building Laws, Building Certifications, and Landlord's Sustainability Practices shall be addressed in the Lease.] OR [Common Area Maintenance Charges, in addition to those set forth in the Lease, include, without limitation:

(a) **Building Certification Costs.** Any and all costs and expenses incurred to obtain and maintain the Building Certifications, including but not limited to replacement, retrofitting, commissioning, and/or re-commissioning Building Systems and related project management and reporting costs. Such costs that are determined by Landlord in its sole discretion to be capital expenditures or capitalized maintenance costs shall be amortized over the course of their useful life.

(b) **Compliance with Green Building Laws and Landlord's Sustainability Circumstances.** Any and all costs and expenses incurred to comply with Green Building Laws or Landlord's Sustainability Practices.

(c) **Alternative Energy.** Any and all costs and expenses incurred by Landlord to purchase alternative energy for the Building.

(d) **Alternative Transportation.** Any and all costs of implementation of Landlord's alternative transportation programs, or compliance with governmental requirements for alternative transportation.

(e) **Insurance Endorsements.** Any and all costs and expenses relating to insurance endorsements obtained to provide coverage for the repair, replacement, recertification or re-commissioning of the Building or any Building system to obtain and maintain the Building Certifications.

4. **Real Estate Taxes.** Tenant shall pay its pro rata share of any increased property taxes resulting from a reassessment of the Building following the completion of improvements to obtain Building Certifications.

5. **Utilities.**

5.1 **Alternative Energy.** Landlord shall have the right to purchase green or renewable energy, the costs of which shall be a Common Area Maintenance Charge.

5.2 **Sub-metering.**

³ Common Area Maintenance charge issues are of such a fundamental nature that they may best be addressed in the base lease. A proposed allocation of green building related common area maintenance charges is included here for consideration.

[address], [city], [state]
[Landlord]/[Tenant]

Landlord's Initials

Tenant's Initials

(a) **Landlord's Right.** Landlord shall have the right to sub-meter the Premises at its sole cost and expense, either for informational purposes or to charge Tenant for its actual electricity usage. In the event Landlord elects to charge Tenant for its actual electricity usage, as and when invoiced by Landlord, Tenant shall pay for the cost of Tenant's actual electricity usage and Landlord's reasonable administrative charges related to allocation of electricity charges in the Building.

(b) **Tenant's Right.** Tenant may request sub-metering of the Premises at its sole cost and expense, either for informational purposes or subject to Landlord's consent, in its sole discretion, to be charged for Tenant's actual electricity usage. Landlord shall have the right to oversee Tenant's sub-metering planning and installation process, and Tenant shall pay to Landlord a reasonable administrative charge for this service. In the event Landlord consents to Tenant's request to be charged for its actual electricity usage, as and when invoiced by Landlord, Tenant shall pay for the cost of Tenant's actual electricity usage and Landlord's reasonable administrative charges related to allocation of electricity charges in the Building.

(c) **Charges.** In the event the Premises are sub-metered, either by Landlord or Tenant, and, unless Landlord or Tenant has sub-metered the Premises for informational purposes only, Tenant shall pay to Landlord:

(i) All invoiced amounts within 10 days of receipt of invoice; and

(ii) as part of Common Area Maintenance Charges, Tenant's share of common area electricity charges, which shall equal Tenant's Share multiplied by the difference between the total electricity costs for the Building and electricity costs attributable to those portions of the Building leased to all tenants.

5.3 Separate Metering.

(a) **Tenant's Right.** Tenant may request separate metering of the Premises at its sole cost and expense, subject to Landlord's consent in its reasonable discretion. Landlord shall have the right to oversee Tenant's separate metering planning and installation process, and Tenant shall pay to Landlord a reasonable administrative charge for this oversight.

(b) **Charges.** In the event the Premises are separately metered, Tenant shall pay:

(i) all electricity charges attributable to the Premises on its own account;
and

(ii) as part of Common Area Maintenance Charges, Tenant's share of common area electricity charges, which shall equal Tenant's Share multiplied by the difference between the total electricity costs for the Building and electricity costs attributable to those portions of the Building leased to all tenants.

[address], [city], [state]
[Landlord]/[Tenant]

Landlord's Initials

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(c) **Electricity Reporting.** In the event the Premises are separately metered, Tenant shall provide to Landlord within 10 business days of request electricity consumption data for the Premises.⁴

6. **Insurance.** Landlord shall have the right to obtain and maintain any insurance endorsement or other product to provide coverage for the repair, replacement, recertification, or re-commissioning of the Building to obtain or maintain the Building Certifications, the costs of which shall be a Common Area Maintenance Charge.

7. **Tenant's Operating Covenants.**⁵

(a) **Compliance with Green Building Laws and Landlord's Sustainability Practices.** Tenant shall comply with, and ensure that its employees, invitees, and licensees comply with all Green Building Laws and Landlord's Sustainability Practices applicable to the Premises.

(b) **Permitted Use.** Tenant shall not use or operate the Premises in any way that would cause the Building to lose its Building Certifications or violate Landlord's Sustainability Practices.

(c) **Sustainable Building Operations.** Tenant shall use proven energy, water, carbon reduction, and other sustainable measures, including, without limitation, energy efficient bulbs in task lighting; lighting controls, such as automatic sensors; daylighting measures to avoid overlighting interior spaces; closing shades on south side of the building to avoid overheating the space; turning off lights and equipment at the end of the work day; purchasing ENERGY STAR® qualified equipment, including but not limited to lighting, office equipment, commercial and residential quality kitchen equipment, and vending and ice machines; water filtration systems to avoid the use of bottled water; and water conservation measures, such as purchasing products certified by the US EPA's Water Sense® program.

(d) **Recycling, Compositing, and Waste Management.** Tenant shall, at its own cost and expense:

(i) comply with any present or future Green Building Laws and Landlord's Sustainability Practices regarding collecting, sorting, separating, recycling, and composting of garbage, trash, and other refuse (collectively, "Waste")⁶;

(ii) sort and separate Tenant's Waste according to any present or future Green Building Laws and Landlord's Sustainability Practices;

⁴ California has enacted AB 1103, which requires building owners to benchmark their building's energy performance and to make their building's energy consumption data available to prospective tenants of the entire building, buyers, and lenders.

⁵ Landlord may consider adopting mutual operating covenants in accordance with Landlord's Sustainability Practices.

⁶ In San Francisco, Ordinance # 100-09 was adopted on June 23, 2009 and requires all residential and commercial properties to recycle and compost waste. Landlords have 2 years to comply with the new requirements before San Francisco will impose fines for failure to recycle or compost.

[address], [city], [state]
[Landlord]/[Tenant]

Landlord's Initials

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(iii) arrange for collection of any of Tenant's Waste that is not sorted and separated as required by any present or future Green Building Laws, utilizing a contractor approved by Landlord; and

(iv) pay on demand any and all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant due to Tenant's failure to comply with the provisions of this Section 6(d).

(e) **Maintenance and Repairs.** Tenant shall perform any required maintenance and/or repairs of the Premises in accordance with Landlord's Sustainability Practices and the Building Certifications.

(f) **Tenant Improvements and Alterations.**

(i) Tenant shall perform any and all Tenant Improvements and/or Alterations in accordance with Landlord's Contractor Rules and Regulations,⁷ Landlord's Sustainability Practices, and the Building Certifications. Any Tenant Improvement Allowance may be applied toward the costs of certification of the Premises under any Green Building Standards.

(ii) For any Tenant Improvement and/or Alteration over 25,000 square feet, Tenant shall engage a LEED[®] accredited or Green Globes[™] professional as project manager.⁸

(iii) At the end of the Lease term, Tenant shall restore the Premises in accordance with the provisions of any Building Certifications, and in any event maximize diversion of Waste from landfills.

(g) **Rooftop Equipment.** Tenant's right, if any, to install rooftop equipment shall be exercised in a manner that will not interfere with any existing solar or alternative power systems of Landlord or any other tenant of the Building, any green or living roof installed by Landlord, or any other similar measure taken by Landlord.

8. Transportation. Tenant shall cooperate with Landlord in implementing any alternative transportation or transportation demand management programs adopted by Landlord for the Building.

9. Assignment and Subletting. Notwithstanding any contrary provision of the Lease, and irrespective of whether Landlord's consent is required, Landlord may disapprove of any proposed assignment or sublease if Landlord determines in its sole discretion that the proposed use of the Premises by the proposed assignee or subtenant would impair Landlord's ability to obtain or maintain the Building Certifications, or the proposed assignee or subtenant would be unable or unwilling to comply with Landlord's Sustainability Practices.

⁷ If Landlord does not have Contractor Rules and Regulations, Exhibit D to the BOMA Green Lease[®] is a good resource for the creation of one.

⁸ This requirement aligns the Rider with San Francisco's green building ordinance, as set forth in San Francisco Building Code, Ch. 13C.

[address], [city], [state]
[Landlord]/[Tenant]

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10. **Janitorial Services.** Landlord reserves the right to provide janitorial services Monday through Friday, except holidays, during normal business hours in accordance with Landlord's Sustainability Practices.⁹

11. **Remedies.** Tenant's failure to comply with any term, provision, or covenant of this Rider, which failure is not cured within 10 business days after Landlord's delivery to Tenant of notice of such failure shall be deemed an Event of Default; provided, however, that if the nature of Tenant's default is such that more than 10 business days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said 10-business-day period and thereafter diligently prosecutes such cure to completion. In addition, Tenant acknowledges that any Event of Default that would jeopardize the Building Certifications shall constitute irreparable harm and entitle Landlord to seek injunctive relief in a court of competent jurisdiction.

[Signatures on following page]

⁹ Although it is historically customary for janitorial service to be completed after hours, completion of routine janitorial services during normal business hours would reduce the need to operate building systems after normal business hours and presumably result in energy and other cost savings.

[address], [city], [state]
[Landlord]/[Tenant]

Landlord's Initials

Tenant's Initials

This Rider can be executed in multiple counterparts and when so executed by all Parties shall be deemed in full force and effect.

EXECUTED ON THE DATE NOTED BELOW:

Landlord:

[company], a [state] [corporate form]
company

Tenant:

[company], a [state] [corporate form]
company

BY: _____

ITS: _____

DATE: _____

BY: _____

ITS: _____

DATE: _____

[address], [city], [state]
[Landlord]/[Tenant]

Landlord's Initials

Tenant's Initials
