

'Green Leases': commercial lease arrangements for sustainable buildings

Publication - 18/10/2010

What is a 'Green Lease'?

A 'Green Lease' is a lease of a commercial or public building which incorporates an agreement between a landlord and a tenant as to how a building is to be occupied, operated and managed in a sustainable way.

It links sustainable building design with post-constructive obligations on both the landlord and tenant of commercial property to achieve environmentally sustainable development objectives.

In other words, a 'Green Lease':

- Reflects the parties desire to improve and be accountable for energy efficiency at a building.
- Provides a legal framework for the ongoing sustainable operation of a building in accordance with its environmentally sustainable design.

Green Lease origins

The 'green lease' was first developed in Australia where its use became mandatory from 2006 in all Government owned and occupied buildings.

It has since expanded into the private sector around the world as a voluntary initiative and is now being implemented in commercial property lease arrangements in London and across the UK.

What are the commercial benefits of 'Green Leases'?

The property owner's perspective:

- The core asset (i.e. the building) is maintained in accordance with its environmentally sustainable design.
- As a consequence, the building achieves maximum rental returns and occupancy rates.
- The owner's costs of maintaining the asset are minimized.
- The owner is able to offer a product to meet tenants requirements.
- The owner benefits from a lifestyle cost-benefit analysis whereby tenants actively seek out premises that provide sustainable design with ongoing sustainable building management and operation.
- The owner is able to meet Corporate Social Responsibility requirements.
- The owner benefits from an improved public image and related marketing position.

The tenant's perspective:

- The premises provide a safe, productive and 'green' work environment.
- The tenant benefits financially from lower operating costs/service charges through reduced energy and water consumption rates.
- The tenant is able to meet Corporate Social Responsibility requirements.
- The tenant benefits from an improved public image and related marketing position.

What are the essential elements of a 'Green Lease'?

A 'Green Lease' incorporates five essential elements:

- An agreed target rating including annual assessments.
- Separate digital metering.
- A Building Management Committee.
- An Energy Management Plan.
- A dispute resolution process.

Agreed target rating including annual assessments

A 'Green Lease' applies a target rating (e.g. BREEAM) into a binding agreement between the landlord and tenant to enable the landlord to operate the building in accordance with its environmentally sustainable design.

This enables the building owner to improve energy performance, reduce energy costs and give its building and organisation a competitive advantage in the market place.

An annual assessment allows the parties to monitor energy efficiency at the building and to assess energy performance in the context of the target rating obligations set out under the terms of the lease.

In the UK, where Energy Performance Certificates (EPC's), are a legal requirement for commercial buildings, 'Green Leases' can be used to ensure that buildings are operated to their optimal sustainable design capability.

This is advantageous to both landlords and tenants who must by law produce an EPC each time a property is sold or let or an existing lease is assigned or sublet.

Separate digital metering

A 'Green Lease' requires:

- All services (electricity, gas, water both hot and cold) to the premises to be separately metered - electricity meters need to be digital meters.
- All central services in the building (i.e. common areas) to be separately metered.

This is an essential component under a 'Green Lease' and, in the case of electricity meters, is critical to the tenant's ability to achieve energy efficiency via its ability to monitor and manage its energy usage at the premises.

Building Management Committee

Under the terms of a 'Green Lease' a Building Management Committee ("BMC") is set up to operate as a communication, consultation and record keeping vehicle for the parties to the 'Green Lease'.

The BMC consists of the Landlord's Energy Representative (e.g. the building manager) and the Tenant's Energy Representative (e.g. the tenant's representative).

Energy Management Plan

An Energy Management Plan (EMP) is annexed to a 'Green Lease' and the parties covenant to comply with its provisions.

It incorporates specific minimum requirements for maintaining the target energy consumption for the premises.

An EMP is usually prepared by a landlord's technical advisor and is a detailed document setting out technical requirements for ongoing sustainable building management and operation.

Remedial action and dispute resolution provisions

A 'Green Lease' incorporates both (i) remedial action and (ii) dispute resolution provisions.

These provisions enable a co-operative approach to rectifying non compliance with 'green' provisions under a 'Green Lease' by the landlord and tenant.

They enable the parties to manage risk and avoid possible lease termination or other onerous consequences of a breach of the 'Green Lease'.

Ultimately, they provide for expert determination for resolving issues under the 'Green Lease' where the parties are unable to reach a harmonious resolution.

Tenant Fit-out Policies

'Green Leases' often form part of a suite of legal documents including a 'Tenant Fit-out Policy'.

In essence, the related 'Tenant Fit-out Policy' sets out the specifications which a tenant must adhere to when fitting out its premises so as to ensure compliance with the relevant target rating (e.g. BREEAM) which is assessed collectively on both the developer's base building design as well as the tenant's fit-out works.

The policy can be used not only in relation to the tenant's fit-out works at the commencement of the lease but also to any alterations carried out by the tenant during the term of the 'Green Lease'. This ensures that the same target rating is achieved in respect of any works to the building which are carried out after the initial fit-out during the term of the lease.

'Green Leases' in new and existing buildings

'Green Leases' can be used not only for new developments with sustainable design features but also for existing buildings.

Underperforming investment properties with poor carbon footprints are often retrofitted by an owner in order to attract commitment from its existing, or potentially new, tenants.

In such instances, where an investment property owner retrofits existing buildings with sustainable design elements it can consider incorporating 'Green Lease' provisions into the existing lease by way of variation of lease.

Conclusion

The 'Green Lease' was created for mandatory use in 2006 by the Australian Government in all circumstances where it was either a landlord or tenant of a commercial property.

Since its origins the 'Green Lease' has spread globally into the private sector and is now being used by the property industry's leading developers, real estate investors and corporate occupiers.

As well as providing commercial benefit to landlords and tenants, the 'Green Lease' enables landlords and tenants to meet regulatory requirements. It is also perceived to be of genuine long term benefit to the environment as it ensures that sustainable developments are occupied, operated and managed in accordance with their design.