



# Aligning Owners & Occupant Energy into the Lease

By Josh McIlwain, SFP, LEED Green Associate

At both the individual level and as a society, it is time to cast aside old ways of doing business to make way for the new. Decarbonization and sustainability challenges are more than just a growing trend, they are here to stay. We can either dive into them or run and hide from them.

To begin with, we must discard the old way of thinking. It can no longer be “Us vs. The World”, “Management vs. Labor”, “Either/Or”, “Mine or Yours”. We must work together. Our jobs are as corporate and planetary citizens. In Facilities, we care for the assets: the people who own them, the people who occupy them, and the people around them. Indeed, when referencing the traditional landlord/tenant relationship model, JLL notes: “This will require a shift from the adversarial and at times contentious relationships that exist today. In doing so, (Landlords and Tenants) will have to form new business models of building management which allow for increased collaboration and communication between both parties, with clearly defined responsibilities and benefits for each.”<sup>1</sup>

This is where the mind shift can happen, and for Facilities Services, this is where we can think and act globally and locally. This is not to say competitive market forces and capitalism will cease to exist. This is not to say we’re headed for a socialist or dystopian future. It is to say we need to get it together to move forward.

Since every building is unique, there are no one size fits all solutions. So, let’s focus on one such tool we have available to us - - Green Leasing, or “energy-aligned leasing” - - in our efforts to move away from old thinking and towards new, sustainable solutions. These legally binding agreements represent significant opportunities to practitioners and service providers alike. Being knowledgeable

about market trends ensures a strong position at the decision-making table and can give professionals and organizations an edge.

Green Leases have been around for 15 years or so and while there has been significant adoption there is still work to be done. At their core, they aim to remove the split incentive that exists between owners and occupiers, remove barriers to sharing of data for Energy, Waste and Water and enable building owners to meet compliance requirements. The idea is to create a cooperative business model to work toward common goals, and to modify the mechanisms in negotiated leases to enable both sides to win. By solving multiple challenges along a linear path, instead of a single point moment in time, the parties can navigate the increasingly complex challenges that each side faces. By recognizing and validating concerns of the other party and working together as participants in a harmonious business ecosystem, we are emulating a natural system with its component parts in balance and stepping into the new thinking.

New challenges require new thinking in our approach to solving them. Western work cultures, steeped in capitalistic tradition and laissez faire approaches to change, can be at odds with new thinking, but they don’t have to be. Building owners and tenants both have new mandates for compliance, so who could fault the Facilities Management world from feeling caught between a rock and a hard place?

Regulations are imposing change on the private sector, which has become increasingly more accountable to the public in the form of Building Performance Standards and Compliance with Greenhouse Gas Emissions reporting. Corporations that are doing business in California, the EU, within the 46 jurisdictions in the

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<sup>1</sup> “Green Leasing 2.0”, JLL, March 2023



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United States with existing or looming Building Performance Standards are having to adapt. While the SEC's rule for publicly traded entities is stayed as of this writing, it too calls for reporting on Scope 1 and Scope 2 emissions data.

Simultaneously, there is demand and broad consensus in the market by investors, insurers, and the institutions in the financial markets for carbon emissions accounting. Indeed, in a recent survey, 81% of corporate executives supported continuing investments for Sustainability initiatives, even if government funded programs (like the Inflation Reduction Act) are rolled back.<sup>2</sup>

Traditional risk management approaches lean heavily towards compliance. Accordingly, facilities managers are called upon to deploy cost avoidance strategies, through research, innovation and adaptation. To remain competitive with changing market trends, our built environment must be upgraded and maintained for high performance and energy efficiency.

In terms of market mechanics and simple economics, let's look at supply and demand. The global demand for low carbon building stock outstrips supply considerably, and occupiers are increasingly demanding space that will enable them to fulfill their commitments and obligations to their stakeholders, while building owners need to see returns from their investments. Paulina Torres, Research Manager, Sustainability and ESG at JLL, adds "Buildings aren't anywhere near where they need to be in terms of compliance with regulations." She points to data projecting gaps in the supply of low carbon space of 30% by 2025 and up to 70% by 2030<sup>3</sup> in 21 cities globally. In what is known in the market as the "flight to quality",

Paulina elaborates that while "the office sector has seen a slowdown in activity due to downsizing trends catalyzed by the pandemic, record rents are still being achieved in many markets. Tenants are decreasing their footprint, but where they do lease space, they are increasingly demanding more - and sustainability, namely carbon performance, is becoming an integral component." Torres continues, noting the trend is "happening across office markets and is expanding to include sustainability elements. The factors driving the demand are energy efficiency, clean energy and zero fossil fuel emissions. In fact, these are the requirements under the official definition of a "Net Zero Emissions Building."<sup>4</sup> It is against this backdrop that the concept of a green lease emerges as a path forward.

The crux of a green lease is that it enables win-win outcomes for Landlords and Tenants by aligning financial and sustainability incentives within the lease. As you can imagine, corporations' finance, insurance and legal departments will need to review all the terms and conditions, pondering all the possible implications to mitigate risks. If it is a new concept not currently in use within their organization, they are right to be wary. Put yourself in their shoes: the volume of new regulations and risks that have arisen in the past 5 years is astounding. Yet, this is not a reason to stall, delay, stymie progress or sue. While the concepts of new thinking may run counter to certain stakeholders established business traditions, the time is upon us to embrace change, and it will require the best that we have, from all of us.

Like other forms of the new thinking, it is inclusive, and there's something in it for everyone. Green leases may improve the overall organization from facilities, to

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<sup>2</sup> [Sustainability spending tops US corporate agenda amid decarbonization hurdles: Carrier | ESG Dive](#)

<sup>3</sup> [The green tipping point: Is 2024 the year when carbon commitments change lease markets at scale? \(jll.com\)](#)

<sup>4</sup> [National Definition of a Zero Emissions Building | Department of Energy](#)



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legal, insurance, operations, marketing, HR, occupant health and safety, and community. There are also trials, tribulations and pitfalls that need to be sorted through and worked out, and where the process gets messy, it's probably most needed.

Overcoming these challenges is as unique and specific to our buildings as their ownership, occupants and the jurisdictions they find themselves in. Indeed, every building is different, our tenants have various needs and clauses and there's no silver-bullet solution. While there's no perfect template, there are plenty of examples of legal verbiage available for common scenarios.<sup>5</sup>

Imagine a building located in a city on the eastern seaboard of the U.S., owned by a large, publicly traded, multinational firm with global holdings. They will likely be looking to ensure compliance with the EU's CSRD, CCDAA, possibly the SEC, and a myriad local jurisdictional building performance standards. The risk for non-compliance is just too large.

Imagine this building has post-Covid occupancy rates that they need to improve and/or debt restructuring to accomplish. Imagine the building needs to attract new tenants and needs to invest substantially not only for compliance but maintain competitiveness in the market. Imagine this building's finances are held by a European firm, beholden to the Paris Climate Accords and EU's CSRD.

Sound familiar?

Imagine a potential tenant, struggling with return to office mandates, looking to maximize on-site occupancy and space utilizations, while also balancing corporate sustainability initiatives.

Sound familiar?

How can both parties marry their seemingly competing interests? These can be negotiated into the lease agreement. One of the bigger challenges on the landlord side in the U.S. is the split-incentive, where the owner is often responsible for upfront investment in new equipment / building upgrades, but the tenant realizes the majority of the savings as a result of that investment, most particularly in the form of reduced operating energy and maintenance costs. By discussing the split-incentive and incorporating language in the lease, the tenant and landlord can agree to share these costs or to concessions that make the investment more palatable.

Therefore, they both benefit: The landlord gets a committed tenant and can hit their building performance targets, compliance objectives and avoid fines. The tenant gets an upgraded space that they can use to attract talent to their location and meet their compliance objectives. The workforce gets an inspiring building. The community gets a building that consumes less energy from the grid and reduce GHG emissions. Costs and risks are mitigated, and everyone wins. I don't often deal in oversimplifications, but it's an ideal to work towards. We'll need ideals to strive towards when working together and thinking longer-term.

Diana Lee, with IMT, shares that "Green leases can enable an average of 17% in savings for Office Buildings in the United States." While this is significant in terms of meeting goals, it also represents tangible savings. Diana leads the Green Lease

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<sup>5</sup> [Green Lease Language Examples - IMT](#)



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Leaders program, which both recognizes organizations who utilize green leases and educates the commercial real estate industry through resource creation, webinars and more.

The challenges are even more nuanced globally. In Australia, building owners typically pay for equipment upgrades and operating costs. In the U.K. they pay for upgrades, and occupiers pay service fees. In the U.S., a triple net occupier pays all the costs for operations and maintenance while the owner is responsible for equipment, upgrades and compliance. Just amongst these three nations and these three leasing models, there are wide variations, making it a complex organizational challenge for a global firm to implement standard practices internationally.

Players in the U.S. market can learn a thing or two from our counterparts internationally, and we need to: In the U.S. alone, 1.2 billion square feet (111 million square meters) of office space and 2.5 billion square feet (232 million square meters) of industrial space will be experiencing a lease expiration before 2030.<sup>6</sup>

As practitioners in our field, if we are to advance ourselves professionally, we must move towards a more inspired future. This may mean more formal education for some, on the job training or apprenticeships for others, and awareness of growing trends and future career potential for the next generation.

Sustainability and decarbonization represent growing opportunities within facilities. By now, many of us know that 90% of our time is spent within the built environment. As we train and educate the next generation into the workforce, what's not yet been realized by the general public is the astounding number of specializations needed to construct, maintain and manage our facilities.

Long term thinking is inherently necessary for making good investments. This is where capitalism and sustainably meet: combining interests in making the best decisions for the long haul. We need to seek more opportunities where we can combine gains for the triple-bottom line. It might take little longer to think through and decide on, but it ought to cost us less in the long term.

I recall that during a presentation I delivered to a group of business executives on Building Performance Standards, a contractor raised his hand and questioned the premise of regulations and its impact on capitalism. It's a debate that comes up frequently during these sessions. Before I could answer, another hand raised and its owner responded: "As capitalists, why wouldn't we want to eliminate waste, in all its forms?"

Asking it was TJ Carvis, Project Executive and Architect at Gresham-Smith. TJ graciously agreed to be interviewed on his perspective for this article. In exploring the central question of Sustainability in the Built Environment – TJ pondered "The environmental and long-term economic benefits are real, but I do wonder how we are going to get it all done." In his words: "The extent of upgrades these buildings require typically only get done when we're repurposing a building – as they can be invasive. Collectively, the effort to green our larger buildings is going to require a ton of labor and capital to complete."

As Carvis notes, "Buildings are almost always unique, even when they are of similar design and were built around the same time", so to meet the challenges ahead, Carvis believes that the thinking that's required "includes a broad understanding and adaptive mindset to address any unforeseen and special conditions. In many cases we will need to develop truly unique solutions. It isn't to say we shouldn't

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make the effort; it just that it adds to the complexity of the task. The effort can be quite a bit more complicated than simply upgrading to LED lighting where there is a certain amount of repetitiveness to the work, and the result is a scalable reduction in energy loads,” and naturally, these kinds of changes are more nuanced and based on the occupant and landlords’ overall business together.

Carvis continues: “For example, we have buildings that will need significantly more electricity. Adding EV charging stations, likely requires adding both switch gear and transformers. It could also mean adding batteries for energy storage especially when capacity available in the electrical grid is limited. Existing buildings may not have the space to accommodate the new equipment. Similarly, if EV charging spaces are required to be larger by zoning, it can impact the overall capacity of a building’s parking facilities.” Simply modifying lease language and calling it “Green” across the board won’t do when real action is what’s needed and there are complex challenges that need to be solved. A lease needs to incorporate clauses to enable real action to address these complex challenges.

An ideal time for these considerations, according to the Urban Land Institute, is before and during the planning of new tenant fit outs, as new tenants are negotiating their terms before moving in. This time provides the building owner and tenant the chance to address equipment and efficiency upgrades, including HVAC, lighting, EV chargers, biophilic design or Green Building Certifications that are important to the tenant. The landlord can gain commitments over the term of the lease for compliance, data sharing, and meeting of mutual goals related to ESG and Building Performance Regulations.<sup>7</sup>

When we talk about growth, whether it be economic or career, we are opening our world to something new, something bigger, something *more*. In having a growth

mindset, as individuals and organizations, we are contemplating and processing new information to produce a different result in the future.

Maintaining a competitive market advantage means always learning and adapting to changing market conditions. For our buildings, it means continuous innovation in terms of how we position our spaces to be attractive to current and potential tenants. For ourselves, that means educating ourselves on how we can learn and apply new solutions, innovate and improve on them, and position ourselves for continued growth. Within the Built Environment, Green Leases can provide us an opportunity to shine.

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<sup>7</sup> [Green Leasing as Part of a Sustainable Tenant Fit-Out | ULI Knowledge Finder](#)



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