

# Real Estate Strategies

MacLaurin Williams | Denver/Boulder, CO

## Green for the Environment, Green for the Bottom Line

**G**reen leases come at a price. Our lead article this issue covers items that arise in negotiating a green lease. The goal for tenants is not to absorb an unfair share of the costs, since the landlord benefits greatly from a building that's green.



William Gary

Green building cost benefits and ROI are easy to recognize, quick and substantial, as supported by a recent

study by the University of San Diego.

Consider that tenants who lease in green buildings (LEED certified or Energy Star):

- Have 2.9 less sick days annually saving employers \$1,200 per worker annually
- Experience a 5% increase in worker productivity (\$5,000 per worker annually)
- Report improved staff retention (three of five firms)
- Report an improved image with their clients (three of four firms)
- Save an average of 21% on electricity costs (by billing tenants directly)

The two most important reasons for increased employee productivity and morale were the improvement in air quality and light.

The survey found that these improvements equal a net savings of \$5 per square foot. This more than makes up for the additional expense of a green building.

The old canard that you have to spend some green to make some green applies here. The ROI clearly justifies the investment.

For more information about green leasing, contact William Gary at 303-294-0277.

## Sharing Costs for Green Leases:

# Green Building Tenants Should Not Pay Full Freight

BY MICHAEL W. PARKER, ESQ.  
ENVIRONMENTAL/REAL ESTATE ATTORNEY  
RACKEMANN, SAWYER & BREWSTER

**W**HILE THE CONCEPT OF A "GREEN" LEASE SOUNDS LOFTY and socially responsible, every tenant must question whose "green" (as in dollars) will pay for the energy and environmental initiatives—yours or the landlord's?

The fact that buildings are much bigger energy users than autos certainly lends urgency to the need to drastically

Green buildings usually contain components such as lots of natural light and foliaged common areas that keep up employee morale.

reduce a building's carbon footprint. In the U.S., buildings contribute nearly 40% of global warming emissions while consuming over 70% of U.S. electricity use, according to the U.S. Green Buildings Council, which oversees the LEED program.

Companies and their employees prefer occupying buildings certified with the LEED (Leadership in Energy and Environmental Design) rating.

It is a badge of responsible corporate citizenship that demonstrates environmental accountability to shareholders, stakeholders and customers.



Tenants can parlay the sustainability, progressiveness and health of the building to attract talented employees.

But the costs of green leases (leases in green buildings) should not be borne solely by tenants. Landlords, too, have a desire to demonstrate corporate social responsibility, which can serve as an effective marketing tool to attract and retain high quality tenants.

Important green cost allocation issues are not addressed by standard leases, thus the need for "green leases." Green issues impact lease negotiation and tenancies in

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*Don't Get "Boxed" In:*

# An Inside Strategy For Saving \$\$\$ Leasing Industrial Buildings

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**W**HEN IT COMES TO INDUSTRIAL BUILDINGS, WHETHER it's leasing space, or buying property, it pays to think *inside* the box.

Whether it's a factory, research and development facility, warehouse and/or distribution facility, the "i's" on any leasing agreement have to be dotted and the crossdocks, if needed, better be included.

Industrial buildings not only come in many shapes and sizes, but the needs of every potential tenant and buyer-user vary across a broad spectrum. And the issue of whether to buy outright, triple-net lease or double-net lease can be affected by a company's tax structure, cash flow or the vertical industry it serves.

To the untrained eye, the industrial building is a plain box. To the CFO, or CEO/owner, it's a fiscal as well as physical profit center with attributes that must raise operational efficiency and productivity.

## 7 Tips For Better Lease Terms

Here are seven important tips and strategies for industrial building tenants that can facilitate the negotiation of the most favorable lease terms and conditions:

**Thoroughly Describe the Proposed Use of Both the Exterior and Interior of the Premises: Kick some tires.** In order to effectively evaluate alternatives

and negotiate the terms and conditions of the lease, the tenant representative must have a thorough understanding of the proposed use of the exterior and interior of the space. Valuable



*To the CFO or company CEO/owner, the industrial building is a fiscal as well as physical profit center with attributes that must raise operational efficiency and productivity.*

insights can be obtained by touring existing facilities, consulting with the tenant's staff (e.g. warehouse supervisor, building engineer, director of logistics) and vendors (e.g. suppliers or trucking firms). It is important for the tenant representative to know the "got-to-haves," as well as the reasons behind the requirements.

**Verify the Measurement of the Leased Area: Use industry standards.**

Many industrial leases contain a provision that states that the leased area is by "agreement," and not subject to revision whether or not the actual square footage is more or less. This provision may be acceptable, provided that the square footage is confirmed by a 3rd

party and was calculated in conformity with BOMA & SIOR standards described in "Methods for Measuring Floor Area in Industrial Buildings."

**Negotiate "Caps" and Timing for NNN Charges: In a soft market, set limits.**

Many industrial leases provide for a "base rent" plus a prorated share of all operating costs including but not limited to real estate taxes, insurance, maintenance of common area and management fees. It is the landlord's objective to pass all operating and property costs on to the tenant as additional

rent. In "soft markets" with high vacancy factors, it is possible to negotiate for the landlord's responsibility to maintain certain items such as HVAC and mechanical items during the initial 3—12 months of the

lease. Similarly, it is possible to negotiate a "cap" or "not-to-exceed" amount for all triple net charges.

**Purchase Professional Building Inspection: Inspect Before Negotiating.**

If a property is being considered for a long-term lease, and it is likely that the

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## ITRA Success Story:

# ITRA Portland Helps Pacific Crest Technology Achieve Dream Office

**A**fter ten years in the same space, Pacific Crest Technology (PCT) a Tualatin, Oregon USA-based manager of application maintenance, software development, system conversions, QA, and product engineering, was not satisfied with their Class A headquarters near Portland.

Something was missing.

PCT wanted a better location, more convenient for their employees, who had made their needs known. The IT firm also wanted an office close to restaurants, and a building that would allow them to raise their visibility.

Counterintuitive to many recent tenant space searches, price was not the only driver—employee productivity was also of key importance.

Enter Greg Hume, President, and Brian Wise, Senior Broker of ITRA / Hume Myers Tenant Counsel, which represented PCT. Mr. Hume leveraged PCT's stable corporate profile, noting that it "strengthened our negotiating position as Class A vacancies rose above 15 percent at competing properties during the search."

"Greg Hume and Brian Wise helped us realize that we could reduce our occupancy costs by relocating and also create a new and more productive workplace. Our employees are benefiting from the efficiency of the new space and enjoying the location and area amenities," said PCT President Brad Greer.

ITRA's Hume and Wise negotiated a lease of 15,422 square feet in Lakeside Commons, Tualatin. The building is adjacent to the town's CBD, with signage viewable from the main road.

"We like the improved access, lake views, nearby shopping and dining," said PCT's Mr. Greer.

"Taking advantage of current market conditions, we negotiated an economical rate with concessions that more than offset the cost of relocation for PCT," said Mr. Hume.

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- Selection and Oversight of Design Team Contractors and Vendors
- Move Coordination



significant areas, such as building construction and design. Green leases also serve to insure compliance with LEED standards and fairly allocate green costs between landlords and tenants.

While standard leases often provide that the landlord construct a core and shell and the tenant builds, or pays for, tenant improvements, a green lease provides an integrated tenant improvement process. This process incorporates the building's design and specific materials that conform to the building's current LEED rating. Having complied with the construction process, tenants should require that the landlord represent and warrant that the building achieve and maintain its LEED rating.

Green buildings generally have higher construction costs, but lower operating costs, as green systems are more energy efficient than typical or older systems. Tenants need to make sure that the costs and benefits are allocated fairly. This landlord-tenant cost allocation raises the issue of what type of lease is used, a gross lease, a triple net lease, or a hybrid of the two, a modified gross lease.

If the landlord charges a higher base rent to recover its green construction costs, tenants should utilize either a triple net or modified gross lease, where the tenant pays only its proportionate share of operating expense increases

over a base year. Utilizing a triple net or modified gross lease may change traditional leasing negotiations in some parts of the country.

Another green lease issue concerns operation and maintenance. Green operating systems, like HVAC systems, typically have specific requirements, such as frequent calibration and cleaning procedures, to insure compliance with LEED standards. As part of a green lease, a landlord may provide tenants with a systems/building manual and require tenants' compliance. Tenants

it becomes a material default. Thus, rent payments should be reduced commensurately.

Tenants should also be aware of the impact of environmentally-friendly cleaning materials (usually addressed as an attachment to the lease), caps on individual tenant energy use (whether by usage or times of use) and the landlord's ability to charge tenants for capital projects that lower operating expenses. If a tenant agrees to pay for such projects, the tenant needs to insure that the cost amortization does not exceed the

costs savings realized in lower operating costs by the tenant.

Green leasing raises questions that have not been fully resolved due to the newness of the concept. This could significantly change the way leases are negotiated. Green leases offer fantastic opportunities to reduce costs while supporting

the environment. This is where tenants, working with their ITRA exclusive tenant representatives, can avoid being blinded by the "goodness" of a green lease and use their instincts to ensure that they are not paying a disproportionate share of the common good.

*Based in Boston, Massachusetts USA, Michael Parker formerly served as Senior Enforcement Counsel at the U.S. Environmental Protection Agency.*

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should review such manuals carefully to make sure that they will be able to comply with the requirements without undue costs and without unreasonable obligations. For instance, since the landlord installs and controls most, if not all systems, tenants need to think twice before agreeing to systems compliance.

Tenants should be adamant that landlords represent and warrant that they must maintain the building and its systems in compliance with LEED standards, and if the landlord defaults,

## Leasing Industrial Buildings *Continued from page 2*

tenant will be responsible for the repair or replacement of HVAC, mechanical or plumbing item, professional building inspection is recommended. The cost of a written report can range from \$300—\$1,500+ depending on the size of the property and improvements. The building inspection report can be an effective tool for negotiating "caps" and timing for NNN charges.

**Differentiate Tenant Improvements vs. Cost to Correct Building Code Deficiencies: Don't Take Compliance For Granted.** Never assume that property under consideration (based upon a prior use or occupancy) is in compliance with current building codes. Any tenant improvement allowance

should be directed for the construction of improvements that are tenant specific requirements. The cost to retrofit the building to bring it in compliance with current building codes should be in addition to the tenant improvement allowance.

**Carefully Define Occupancy Date vs. Commencement Date: Know your start date.** The commencement date of the lease is the date that term begins and rent, including any free rent, starts to accrue. The commencement date should be keyed to the occurrence of a specific event such as 100% completion of tenant improvements and issuance of a certificate of occupancy. The Occupancy Date may occur prior to the

completion of certain tenant improvements, and is the date that the tenant takes possession of premises.

**Retain an Experienced Tenant Representative: Avoid brokers with dual loyalties.** Seek the services of an exclusive tenant representative or competent real estate advisor that has current and verifiable experience and uses current available market data bases in the product type that is under consideration. An ITRA tenant representative does not work for landlords—they work only for you, the tenant.

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