Green Leases: The Next Step in Greening
Commercial Buildings

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The Context of Green Leases

Leases are long-lived agreements. Terms of 5, 10 or even 20 years are not uncommon for office, retail and industrial premises, if you add in potential renewals. However, the recent critical awareness of global warming and local environmental degradation, and the emergence of regional and global targets for reductions in the production of greenhouse gases and the consumption of other resources, means that we must get commercial leases modified now, if we are to ensure these documents are flexible enough to accommodate the required adjustments in operations and standards. Both landlords and tenants will need to be involved in achieving these goals. The variety of net and gross lease structures throughout North America means that landlords and tenants will each sometimes have all or most of the economic incentive to co-operate or conserve, and each will sometime have little or no incentive to co-operate or conserve. We need to make sure leases are structured to create compulsion, to create incentive, and to create flexibility, for both parties to do the right thing. If we wait until all levels of government agree on greenhouse gas or water usage reduction standards, we cannot then discover we must wait another 5, 10 or 20 years for commercial contracts to be then up for renewal, to implement change. This article discusses the background for, need for, benefits of, contents of, and approaches to, green leases.

The Environmental Background

Commercial buildings are significant consumers of energy, the production of which creates greenhouse gases, the primary contributor to global warming. In North America, energy consumption by buildings represents between 30% and 48% of all electricity consumption, and commercial buildings account for between 10 to 15% of the total.²
In 2004, in Canada, the commercial sector produced or caused the production of 13.4% or 67.9 megatonnes of energy related greenhouse gas emissions. These emissions were created both directly and indirectly. The direct creation of greenhouse gas emissions arises from the on-site combustion of fossil fuels for boilers and space heaters. The indirect creation of greenhouse gas arises from the use of electricity consumed within a commercial building that is produced elsewhere.

The energy consumption may be of natural gas for heating, or electricity for heating, running electrical systems, and cooling. In Canada, commercial buildings accounted for 14% of energy in use in 2004 (1,171 petajoules of total secondary energy end use), comprised of 44% natural gas (largely for winter heating) and 41% electricity consumption. Indeed, thermal combustion and electric heating systems accounted for 52% of energy use in 2004 in Canada, with personal and portable electronic devices (e.g. computers), task lighting, security and security systems accounting for the next 14%, and lighting of common spaces, individual work spaces as well as exterior, security and public spaces accounting for the next 10%. The energy profile of consumption will change, of course, the farther south one goes in North America. One would expect natural gas (and heating oil) consumption for winter heating to drop the farther south one goes, but the consumption of electricity for cooling to increase.

How that electrical energy consumption translates into the creation of greenhouse gases will depend a lot on whether the local source of power is clean and/or renewable, such as hydro electric, nuclear, solar or wind, or whether it is derived from a source that itself creates significant greenhouse gases, such as the burning of coal and, to a much lesser extent, the burning of natural gas. Where the source of electrical power is coal or natural gas, the need to reduce electrical consumption is critical. Coal is a particularly dirty source of
power, but coal is cheap, plentiful, and is still burned throughout North America (and indeed the world). Coal is the source of 90% of Australia’s power, for example.

At the post Kyoto meeting of world delegates in Bali in mid-December 2007, an ambitious goal for cutting industrial nations’ emissions was discussed – all countries were to work toward cutting greenhouse gas emissions by 25 to 40 percent below 1990 levels by 2020. This is a huge reduction. There are many other targets that have been announced, by a variety of governmental and non-governmental agencies and non-profits throughout the world. Of these announced targets, 20% of 2006 levels by 2020, seems to be at the low end of announced greenhouse gas reduction targets, 50% of 1996 greenhouse gas levels by 2020 near the high end, with many calling for zero net greenhouse gas emissions by 2030 to 2050.

However, belief in climate change does not have to be a necessary condition to reduced consumption of energy and water, and reduced consumption of raw non-renewable materials. There are plenty of local reasons to do it. However, fighting greenhouse gas emissions and global warming is clearly the lower risk alternative to doing nothing, and having the adverse predictions materialize. Indeed, the adverse impacts are revealed now. No one, to my knowledge, has argued that greenhouse gases are good for the environment, or for people. Local reasons to reduce consumption of energy, water and raw materials may include poor air quality conditions over urban areas, shortage of drinking water or excess use of treated water for industrial or other non-drinking applications (where “grey water” would have done the job just as well), too much water going into older sanitary sewer systems, and too much storm water runoff overflowing storm ponds and drainage ditches. In addition, the locating of new landfills is increasingly difficult in most municipalities as no one wants it near them and accordingly, recycling and the diversion of waste from
landfills has become and will continue to be an increasing priority in many municipalities. As part of that sensitivity, there will be increasing pressure to preserve and reuse existing materials and there will be some increasing pressure not to use rare, far-traveled, carbon-heavy-production goods, or environmentally toxic materials.

Water is rapidly becoming a scarce resource in many parts of North America, and North Americans are the highest per capita users of fresh water in the world. In many applications, fresh, treated water is wasted. As residential users, we are often encouraged to take shorter showers, water lawns less frequently, use reduced-water toilets and low flow shower heads. However, what is the commercial real estate sector doing to reduce its consumption of water resources?

Commercial buildings accounted for 18% of the total annual water consumption in Canada in 2004 compared to over 50% for residences\(^7\). However, in reviewing the use of municipally treated water in commercial buildings, Public Works and Government Services Canada (“PWGSC”) reports that 51% was used in water cooled chillers, 34.3% was for domestic use (e.g. flushing toilets) but only about 5% was actually consumed by the occupants of the commercial building\(^8\). According to PWGSC, the figures apply to office buildings only and may not be representative of the entire commercial sector. Immediately, one could question why treated drinking water is needed for cooling towers or flushing toilets. Surely internally recycled water or collected rainwater could be used for these purposes (called “grey water”). Many new buildings in Australia and Europe have adopted grey water systems where the water is not actually being consumed by humans. These systems are only just starting to be seen in North America. The fact that the Leadership in Energy and Environmental Design (LEED) rating system and others address water conservation is a key indicator of the need for landlords to be increasingly conscious of water conservation in new building design and
existing building management. Water needs to be managed just as carefully as energy is.

Similarly, there is too much solid waste produced, and most of it is still going to landfills. In 2004, Canada generated 33.2 million tonnes of municipal solid waste, 60% or 19.8 million tonnes of which was from non-residential sources (i.e., the commercial sector). Of that total, 78% was disposed of in landfills and the balance was recycled. It has been estimated that in Ontario, Canada, the commercial sector creates 72% of the total industrial, commercial and institutional waste, which can include paper waste, old equipment, and construction materials.

LEED and other rating systems encourage recycling of construction materials where possible, and the use of local materials where not. The intention is to;

1. keep good material out of landfills;
2. reduce transportation pollution by reducing the distances traveled of raw and construction materials; and
3. reduce the greenhouse gases created, water consumed, and waste produced in the production of building materials, by preferring materials that did not produce greenhouse gases in their creation, such as wood, or used reduced amounts of energy or water or other scarce resources in their creation.

Many municipalities throughout North America have instituted mandatory recycling programs, as the difficulty of locating new landfills increases, and current landfills fill up. From an urban planning perspective, no one wants a landfill site in their neighborhood and so the rate of fill-up of existing landfills is becoming of critical importance to local politicians. Many existing commercial landlords provide “blue bins” to recycle paper waste, but there is little
commercial separation at source of cans and bottles, and organic waste.

**Economic Reasons to Build and Manage Green**

There are strong economic reasons to build and manage green buildings. CoreNet and Jones Lang Lassalle reported, after conducting a global survey, that energy concerns dominated corporate thinking on critical sustainability issues. Cost savings in energy can certainly be a key initial driver. In a survey by Johnson Controls, over 50% of respondents cited cost savings as the primary motivator behind their company’s investments in energy-efficient technology.

Green buildings are becoming the norm. As of the fourth quarter of 2007, there were some 40,000 projects in the United States and beyond that were accredited through the USGBC’s Leadership in Energy and Environmental Design (LEED) rating system, totaling about 3.2 billion square feet (300 million square meters).

Green buildings are also value winners. REALpac and others commissioned the Green Value study in 2006, which showed a strong correlation between green buildings, and enduring value. Recent research conducted by the University of San Diego and CoStar revealed:

1. Green buildings have higher occupancy rates and lower operating expenses than non-green buildings.
2. Green buildings observed higher rental rates by almost $2 dollar per square foot per year net in the second quarter of 2007 and $2.65 higher in the third quarter of 2007.
3. Green buildings command sales prices of 30 percent more on average when compared with other buildings, specifically, $352 per square foot vs. $270 per square foot for 2006 transactions. This far exceeds even pessimistic incremental cost estimates to achieve Energy Star or LEED certification.  

A full discussion of the benefits of green buildings are beyond the scope of this paper, but readily available for those interested.

The Role of a Green lease

Outside of owner-occupied commercial space, most retail, office and industrial premises are leased to third party tenants. The form of this lease varies greatly, both between these types of land uses, and by landlord, who may use their own “proprietary” form of lease, developed over many years of tinkering, legal advice, and copying. There are also stationer’s forms of commercial lease, and forms available on the internet. These landlords may not only have a preferred overall standard form of lease, but they may also use, on a building by building basis, different forms based on that building standard, and possibly inherited from a prior owner. Accordingly, the current commercial lease landscape can be seen to be comprised of a wide variety of lease types, each reflecting the diverse nature of land use types, individual landlord and tenant preferences, and building history.

The commercial lease, in its widest sense, governs the relationship between the landlord and the tenant: who can do what, when, how, and who pays. It gives exclusive possession of premises in return for rent and compliance with certain rules. In the office context, the landlord may control the shell, common areas of the building, and operations, but it is the tenant who controls activities within its own space.
Both will usually have “standards” governing their conduct. Landlords may have to run a “first class office building”, or act as a “prudent landlord would, having regard to the age and character of the building” (typical lease language setting standards) and these standards may apply to cleaning, mechanical systems, building amenities, services, or maintenance obligations. These standards, and other more specific provisions in a commercial lease, generally do not encourage, allow, or fairly allocate the costs of, reduced energy usage, reduced water usage, reduced materials usage, or the diversion of waste or recyclables.

Tenants in 58% of U.S. office buildings occupy under a “gross” lease, where they may have energy costs for common areas, if not for their premises as well, included in their base rent, according to CoStar; a national real estate information company (Whitson, 2006). This gives no financial incentive to tenants to conserve.

Proponents of the net lease say this creates a more transparent lease arrangement, and creates an incentive for tenants to use less energy (since they may directly save in reduced operating costs as a result of individual reductions in usage), but in the reverse case, it also gives little incentive for the landlord to conserve if tenants aren’t individually metered, or for common area energy costs (since the savings aren’t to its account), except to keep total rent within market ranges.

Of course, landlords have for decades have had an incentive to and in fact have carried through on many types of energy saving initiatives, usually motivated by the desire to save energy costs and therefore make the building more competitive on a gross rent basis. Examples of this include:

- Re-glazing windows and double glazing single pane windows;
• Upgrading the insulation and maintaining seals on building envelopes;
• Undertaking lighting retrofits from inefficient lighting (perhaps with PCB-based ballasts) to more efficient lighting systems and control systems; and
• Undertaking retrofits of heating, ventilating and air conditioning systems to move to more energy-efficient systems, and changing building controls in respect thereto.

More recently, we have seen the emergence of “white roofs” on industrial and large roof buildings to reduce heat damage and the heat island effect, and improve cooling in the summer months. Some landlords have purchased “green power” for the energy usage within building common elements (e.g., Ivanhoe Cambridge on some Canadian retail mall properties). Notwithstanding these efforts, it is clear that much more needs to be done. The language in some existing leases permitting the landlord to incur capital costs on energy saving equipment as a legitimate operating cost, the current amortized portion of which may be passed through to a tenant, is not wide enough, as the cost saving may be nominal, and the desire to reduce the high negative impact of a consumed resource the more primary motivator.

**Resistance to Green Leases**

Barriers to further efforts by landlords to make their buildings more energy, water and resource efficient may include:

• Long pay back periods of some types of improvements;
• Indifferent tenants;
• Inability to pass through the current portion of amortized landlord’s capital costs;
• Lack of skill or knowledge;
• No knowledge of an achievable target;
• No leadership, compulsion or incentive from government
• No measurement systems in place to determine existing consumption;
• Lack of capital;
• Lack of building operational expertise; and/or
• Restrictions in the lease (e.g., minimum foot candles of light at the desktop, tight permissible temperature ranges, restrictions or making changes to premises or base building features, or restrictions on the type of materials or equipment that can be used, inability to pass through co-generation costs if provided by a third party, inability to pass through standby costs of local utility if co-generation systems used).

However, landlords may not be the only ones interested in reducing their consumption of resources. What about tenants who lease space in a commercial building who want to measure, and reduce their energy and water consumption, and increase recycling? Barriers to efforts by tenants to make buildings they occupy more energy, water and resource efficient may include:

• poor tenant premises-specific energy and water consumption data from the landlord;
• shared energy and water costs (e.g. allocated on a per square foot basis) – no direct relationship between savings for individual-tenant reduced consumption and costs allocated to that tenant;
• indifferent landlords;
• fear of an unfair rent increase, as the current portion of water and energy saving capital costs are jammed through to the tenant on an unfair basis;
lack of skill or knowledge accessible to the tenant;
• no knowledge of achievable targets;
• fear that the landlord will “green plate”18 the building at the tenant’s cost
• need to get all tenants onside to push a reluctant landlord; or
• restrictions in the lease (e.g. tenant must use new materials in all tenant improvements; tenant cannot alter base building features, common areas, or central systems; inability to install any equipment outside the premises; inability to compel more recycling; inability to compel installation of bike racks; inability to install on-site co-generating facilities such as solar; poor or no record keeping of individual tenant energy usage; poor disclosure of energy usage; inability to compel different water-saving fixtures etc.).

Defining a Green lease?

A “green lease” seeks to remove disincentives in a commercial lease to reduced energy, water and raw material consumption, increased recycling, as well as the use of sustainable materials in tenant improvements, and encourages sustainable practices by both the landlord and the tenant.19 A Green lease works to ensure that tenants and landlords are required to adopt environmentally friendly practices.

Green leases have as potential objectives:

• To increase the energy efficiency management of commercial building operations by providing transparent legal options to overcome the market failure of the tenant-landlord split incentive problem20 (McGlynn, 2006).
To increase the uptake of energy-efficient building designs and appliances by stimulating additional market demand (McGlynn, 2006).

To promote the practice of green building techniques in the design, construction and operation of new and existing commercial office buildings.

To create a financial incentive for landlords to effectively design, build and manage high-performance and sustainable buildings without sacrificing comfort or service, while maximizing the landlord’s return on investment (Whitson, 2006).

To ensure that tenants receive the full use of space in a high-performance building over the lease term at a competitive price (Whitson, 2006).

To ensure that tenants are as committed to environmental sustainability as their landlord/building owner or manager is, and vice versa;

To reduce building operating costs and to maintain the ongoing energy performance standard of the building/tenancy;

To enhance communication channels with owners, tenants and consultants;

To reinforce an integrated design approach – getting all of the relevant stakeholders involved from the beginning (tenant, architect, engineer, owner, lawyer, etc.);

To improve rental rates;

To reduce the building-associated carbon and ecological footprint and maximize livability (Australian Green Building Council, 2006);

To encourage the effective use of new advances in digital metering technology that pinpoint energy consumption and provide more useful
energy management information (McGlynn, 2006); and

- To encourage market demand for the use of energy service companies and energy performance contracting in providing support services for landlords and tenants (McGlynn, 2006).

What is in a Green lease?

There seem to be at least two (2) approaches to a green lease:

(i) A “paternalistic” approach where the obligations for reduced consumption and environmentally responsible behaviour are mandated by either the tenant or the landlord within the lease; and

(ii) A “co-operative” model, where mutual objectives are set out in the lease for both parties to achieve, leading to responsibilities and liabilities for both parties.

A tenant-paternalistic lease may be the case where government or a corporation with a strong green brand is a tenant, has internal “green” targets it is subject to, and wishes to force the Landlord to do its part to assist in compliance.

A landlord-paternalistic lease may be the case where a landlord wants to green its portfolio, or engage in carbon-trading, or be seen as environmentally responsible, and wants its tenants to toe the line in achieving certain environmental goals.

A co-operative model lease may be the case where both parties buy into the need to green an existing building and want to ensure each is doing their part to achieve the joint goal.
All three models may end up in the same place over time.

The following are some of the main elements of existing green leases:

- **Targets and Benchmarks** – the inclusion of targets, expressed either as a percentage reduction or an absolute target in terms of objective measures (e.g., petajoules) for the environmental performance of the building to include water and energy reduction, waste reduction, and waste and water recycling.

- **Ecologically Sustainable Development (ESD)** Principles and Regulations – this may include indoor air quality standards, and rules governing the use of materials and the recycling of products.

- **Performance Standards** – these may include specifications as well as procedures as to how environmental performance is measured.

- **Dispute Resolution Mechanism** – these may apply in the event of a disagreement between the landlord and tenant as to why a particular target or objective prescribed by the lease is not achieved. For example, this mechanism could outline those ramifications taken in the event that a tenant exceeds an energy use target or fails to comply with ESD principles set out in the lease.

- **Environmental Management Plan (EMP)** and a **Green Lease Schedule (GLS)**. These components are commonly found in those green leases developed in Australia. An EMP is often featured within a GLS.

A green lease may specifically detail:

- Environmentally preferable products;
• Water conservation measures;
• Comprehensive landlord and tenant procurement guidelines;
• Energy conservation/efficiency targets;
• Requirements for natural or low water consumption landscaping;
• The permissibility of solar or wind applications on-site;
• The ability to specify higher cost but sustainable energy sources;
• Indoor air quality standards;
• Construction period recycling;
• Life-cycle costing;
• Day lighting, and the usage of screens to shield the sun’s rays;
• Recycling room and practices;
• Efficient appliances and fittings;
• Waterless urinals and low flow faucets and taps;
• Efficient thermal control systems, and potentially operable windows;
• The use of Energy Star rated photocopiers that reuse paper, or print double sided;
• An energy or operations standard, such as LEED, Green Globes, BREEAM, AGBR, Energy Star, or other rating system;
• Ventilation and fresh air requirements;
• Allowable cooling, heating and humidity;
• Cost apportionment of capital costs of new equipment;
• Incentives to invest in new equipment;
• Heating, ventilation and air conditioning specifications;
• Environmentally friendly leasehold improvement materials, or LEED CI requirements; and
• Dispute resolution procedures and references to third party experts.24
To the extent that the parties feel that technical goals need to be defined in a lease document or schedule (such as target kilowatts per square foot per year, or reduced water consumption to a target of liters per square foot per year) either or both the landlord and tenant may need technical consultants available to them to advise on the legitimacy and attainability of those technical goals in the particular building to which the green lease would apply. The same technical expertise would also need to be available to determine compliance or to provide audits from time to time potentially for both parties.

Of course, there are usually many open questions. How much ought one to reduce energy usage, water consumption, material usage, material sent to a landfill? What is the objective target? Who pays? How? When? What if the changes negatively impact the tenant’s operations or sales? How can a conservation-minded landlord convince a skeptical tenant to go along with a green lease and vice versa?

While various NGOs have identified targets for reduction of energy, greenhouse gas emission causation, water consumption and solid waste creation, there is no single consolidated national goal for any of these resources in either Canada or the United States. The Canadian Government had in 2007 a soft target of 20% reduction of the 2007 levels of greenhouse gas emissions by 2020, a target derided by many pundits as too low. Canada has no national water consumption reduction target, and no national solid waste reduction target. Until such time as those targets emerge, both landlords and tenants need to be guided by international targets, the requirement of credible third party certifications (such as LEED) and their own consciences.

It has been repeatedly said that building a green building costs more. However, the more experience that is gained, the more that premium seems to be dropping. The current range
seems to be 1.5 to 3% for large buildings, (i.e. over 500,000 sq feet), but possibly higher for smaller buildings. It was also thought that greening an existing building can be expensive; but current wisdom suggests that 10% reductions in energy consumption can be achieved in most buildings with minimal or no capital improvements. The extent to which significant further gains can be achieved in energy reductions in any one building will depend on that building, and a variety of local factors. Each landlord can sequence potential upgrades, ranked from greatest impact to least, on a building by building basis.

Green leases may be considered as ‘partnerships’ or ‘alliances’ requiring greater cooperation between landlord and tenant than traditional leases. It is nevertheless important to ensure the lease clearly defines the obligations of each party and the consequences of breach (Brooks et al., 2007).

It is also important to mention that poor performance within any particular tenancy will have the capacity to influence comfort and performance in other tenancies in a multi-tenant building. The underlying notion is that what one tenant does or does not do, could ultimately impact other tenants in the same building.

The value proposition of a green building and green lease for both the landlord and the tenant must not only be commercially viable, but positively attractive for both parties when compared to non-green alternative (Freehills, 2004). Otherwise tenants are likely to pursue other options.

The multiplicity of “what green might mean” requires parties aiming for green outcomes to agree and be clear on what it is they are seeking to protect and achieve. Different parties may describe ‘going green’ in different ways – there may not always be a consensus (Australian Green Building Council, 2006).
Most landlords and tenants will want to avoid accusations of half-hearted or insincere attempts at “greening” their operations: called “greenwashing”\textsuperscript{25}. Greenwashing can damage brands and credibility, dishearten employees, and increase costs over the long term. The references to and achievement of credible third party certifications is a key method of establishing the credibility of any attempt at greening a building or operations, and avoiding the greenwashing label.

**Conclusions and Recommendations**

Commercial buildings are significant consumers of electricity and water, and significant waste is generated. Where the source of electrical power is coal or natural gas, the need to reduce energy consumption, and thereby reduce greenhouse gas emissions, is critical. Water conservation is just as important, and landlords need to be increasingly conscious of water conservation in new building design and existing building management. Similarly, too much waste is produced by commercial buildings. Many commercial landlords provide “blue bins” to recycle paper waste, but there is little commercial separation at source of cans and bottles, and organic waste. LEED and other rating systems encourage efficient building design, recycling of construction materials where possible, and the use of local materials where not.

Belief in climate change does not have to be a pre-curser to the development and use of the green lease, as there are plenty of local reasons to develop it, and fighting greenhouse gas emissions is clearly the lower risk alternative to doing nothing. No one to my knowledge has argued that high levels of greenhouse gases are good for the planet.

Lawyers are on the front lines of lease negotiation, and can lead change. Of course, brokers, owners, and tenants all need to also be committed. Current commercial leases are a barrier
to achieving significant reductions in greenhouse gas production, water and energy consumption, and material usage. Given that they are long lived documents, efforts to modify base form leases to make them green should be undertaken now. Given the re-education program that all market participants will need, to prioritize and price green initiatives on a building-by-building basis, to agree on objectives and targets, and to understand new green lease standards, more green lease development, leadership and innovation is needed from real estate lawyers and other real estate leaders. That leadership is required now.

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Selected References


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1 Acknowledgement is given to The Real Property Association of Canada, Ms. Gudrin Bildfell, who assisted on background research for and the writing of parts of this paper, and Ms Carolyn Lane who assisted in editing.


5 Ibid.
6 Associated Press, Saturday December 15th, 2007, as reported in http://www.msnbc.msn.com/id/22226310/
10 Ibid.
11 Ibid.
13 Ibid
17 Sample resources: www.usgbc.org; www.ausgbc.org; on green buildings see http://www.epa.gov/greenbuilding; on global warming generally see the Intergovernmental Panel on Climate Change (UN) 4th report (November 17th, 2007) at http://www.ipcc.ch; for a “lay” explanation see http://en.wikipedia.org/wiki/Global_warming;
18 “Green plating” is a coined term I use to signify a large and potentially unreasonable investment in green technologies without regard to cost, payback, tenant benefit or value creation, and where the beneficiary was disproportionately the landlord, but the cost passed through to the tenant. “Gold Plating” is a term used in lease negotiations by a tenant to
represent the fear that a landlord under a triple net lease could literally, “gold plate” the lobby of a building and pass through the current portion of amortized capital costs as additional rent to be paid for by a tenant, if there were no controls on that expenditure.

There are many definitions in the literature so far. One notable one from Australia, where green leases abound, is: “A Green lease involves parties committing to achieving a comprehensive green result for the whole building, either by reference to a tool or rating system (e.g. Green Star) or by criteria agreed between them and set out in a schedule document (Environmental Management Plan)” (Australian Green Building Council, 2006). Also: A green lease is a lease that, in addition to setting out the conventional rights and obligations of the landlord and the tenant, also places obligations on the parties to ensure that the ongoing use and operation of the premises minimizes environmental impacts (Brooks et al., 2007). Another: A green or performance-based lease is similar in most respects to a standard lease for a conventional building, but also provides for the landlord and tenant to maintain and conform to the environmental and sustainable development (“ESD”) aspects included in the building to minimize environmental impacts and to achieve agreed energy and water-use outcomes, with associated reduced operating costs (Fullbrook, 2007).

The split-incentive problem means in a net lease, the potential indifference of landlords to controlling or reducing costs that are otherwise a pass-through to a tenant under a net lease, and the inability of a tenant to control overall energy consumption and building management where it either has no control over it or no economic incentive to conserve. In a gross lease it’s the opposite: since the tenants’ costs (which may include heat, water, hydro and other utilities) are capped it has no economic incentive to conserve its usage of those resources subject to the cap.

An ESD Schedule, as used in New Zealand, will include the required ESD outcomes and the associated assumptions and requirements for meeting them, along with the requirement to make the tenant’s fit-out consistent with the ESD principles of the base building, and an environmental management plan or user guide on the correct and sustainable use of the building (Fullbrook, 2007).

An EMP stipulates how tenants are intended/required to go about their energy conservation. The purpose of the EMP in Australia is for parties to meet and maintain the required Australian Building Greenhouse Rating (“ABGR”) as outlined in the Energy Efficiency in Government Operations (EEGO) (Australia) policy. The EMP provides tenants with information on installation, sourcing and workplace practices to cover every facet of the green tenancy. The EMP contains many prescriptive
elements, necessary to underpin the superior environmental performance of the building and to ensure a safe and comfortable workplace.

A GLS provide for mutual contractual lease obligations for both tenants and owners to achieve energy efficiency targets. GLS promote uniformity, consistency, and market acceptance while minimizing the need for legal advice on individual lease agreements relating to energy efficiency (McGlynn, 2006). A GLS was developed by the Department of the Environment and Water Resources and the Australian Government Solicitor (AGS) for Government agencies. It contains mutual obligations for tenants and owners of office buildings to achieve efficiency targets. The GLS aims to improve energy efficiency by setting minimum ongoing operational building energy performance standards. The standard used is known as the Australian Building Greenhouse Rating system. Every time a new office building lease is signed by a government agency, a GLS should be included to form part of the lease. Each GLS contains an EMP guide detailing those necessary performance standards and environmental obligations for tenants (and landlords).

Green building issues are often very technical and could require a level of expertise that is currently beyond the experience of most landlords and tenants. The Australian GBC advises that many of the possible requirements for Green leases such as annual certification of energy star or water or other ratings or measurements of energy, water and resource efficiency, may require specialist auditing services. Given the technical nature of the issues, it is considered prudent to allow for the involvement of an independent expert into a lease mechanism (Australian Green Building Council, 2006).

Green Washing is an accusation made at those companies that want the brand benefit of being green, without having materially reduced portfolio energy, water and material consumption.