Accelerating Energy Efficiency Through the Commercial Lease

Better Buildings Summit
May 27th, 2015
1:30 to 3:00pm ET
Agenda

- Welcome and Introductions
  - Energy Efficiency Improvement Act
    - Special Guest, Duane Desiderio, Real Estate Roundtable
- Commercial Leasing Primer
  - Introduction to Green Leasing
  - 2015 Green Lease Leaders
- Becca Rushin, Jamestown
- Brant Smith, NEO Realty Group
- Jeff Lesk, Nixon Peabody
- Moderated Q&A
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Energy Efficiency Improvement Act of 2015
“Tenant Star” Legislation

Timeline
Agency Responsibilities
<table>
<thead>
<tr>
<th>Department of Energy</th>
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</thead>
<tbody>
<tr>
<td><strong>Design &amp; Construction</strong></td>
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<tr>
<td>• Publish Fed. Reg. notice by July 30, 2015 requesting public comment on D&amp;C methods and practices in tenant spaces. <em>See § 424(b)(3).</em></td>
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<td>• <strong>Complete and publish a study by April 30, 2016</strong> on D&amp;C practices in tenant-spaces. <em>See § 424(b).</em></td>
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<td>• <strong>After tenant D&amp;C study completed, consult w/EPA to develop branding program</strong> to recognize commercial building owners and tenants that use high performance D&amp;C practices in tenant spaces. <em>See § 425(d)(2).</em></td>
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### Design & Construction
- After public notice and comment and consulting with DOE, **EPA “may develop” a voluntary program to recognize commercial building owners and tenants** for energy efficient design & construction in separate spaces. See § 425(d)(2).

### Occupancy Based
- Not later than 1 year after receipt of “TBECS data” and after public notice and comment, **EPA “shall” establish an occupancy-based recognition program for tenant spaces modeled after ENERGY STAR for whole buildings. See § 425(d)(1).**
- “Other appropriate data sources” apart from “TBECS” can support occupancy-based recognition program. See § 425(d)(1)(C).

### Leasing, Energy Info & Benchmarking
- With DOE in lead, by April 30, 2017 collaborate and complete **study of state/local benchmarking and disclosure policies.** Study to identify costs, benefits and results from building benchmarking laws and practices. See § 301(b)(1).
<table>
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<tr>
<th>General Services Admin.</th>
<th>Design &amp; Construction</th>
<th>Occupancy Based</th>
<th>Leasing &amp; Data Gathering</th>
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<tr>
<td>By October 2015, consult w/ DOE to <strong>develop model commercial leasing provisions and best practices</strong> regarding energy and water efficiency. <em>See § 102(b).</em></td>
<td>No action required.</td>
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**Energy Information Agency**

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<td>• No action required.</td>
<td>• “TBECS.” See § 425(c).</td>
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The Commercial Lease

- A commercial lease governs the LL/TT relationship, defining roles and responsibilities for each party over the term of the agreement
- Although lease forms vary, common provisions include:
  - Term length and options to renew/extend
  - Base rent, additional rent, reimbursables, etc.
  - Use of leased premises and property rules/regulations
  - Maintenance of premises and common areas
  - Utility metering and billing
  - Leasehold improvements, including work specifications and tenant improvement allowance (TIA)
The Commercial Lease

- Commercial leases are commonly characterized as either “gross” or “net”, which represent extremes on a continuum of lease forms:

  **Gross Lease**
  - Tenant pays a fixed all-inclusive rent amount covering use of premises, utilities, maintenance, etc.
  - Landlord bears responsibility for most maintenance and building improvement activities

  **Net Lease**
  - Tenant pays a base rent, then pays most operational expenses either directly or as a “pass through” from the landlord
  - Landlord only maintains common areas where tenant cannot self-perform
Lease types can vary by market, tenant preference, and other factors. However – common lease types prevail within sectors:

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<tr>
<th>Sector</th>
<th>Gross</th>
<th>Net</th>
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<td>Industrial</td>
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The challenge of creating greener leases

- Although “split incentive” issues arising within net leases are a major focus of discussion, green leasing challenges exist with all lease types

- Some of the traditional challenges greener leases are trying to solve:
  - Properly aligning incentives to achieve better environmental performance within existing buildings
  - Seizing opportunities for major upgrades at key inflection points during the life of a leased space (e.g. lease renewal)
  - Sharing of information to allow for planning and measurement of improvements
Components of a ‘Green Lease’

- Site selection language that prioritizes green certifications
- Energy efficient build-out specifications
- Tenant cost recovery clause
- Disclose monthly utility data for purposes of whole-building energy benchmarking
- Request building energy consumption info and ENERGY STAR score
- Sustainable operations and maintenance rules & regulations
- Submetering of tenant space or separate metering of tenant plug load and equipment
- Energy management best practices for building operations
- Language encouraging energy efficient improvements to be implemented in the building
Green Lease Leaders

- Recognition program for brokers, tenants and landlords that highlights:
  - Those who implement green leasing
  - Growing adoption of green leasing
  - Critical components of a green lease
  - Available tools and resources

- Current Green Lease Leaders own or occupy more than 800 million square feet of commercial floor space
2015 Green Lease Leaders

- Tenants/Landlords
  - Bentall Kennedy
  - Boston Properties
  - Cadillac Fairview
  - Capital One
  - Deutsche Asset & Wealth Management
  - Forest City Enterprises
  - NEO Realty Group
  - Shorenstein Properties
  - TD Bank

- Brokers
  - TIAA-CREF
  - Weingarten Realty
  - Meade Boutwell, CBRE
  - Greta Garner, Green Coast Realty
  - Randy Harrell, CBRE
  - Laurie McMahon, DTZ
  - Brant Smith, NEO Realty Group
  - Sally Wilson, Newmark Grubb Knight Frank
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Perspective: Implementing green leasing using a portfolio wide, top down approach

Becca Rushin, EMIT, LEED AP O+M
Associate Manager, Sustainability
Jamestown, LP

Topics covered:

I. About Jamestown
II. Jamestown Green
III. Our Process
IV. Our Challenges
V. Our Strategies
VI. Our Progress
VII. Evolution
About Jamestown

• Vertically integrated real estate operator with approximately $7.6 billion of assets under management

• Capabilities include: acquisitions, capital markets, property management, asset management, retail leasing, design, sustainability and risk management

• All real estate acquisition and asset management activities are coordinated out of the U.S. offices, as well as fundraising, marketing and investor relations for institutional investors.

• Headquarters in Atlanta, GA, and New York, NY
  • Additional offices in Washington, DC, Boston, MA and San Francisco, CA

• The related company, Jamestown US Immobilien, has approximately 40 employees based in Cologne, Germany, who are focused on investor relations, fundraising and marketing for European investors.
Jamestown Green

• Property, portfolio, and corporate program formalized in 2012
• Involved from the pre-acquisitions to disposition stage

• Program Drivers
  • Cost savings
  • Desire to lessen environmental impact
  • Investor expectations and reporting standards
  • Regulatory compliance
  • Tenant demands and expectations
Jamestown Green

- 35 assets currently overseen
  - Roughly 17.7 million sf
- 13.6 million sf benchmarked
  - 10 ENERGY STAR Certified Buildings
- 10 LEED Certified Buildings
  - 3 LEED Certifications Underway
  - 2 Recertification's Underway
- Recognized by GRESB as a Green Star
  - Top score in our peer group
  - Top 25% across all GRESB ranked portfolios
Our Process

How to drive improvement once past the “low hanging fruit”?

1. Identified lease language as a barrier to project implementation, and an opportunity to use as a tool to align incentives for sustainability initiatives

2. Worked with asset management and in house legal to prioritize types of provisions

3. Found internal examples already in place

4. In house legal issued a list of provisions to Asset Managers for incorporation into templates and for incorporation by outside counsel

5. Green Lease Leader recognition

6. Education – internal communication at department meetings
Our Challenges

• Limited role as owners - brokers and asset managers are “boots on the ground”
  • Level of comfort of people at the table

• Types of assets – mixed use and industrial redevelopment
  • Not owner occupied, mix of lease types across portfolio

• Stage of development cycle
  • Changing uses and large infrastructure upgrades can complicate

• Level of engagement and control with outside vs in house counsel

• Tracking – strategies to collect internal data
  • Not all assets have heavy leasing activity

• Timing – roll over is key opportunity to phase in updated language
Our Strategies

• Not all language supporting sustainability needs to be part of main body of the lease
  • Work letters which typically contain more sustainability related and technical information
  • Rules and regulations which are easier to modify but not enforceable

• Integration throughout the lease
  • Less of a novelty that can be easily struck

• Make it easy, clarify priority clauses for your team
  • Is the desire for dialogue realistic?
  • Is the tenant’s lawyer aware of the client’s sustainability goals?
  • Are they comfortable discussing sustainability?

• In house architect reviews all tenant plans and enforces the provisions of the lease
Our Progress

- Energy efficiency cost pass-through clauses
  - Have not done a full NYC Energy Aligned Clause

- Operational clauses – maintain LEED or meet LEED standard
  - LEED can be a good driver, but not appropriate for all buildings

- Sustainable purchasing clauses
  - Have not done this unless you consider items work letters – specs for fixtures and lighting

- Reporting clauses, sharing of data
  - These have been implemented successfully, and are further supported in many markets by local laws

- Pushback? Not yet
Evolution

What are we focused on moving forward?

• Tracking clauses that support sustainability
  • Abstracts for new acquisitions, template approach, asset by asset approach

• Follow up on use of templates to ensure consistency

• Education
  • Continued emphasis at department meetings
  • Need to reach brokers and outside counsel
  • Consistent dialogue to identify gaps or challenges to be addressed

• Exploration of retail opportunities

• Recognition – it always helps

• Market Data to support the benefits
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“Accelerating Energy Efficiency Through the Commercial Lease”
The Leasing Process as a Central Tactic...

- The Challenge: merging a Green Lease concept into a wide array of types of leases and types of tenants. Our portfolio, tenant mix, lease type, and property type are diverse. Tenant expectations and objectives are diverse.

Building ages 1923 - 1995

1,000 to 10,000 sq ft. tenancies

- Gross Leases
- Modified Gross Leases
- Full Service Leases
- Tenant/occupant controlled systems
The Leasing Process as a Central Tactic...

- **The Opportunity:** diverse situations allows for project depth and scope, deeper integration, further buy-in:
  - Process begins at the very initial stages stating a broad concept. As the lease negotiation and preparation moves forward, the language and extent of green language is tailored and expanded;
  - Many ideas and concepts did come from template green lease(s), but:
    - Our approach has been customizing and addressing specific-needs and situations, rather than fitting our diverse situations into a template.;
  - Our emphasis has been on a green leasing process/green lease language focused on tenant suites and related to (a) engagement and concept outline in initial documents, (b) build out / work letter specifications, (c) recouping investment through (1) decreasing vacancy loss, (2) increased rents (actual or net), and (3) some shared-efficiency saving (d) tenant attraction and retention.
    - Medium to long-term relationship based approach.
The Leasing *Process* as a Central Tactic…

Dependent on Lease Structure: Craft Specific Lease Clauses + Find Solutions

- Tenant Objectives and Finances
- Owner Objectives and Finances
- Identify Areas of Opportunity
- Lease Cycle(s): Letter of Intent, Mid-Term Proposal, or Renewal
Identify areas of opportunity through energy audits and analysis.
The Leasing *Process* as a Central Tactic...

- Make energy, build out specs, and incentivized energy efficiency the upfront conversation for new leases or renewals:
  
  - To allow for deeper integration later:

**Lease Type:** Modified Gross Lease

**Energy:** Direct metering and tenant controlled systems.

**Challenge/Opportunity:** HVAC M&R Clause, Standard Vs Energy Star costs/performance, Owner Vs Tenant benefits. Relationship-based.

As the Plaza has been continuously improved over the past several years with both physical site improvements and the addition of high-draw regional franchises, and with ongoing plans for upgrades, we believe the Plaza will continue to provide the ACS with everything it needs at an overall outstanding value.

In addition to the requested premises improvements, we would like to take this opportunity to retrofit the lighting system throughout the suite. With a lighting retrofit, lighting load could drop from 160/watts per fixture to 50/watts per fixture: a reduction of nearly 70% in lighting energy cost. We offer this as part of our Sustainable Property Management Solutions, knowing that the energy savings lower tenant operating costs substantially day-in and day-out. These savings offset some of the increased costs of the tenant improvements and would make sense to complete at this time.

Again, on behalf of the ownership, we are looking forward to continuing our long term partnership.

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1) EWS owns and ACS operates the Premises, and the Parties wish to acquire equipment and services to reduce energy costs and related expenses in the Premises.

2) EWS has identified and evaluated energy cost saving opportunities, installation, financing, maintenance and measurement of cost effective energy cost saving measures ("CSMs") as follows: the installation of an energy star rated heating cooling and ventilation (HVAC) system and removal of old inefficient systems described in Schedule A (Description of Pre-Existing Equipment Inventory and new HVAC system)

3) ACS desires to enter into an agreement with EWS for the design, installation, maintenance and measurement of the CSMS all as set forth herein.

4) The Parties all acknowledge and agree that the purpose of this Agreement is to achieve the Cost Saving Measures contemplated by this Agreement to the benefit of both Parties and all agree to cooperate to achieve the purpose of this agreement. ACS shall use best efforts to help meet the Property wide energy use reduction goals and minimize unnecessary use of electricity, water, heating, and air conditioning.
The Leasing *Process as a Central Tactic*…

- Accurate knowledge of utility costs and knowledge of energy calculations is needed;
  - Allows for direct and deep approach in any lease structure.

- Typical cycle for us to implement is 1 to 2 cycles of a lease, often times we don’t directly benefit from the first series of conversations, but do benefit indirectly from retention, lower vacancy, and makes expanding engagement and cooperation down the road easier.
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Nixon Peabody’s New office
799 9th Street NW
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Questions?
Thank You!

For more information on green leasing, visit www.greenleaselibrary.com, or the Better Buildings Alliance Market Solutions webpage.