

New York University

Green Lease Guide

This Green Lease Guide aims to provide general guidelines, key points and sample provisions that will be useful to New York University (NYU) in reducing the carbon footprint and overall sustainability of the facilities that it occupies as a tenant. NYU leases more than a million square feet for use primarily as residences, offices and classrooms. This guide is tailored to the specific and highly competitive market of existing, often older, buildings that are well located for NYU use. This document is not a form lease; rather it should be used as a clarifying guide to focus on the key concerns and draft lease provisions that relate directly to sustainability issues and can be incorporated into each unique lease negotiation.

This is primarily a student project, with the bulk of the research, writing and editing done by graduate students at the New York University, School of Continuing and Professional Studies, Schack Institute of Real Estate; faculty provided guidance, support and review.

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Overview

This Green Lease Guide is based upon established New York University Sustainability goals, as expressed in:

NYU in NYC 2031 Sustainability Goals
NYU Design Standards, including Energy and Water Guidelines 2009
NYU Green Action Plan: 2008.
NYU Climate Action Plan 2009
NYU Sustainability Task Force Web Site

The brief first section outlines sustainability concerns to be considered during the site selection and pre-qualification phase of the transaction. A guiding premise is to seek locations where both parties can and are willing to improve sustainability and to allocate costs and benefits of carbon footprint reduction improvements between the landlord and tenant in a manner that facilitates the undertaking of those improvements.

The second section is a guide for greening the leases that NYU will be a party to and includes draft recommended green lease provisions (shown in italics) that will directly impact the sustainability of NYU's tenancy. Where appropriate these sample lease provisions may be used or modified by those negotiating with prospective landlords. NYU usually directly contracts for its own tenant fit-out, so only few key points and standards for tenant work letters are included. In addition to making a space environmentally responsible, the guideline also calls for high performance building features as reflected in NYU Design Standards.

The third section covers potential certifications, such as EnergyStar® and LEED® for New Construction & Major Renovations™, which are tools for obtaining and verifying green building features, as well as methodologies for allocating third party incentives that may be available to landlords and tenants for achieving sustainable goals. The fourth section is about requiring both landlord and tenant to measure and periodically share information about resource consumption and sustainability as it relates to the operations of the subject premises and the building in which the premises is situated.

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NYU Green Lease Guide – Outline

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I. Site Selection Criteria

The following are factors to be considered when evaluating and qualifying the sustainability of alternative locations for potential NYU leased facilities, and improving NYU's position as one of the least auto dependent and most sustainable universities. These factors many emphasizing established NYU policies need to be considered in concert with the many requirements - such as meeting zoning and building standards for schools, cost constraints – already in place for determining whether a facility would be appropriate for NYU. The criteria listed below reflect many of the objectives of NYU in NYC 2031

A. Location:

- Proximity to NYU buildings and NYU Shuttle
- Proximity to mass transit (aim to be within ¼ mile)
- Proximity to open areas and/or park space (aim to be within ½ mile)
- Locations that minimize vehicular use for faculty, students and staff

B. Building Characteristics:

(Current status and adaptability to be considered, including but not limited to)

- Environmental Conditions – Utilize ASTM standard Phase I Environmental Audits for prospective leaseholds, and further environmental investigations where warranted; includes review of building for lead paint, asbestos or other contaminants
- Building Shell – form, materials, windows, and roof should be evaluated in terms of current or potential sustainability factors, to the extent appropriate depending upon how much of the building NYU will occupy Older buildings may offer limitations and opportunities in terms of sustainability green building practice
- Building Systems – lighting, electric, HVAC, plumbing, and telecommunications should be evaluated in terms of both current use and potential sustainability upgrades. Ability to close down for recess periods would be useful.
- Building Management and Operations – cleaning, pest control, willingness to adopt “green” practices, non-smoking
- Community benefits – provide surrounding community with benefits ranging from landscaping, public amenities, to preservation of historic character
- Energy sources – efficiency and reliability of energy delivery alternatives, access to renewable energy sources and NYU energy facilities, and including the potential provision of on-site renewable energy sources
- Ability to utilize new technology, such as a green roof

- Certification – eligibility or potential eligibility for EnergyStar, LEED or other sustainability certification.

C. Space Characteristics

- Functionality and adaptability – transforming the space in the most cost effective and environmentally responsible manner. **NOTE:** tenant fit out required will be controlled by NYU (see below)
- Natural light – capability to provide natural light to 75% of the leased premises’ floor area, utilizing passive solar energy
- Flexibility – allow flexibility in terms of function and environmental improvement
- Space configuration – should be considered in terms of energy efficiency and natural ventilation. For example, stairs are often highly efficient for students
- Avoid neighboring environmental concerns (i.e. dry cleaner)
- Encourages use of stairs while providing elevator and handicapped access

D. Work Letters

- A note about work letters: It is customary in most build-out situations for there to be a detailed work letter agreed upon by the tenant and landlord, specifying the fit out to be done. NYU generally does its own interior fit outs - utilizing internal design and construction services. Future leasing situations will continue this practice, allowing NYU maximum flexibility and control of budgets and space. Therefore in this document the work letter section is only a brief overview of what would be provided, with specific guidelines listed in the appropriate sections of the document.

II. Guidelines for Greening the Lease and Sample Green Lease Provisions

A. General Lease Provisions

- 1. General Goals** – The net benefit of a sustainable building is possible only through cooperation of NYU and its Landlord. As such, Tenant and Landlord acknowledge their intention to operate the Building and the Premises to provide for:
 - A comfortable, productive and healthy indoor environment.
 - Reduced energy use and reduced production of greenhouse gases.
 - Reduced water use.
 - The effective diversion of construction, demolition and other waste from landfill and incineration disposal, and the recycling of tenant waste streams.
 - Use of environmentally responsible building materials and furnishings
 - The use of environmentally responsible cleaning products
 - Maximize amenities for NYU students, faculty and staff, as well as the community
 - Equitable allocation of costs and benefits of green improvements.
 - Both Landlord and Tenant shall [comply/use best (or reasonable) efforts to comply] with the environmental standards in the lease agreement.

- 2. Green Regulatory Requirements** – This guideline and related suggested lease provisions are primarily about voluntary and/or quasi regulatory requirements that the Landlord would not be legally required to comply with, including aspects of the Greener Greater Buildings Plan that are not yet mandatory or do not apply to the subject building, the International Green Construction Code and the new ASHRAE 189 standard. Mandatory requirements are mentioned as reminders that NYU expects all its facilities to be in full compliance. The extent to which a landlord is obligated to cause its building to meet these non mandatory “requirements” can be evaluated on a case by case basis.

- 3. Applicable Codes** – The building shall meet all applicable codes, including New York City Green Codes adopted in January 2010, and the related New York City Energy Conservation Code regulations in effect as of July 1, 2010. Other applicable codes include OSHA, NYC DOB regulations, and NYS DEC requirements. Leased premises also shall follow NYU Design Standards and Guidelines, September 2009 or as updated.

4. Prohibitions:

- No Smoking - Smoking is prohibited in the Building and within twenty-five (25) feet of any entries, outdoor air intakes and operable windows
- No Chlorofluorocarbons (CFCs) - The use of CFC-based refrigerants is prohibited in the Building and in the Premises
- As installation of efficient HVAC including central air-conditioning is standard in all NYU spaces, no Space Heaters or additional air conditioning units – the use of electric or other space heaters or added window air conditioning units are prohibited in the Building and in the Premises

B. Services and Utilities

The guidelines that follow are aimed at providing key topics and targets for negotiating leases in existing buildings, with the NYU Design and Engineering Guidelines providing the preferred detailed technical specifications to be utilized whenever achievable.

1. Electrical Energy:

Guideline: The design and construction of the Premises is intended to minimize energy usage and costs, improve functionality, while providing sufficient capacity. Where practical, use of alternative energy, such as on-site solar, geothermal or wind energy, or use of NYU systems including cogeneration capacity, or purchase of renewable energy, shall be encouraged. While the standard clause below appropriately requires the energy needed for both lighting and plug load in NYU premises, the requirement should not mandate an over-sized and therefore inefficient system.

Landlord shall make available to Tenant an agreed upon number of watts per rentable square foot connected load for electrical convenience outlets, connected load shall be exclusive of Landlord's lighting and HVAC services, and an agreed upon watts per rentable square foot connected load for Premises lighting, which shall reflect the specific demand based upon use and current, energy-efficient technology

Both common spaces maintained by the landlord and NYU premises shall be equipped so that lights, electrical appliances and mechanical equipment that are not otherwise required to remain on are automatically turned off. There may be situations where it is mutually beneficial for landlord and tenant to utilize a building wide system; such as an upgrade of the entire building service or use of alternative energy source. In such cases NYU and the Owner shall work together and reach a detailed agreement allocating costs, responsibilities and benefits. The Premises shall be designed and constructed to comply with ASHRAE 90.1-2007 and applicable NYU Design Guidelines.

Landlord and Tenant shall use proven energy and carbon reduction measures, including lighting measures as detailed below, including providing shades on the south side of the building to avoid over heating the space; programming to assure turning off lights and equipment when not in use, HVAC systems as described below and purchasing ENERGY STAR® qualified equipment, including but not limited to lighting, office equipment, commercial and residential quality kitchen equipment, vending and ice machines.

2. Energy System Alternatives and Upgrades

Guideline: The allocation of costs and benefits from energy systems upgrades, including provision of renewable energy such as wind, solar or geo-thermal energy, is a complex issue. These costs and benefits should be allocated on a case-by-case basis in a manner that appropriately splits costs of installation as related to energy cost savings and the value of incentives so as to facilitate the undertaking of energy systems upgrades and related expenditures.

NYU may install such upgrades directly and receive all cost savings. If landlord provides energy upgrades, those costs may be recaptured based upon agreed Capital Expenditures (CapEx) pass thru formula and measurement of actual savings. Such pass through of capital expenditures should include: definition of the expenditures; amortization (GAAP may or may not be appropriate); as well as measurement and verification of savings over stated time periods. Leases should incorporate goals for reduced energy consumption over the term of the lease and milestone dates for Landlord and NYU to compare actual consumption to the goals and communicate about strategies for continued improvement.

3. Utility Metering

Guideline: Utility metering is a key component in improving energy efficiency; the overall intent is to efficiently obtain complete metering information. NYU generally prefers direct sub-metering including interval metering with concomitant system for acquiring and storing data from the meter in a way that can interface with NYU's energy data storage and display systems. Landlord and tenant should have communication protocols to enhance the ability to share such otherwise confidential information to improve energy-related decision-making. New York City's new green codes include LL84 (note that metering must be available to make compliance possible) and that the building be in compliance with LL87 (energy audits and retro-commissioning) as well as LL88 (lighting upgrades and sub-metering).

The lease should address allocation of the "house" (i.e. lobby, corridors and other shared spaces) electric bill as well as any tenant space that is not metered, particularly in older buildings. The lease should also address any provision where energy costs may be

“grossed up” to deal with vacancy adjustments. To the extent possible, metering should measure time of day usage so as to allocate demand charges

Leasehold Improvements shall include installation of utility meters for separate metering of the [electricity, gas, water] consumed in the use and operation of the Premises (the “Utility Meters”). By mutual agreement, any and all of the Utility Meters may be either (i) direct meters allowing reading and billing by a third-party utility provider, or (ii) submeters allowing for reading and billing by Landlord without mark up and only agreed upon administrative fees. To the extent the Utility Meters are submeters for reading and billing by Landlord, any expenses and charges for utility usage/consumption shall be payable by Tenant as additional rent within thirty (30) days of Landlord’s delivery of a detailed invoice without markup. To the extent the utility meters are direct for reading and billing by a third-party utility provider, Tenant shall enter into utility contracts with such providers and pay any expenses and charges for utility usage/consumption directly to such third-party utility provider. Operating expenses shall exclude costs and expenses of utilities directly metered to Tenant and payable by Tenant to third-party utility provider. Tenant shall provide Landlord with utility consumption data upon request.

4. Lighting

Guideline: NYU seeks to maximize natural light in all NYU spaces. The target goal is for all NYU leased space to provide an interior daylight access to at least 75% of the leased premises’ floor area, and thereby reduce lighting requirements. Exterior light shall be managed so as to provide security, but excess exterior light shall be avoided to save energy and avoid light trespass.

NYU shall install or require Landlord to install highly energy efficient lighting, such as Compact fluorescent, linear fluorescent or Light Emitting Diode lighting. Individual rooms and common areas shall include manual-on occupancy sensors (vacancy sensors) set to turn off lights after thirty (30) minutes or other agreed upon standard, without sensing occupancy, and upon sensing movement the lights shall turn on within one (1) second.

5. Heating, Ventilation, and Air Conditioning (HVAC) and Air Quality

Guideline: To provide NYU facilities with modern, highly efficient HVAC systems that assure comfort and minimize energy demands utilizing modern technologies such as Demand Control Ventilation, Variable Air Volume and Building Performance Systems, in accordance with the technical standards in the NYU Energy Guidelines.

General Performance Goals suggested are:

- Summer occupied: 75° F at 60% relative humidity
- Winter occupied: 68° F

- Summer unoccupied: 82° F
- Winter unoccupied: 60° F

During [normal business hours], Landlord will provide heating, ventilation and air conditioning (HVAC) in accordance with the applicable ASHRAE Environmental Standards, including ASHRAE Standard 55-2004 Thermal Environmental Conditions for Human Occupancy, ASHRAE Standard 62.1 – 2004 Ventilation for Acceptable Indoor Air Quality, as well as meet or exceed applicable NYC codes and NYU Design Guidelines

Systems that retain heat or cooling while providing air exchanges are preferred as well as systems that utilize variable air volume (VAV) with perimeter radiation convectors and building management systems that incorporate programmable thermostats or alternative compliance through demand controlled ventilation.

6. Water Conservation

Guideline: Water conservation is a key component of sustainability, and some aspects, such as plumbing fixtures, can be applied to the premises, some to the building as a whole. As such, NYU seeks to utilize its design guidelines and minimize its water usage in all leased space, as well as efficiently manage hot water heating. Systems such as grey-water recycling, use and retention of storm water are encouraged. Such systems, and their capital costs and expense recovery, would be part of specific lease negotiations. Requirements for plumbing fixtures in the Premises and the other areas of the Building are suggested below:

The fixtures serving the common areas of the Building and the Premises should meet the following requirements that reflect NYU Design standards:

- Lavatory and pantry faucets: [0.5] gallons per minute (gpm) at 60 psi.
- Flush Valve Water closets: [1.25] or less gallons per flush (gpf).
- Urinals: [0.125] or less gpf.
- Kitchen: [1.5] or less gpm.
- Showerhead: [1.5] or less gpm

Consideration shall be given to reducing storm water runoff through provision of features such as landscaping or green roof.

C. Building Features

1. Parking

Guideline: While not widely used by the majority of the NYU's community, maximizing parking efficiencies is important to NYU's overall sustainability goals. When considering parking, the following are guidelines should be considered.

- Priority Parking:** *Landlord shall provide priority parking for car pools,*

vanpools, low-emitting vehicles and fuel-efficient vehicles. As used in this clause, “low-emitting vehicles” and “fuel-efficient vehicles” are defined as vehicles that are either (I) classified as Zero Emission Vehicles (ZEV) by the California Air Resources Board, or (ii) have achieved a minimum green score of 40 on the American Council for and Energy Efficient Economy (ACEEE) annual vehicle rating guide.

- b. Total Spaces Suggestion:** not to exceed New York City or applicable code.
- c. Plug In Stations:** shall be provided as the occurrence of plug in vehicles increases.

2. Bicycle Storage

Guideline: Given the urban nature of NYU’s footprint most affiliates walk, or walk from mass transit, there is still a significant population that may utilize bicycles as a primary or secondary mode of transportation, bicycle usage (and storage) is to be encouraged. Therefore, the following guidelines should be implemented where applicable.

- a. In addition to, and not in lieu of, automobile parking provided to Tenant, Landlord shall provide (i) secure on-site bicycle racks and/or storage for at least five percent (5%) of the Tenant’s occupants and (ii) shower and changing facilities for at least one half of one percent (0.5%) of full-time equivalent (FTE) occupants within two hundred (200) yards of a main Building entrance. Tenant and its employees may, on a first-come, first-served basis; store bicycles in the areas designated by Landlord and may utilize the shower and changing facilities.*

3. Exterior Treatment and Windows

Guideline: Measures that improve the insulation value and reduce infiltration of the building exterior, such as additional insulation or masonry re-pointing shall be encouraged. NYU shall install or require Landlord to install energy-efficient windows such as double-glazed, Low-E glass windows in its Premises.

4. Roofs

Guideline: While rarely part of the Premises controlled and leased by NYU, the environmentally responsible use and treatment of roof space, which reduces heat island effect and improves storm water control, is encouraged. Alternative roof approaches include:

- Green Roof – provision of plants and landscape amenities
- Alternative Energy – use of roof for solar or wind power
- White Roof – painting to reduce heat island effect

The safe provision of amenities such as green roofs and recreation facilities is encouraged, and where accessible to NYU users, may be considered as part of lease negotiations. Use of white roofs or other low cost environmentally responsible measures are also encouraged.

5. Elevators

Guideline: Where reasonably possible, NYU should lease space in buildings that use energy efficient elevators [such as Machine-Room-Less Elevators] and shall avoid buildings with hydraulic elevators. Traditional hydraulic elevators are very inefficient. It takes much more energy to raise an elevator car several stories, and in a standard hydraulic elevator, there is no way to store this energy. There are also environmental consequences associated with hydraulic elevators in that the hydraulic fluid is prone to leakage into the ground.

6. Landscaping

Guideline: The provision of beneficial landscaping is encouraged and may be part of lease requirements. Benefits include: providing outdoor amenities, shading the building in summer, improved control of storm drainage, reducing heat island impact and aesthetics. NYU's Facilities and Construction Management "Garden Shop" provisions may be incorporated, including provisions related to use of fertilizers and energy efficient gardening.

D. Building Construction and Operations

1. Environmental Standards for Building Operations

Guideline: NYU's sustainability goals are realized both through larger-scale construction projects as well as day-to-day operations of its buildings. As such, Landlord should be obligated to maintain and operate the Building in accordance with specific Green Cleaning standards, noted below, to the extent applicable to the Building and lease in question.

All maintenance and repairs made by either Landlord or Tenant must comply with agreed upon sustainability practices, if applicable, including any third-party rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time.

2. Environmental Purchasing Policy Requirements

Guideline: When new purchases are needed to carry out the day-to-day work of the University, its sustainability goals are to be considered and implemented. Where its real estate is concerned, either through the purchase and use of tangible goods, or the construction of its spaces, the following provisions should be followed.

Landlord and Tenant shall comply with the following Environmentally Preferable Purchasing (EPP) Policy when procuring furniture, fixtures, carpeting, materials, supplies, appliances, and equipment to be brought into the Building and the Premises, which requires that each use, when reasonably practical:

- *ENERGY STAR™ – qualified:*
 - *Office equipment (computers, printers, monitors, fax machines, copiers, water coolers, etc.)*
 - *Electronics (TVs, DVD players, etc.)*
 - *Appliances including refrigerators*
- *Products containing pre-consumer and post-consumer materials*
- *Products containing rapidly renewal material*
- *Products containing Forest Stewardship Council (FSC)-certified wood*
- *Products harvested and processed or extracted and processed within 500 miles of the Building*
- *High-efficiency, low-mercury-content lamps that maintain an overall average of less than 90 picograms of mercury per lumen hour of light output*
- *Compact fluorescent lamps (CFLs) that comply with the National Electric Manufacturers Association (NEMA)*
- *Low- or no-VOC furniture, furnishings, or composite wood products that contain no urea-formaldehyde*
- *Low or no VOC paints, adhesives, solvents or other such materials, meeting Green Seal Standard GS-11 or equivalent. The use of sprayed paint is prohibited*
- *Salvaged, refurbished or reused materials, furniture*

3. Cleaning Materials and Services

Guideline: Indoor air quality is paramount to a comfortable, productive and healthy environment. In order to improve indoor air quality and reduce contaminants in the building, Landlord and Tenant shall use non-toxic cleaning products, methods and equipment; use entry mats to avoid contamination of interior spaces; enforce no smoking rules; avoid use of furniture, paints, carpets or other materials which release high levels of volatile organic compounds (“VOCs”); not allow cooking - other than designed kitchens or other authorized locations - within the premises; not utilize insecticides or other pesticides other than those sanctioned by Integrated Pest Management Programs, and during construction appropriate steps shall be taken to prevent excessive dust or other nuisances. Further provisions are as follows.

Landlord and Tenant shall use green cleaning materials, products, equipment, janitorial paper products and trash bags that, at minimum, comply with the Green Cleaning Standards (hereinafter defined), and any contracts with janitorial service providers must require that the contractor complies with all applicable elements of the Environmental Purchasing policy and the Green Cleaning Standards.

The “Green Cleaning Standards” are as follows:

- *Cleaning products must meet or exceed Green Seal Standard GS-37 or equivalent standards.*
- *Disinfectants, metal polish, floor finishes, strippers or other products not addresses by the above standard must meet or exceed Green Seal Standard GS-40 or equivalent standards.*
- *Disposable janitorial paper products and trash bags must meet or exceed the minimum requirements of U.S. EPA Comprehensive Procurement Guidelines for Janitorial Paper and Plastic Trash Can Liners, Green Seal Standard GS-09, Green Seal Standard GS-01 or equivalent standards.*
- *Hand soap must meet or exceed Green Seal Standard GS-41 or equivalent standard*

4. Recycling and Solid Waste Management Plan

Guideline: Key to a sustainable environment is the treatment of the building’s waste, particularly with regard to recyclables and solid waste. Realizing that, Landlord and Tenant shall establish a Solid Waste Management Plan to: (a) comply with all present and future laws, orders and regulations of the Federal, State, county, municipal or other governing authorities, departments, commissions, agencies and boards regarding the collection, sorting, separation, and recycling of garbage, trash, rubbish and other refuse (collectively, “trash”); (b) to comply with agreed upon recycling policy as part of Building’s sustainability practices where it may be more stringent than applicable law; (c) to sort and separate its trash and recycling into such categories as are provided by law or agreed sustainability practices including NYU’s forthcoming composting plan; (d) that each separately sorted category of trash and recycling shall be placed in separate receptacles as provided by Landlord; (e) to allocate costs and responsibilities between Landlord and Tenant. The following provisions should also be incorporated.

Landlord shall provide collection and storage facilities that are readily accessible from the Premises for recycling paper, corrugated cardboard, glass, plastics and metals. Tenant shall recycle the following waste streams resulting from the Premises:

- *All portable dry-cell type batteries, single-use and/or rechargeables, used in radios, phones, cameras, computers, and other electronic devices or equipment.*
- *Mercury-containing lamps.*
- *Durable goods such as office equipment, appliances, external power adapters, televisions, and other audiovisual equipment.*
- *Ongoing consumables such as paper, toner cartridges, cardboard, old corrugated cardboard, metals, plastic, glass, etc.*

Tenant may utilize the Building's recycling program or, if Tenant recycles directly with a recycler such as for electronic waste or paper shredding services, Tenant shall provide Landlord with waste recycling manifests upon request. Landlord must grant appropriate storage facility and right of access to such tenant recycler.

Both parties shall comply with the Solid Waste Management Plan attached as Exhibit ___ to this Lease. If either party fails to comply with its obligations under the Solid Waste Management Plan, including failure to provide appropriate receptacles or any waste that is not separated and sorted as required therein, the other party hereto may give notice thereof and if such failure is not cured within 5 days, said other party shall have the right, but not the obligation, to cure such failure at the cost and expense of the party originally responsible therefore pursuant to the Solid Waste Management Plan.

5. Integrated Pest Management Plan

Guideline: As with any urban environment, unwanted pests are an issue that needs to be addressed. In order to remain consistent with its sustainability goals, NYU therefore encourages the implementations of the following with regard to pest management.

Landlord and Tenant shall use Integrated Pest Management (IPM) techniques, which emphasize preventive measures to minimize the use of chemicals and toxic pesticides. The IPM techniques should be specified either in the lease or in an exhibit and clearly labeled and referenced.

6. Construction Near NYU Occupied Space

Guideline: As has been noted, it is highly likely that any leased space will need to be customized to fit NYU's needs. While NYU strives to meet and surpass its sustainability objectives on a day-to-day basis, the initial construction phase is particularly important in achieving these goals. Below are provisions to be followed to this end.

To the greatest extent possible, the Lessor shall sequence the installation of finish materials so that materials that are high emitters of volatile organic compounds (VOC)

are installed and allowed to cure before installing interior finish materials, especially soft materials that are woven, fibrous, or porous in nature, that may adsorb contaminants and release them over time. Where demolition or construction work occurs adjacent to occupied space; the Landlord shall erect, or cause to be erected, appropriate barriers (noise, dust, odor, etc.) and take, or cause to be taken, necessary steps to minimize interference with Tenant and other building occupant, including without limitation, maintaining acceptable temperature, humidity, and ventilation in the occupied areas during window removal, window replacement, or similar types of work.

E. Work Letter Agreement (when applicable)

In general the applicable guidelines described above should be met when Landlord provides fit-out. Below is a summary list of key points for the work agreement.

- Landlord shall complete the Leasehold Improvements in accordance with local environmental standards (i.e. New York Green Codes) as well as building and construction Rules and Regulations and NYU Design Guidelines. The Leasehold Improvements shall be performed by architects, engineers and contractors or other certified professionals with demonstrable knowledge and experience with sustainable design and/or construction practices; including LEED Accredited Professionals with actual experience working on LEED for Commercial Interior projects.
- Electrical System – shall provide for direct metering or sub-metering of premises, meet Energy Star standards. Consideration should be given to building wide energy efficiency upgrades or renewable energy additions, where technologically and economically feasible. Added costs for energy efficiency or renewable energy improvements should be addressed on a case by case basis, with emphasis on appropriate cost benefit allocation that facilitates such undertakings by providing the party make the expenditure with an appropriate return.
- Lighting – day lighting shall be maximized and Landlord shall design and construct the lighting systems in the Premises to achieve overall acceptable lighting meeting applicable ASHRAE standards (usually measured in foot-candles) by providing an average connected electrical load value with agreed upon minimum watts available per rentable square foot. The design of the lighting systems shall be specifically agreed up on before the lease is signed, and the work letter (when applicable) should include specific provisions regarding same.
- Heating, Ventilation and Air Conditioning (HVAC) – landlord shall design and construct the heating, ventilation and air conditioning (HVAC) system serving the Premises to meet or exceed the following American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standards: (i) Standard 62.1-2007, “Ventilation for Acceptable Air-Quality”; and (ii) Standard 90.1-2007, “Energy Standard for Buildings.”

- All materials installed in the Premises shall meet the requirements set forth in the Environmentally Responsible Purchasing Plan.
- Construction Recycling – recycling construction waste is mandatory for initial space alterations and improvements and subsequent alterations under the lease. Recycling construction waste means ensuring that construction waste is diverted from landfill and incineration. The LEED standard of 50% diversion should be the goal. It includes providing the required labor and equipment necessary to separate individual materials from the assemblies of which they form a part.

F. Default and Insurance

These guidelines are based upon a cooperative effort between NYU as tenant and the building owner. In that spirit, the Green Lease provisions generally do not require specific default provisions unless substantial sums, such as for systems upgrades or incentives, are involved. While there have been legal articles regarding consequential damages and liabilities, the general lease default provisions should be sufficient and apply for failure to meet significant sustainability or financial agreements.

Similarly, the guidelines proposed should be accommodated by the typical lease insurance provisions and the coverage of the building owner and NYU. Should there be a potential insurance savings (as some insurance companies have proposed), or need for additional coverage (as others have suggested) due to these provisions, these would need to be specifically negotiated.

III. Environmental Incentives and Certifications

A. Environmental Incentives

Guideline: Landlord and tenant shall work together to maximize environmental benefits - and to share benefits on an agreed upon allocation reflecting cost share of improvements.

“Environmental Incentives” shall include all credits (including tax credits), rebates, benefits (including incentive payments offered by any utility, governmental agency including NYSREDA, USEPA, or any other entity), reductions, offsets and allowances, and entitlements of any kind, including without limitation renewable energy credits (RECs), however so entitled, resulting from the activities undertaken by either Landlord or Tenant in the Building or the Premises that result in decreased consumption of natural resources by the Building or the Premises or the avoidance of environmental impacts on air, soil or water, such as the emission of any oxides of nitrogen, sulfur, carbon or of mercury, or other gas or chemical, soot, particulate matter or other substance.

Tenant, and its agents, and Landlord, and its agents, agree to coordinate and cooperate with each other to facilitate the application, award and implementation of Environmental

Incentives that will enhance the performance of the Building and the Premises. This includes the timely sharing of data and other information as well as execution and delivery documents. Costs and benefits of such applications shall be shared, by agreement where significant.

Tenant is the exclusive owner of all Environmental Incentives resulting from or attributable to the Premises (“Tenant’s Environmental Incentives”). Without limiting the generality of the foregoing, Landlord expressly acknowledges and agrees that Tenant (or any of its affiliates or transferees) shall be solely entitled to (i) any and all tax credits relating to the Premises under the Internal Revenue Code, and (ii) any and all incentive payments or rebates with respect to the Premises under local Utility Provider Programs and New York City, New York State and/or Federal Rules and Regulations.

If Landlord has paid for all tenant improvement in the Premises:

Notwithstanding the aforesaid, Landlord is the exclusive owner of all Environmental Incentives, excepting Tenant’s Environmental Incentives, resulting from all other improvements to and/ or operation of the Building (“Landlord’s Environmental Incentives”). To the extent Landlord’s Environmental Incentives result from Landlord’s repairs, maintenance or operation of the common areas of the Building during the Term of this Lease, and the costs and expenses of such repairs, maintenance or operation are passed through to Tenant as Operating Expenses (“Landlord’s Shared Environmental Incentives”), Landlord shall credit Tenant’s Proportionate Share of the fair market value of Landlord’s Share Environmental Incentives against the Operating Expenses payable by Tenant; provided however, in calculating the credit due Tenant, Landlord may subtract from the value ascertained for Landlord’s Shared Environmental Incentives the reasonable costs and expenses arising from the issuance, registration and/or sale of Landlord’s Shared Environmental Incentives.

B. Environmental Certifications

While an ever-evolving process, NYU believes strongly that working to achieve and maintain various environmental certifications/recertification (LEED, etc.) is an important way to benchmark and track progress towards the goal of sustainability in both its owned and leased spaces. Because of this, whenever possible, certification should be sought out. Several scenarios exist when working out how certification can be accomplished, below are several examples.

1. Cooperation between Tenant and Landlord

Tenant, and its agents, and Landlord, and its agents, agree to coordinate with each other to facilitate the design, construction and operation of the Building and Leasehold Improvements in such manner to enable the Premises to achieve appropriate EnergyStar or LEED rating (e.g. LEED EB, LEED for Commercial Interiors) or other environmental rating.

2. Landlord promises to attain environmental certification

Landlord shall, at its own expense, obtain for the Building EnergyStar and or a LEED [Core/Shell; Existing Buildings: Operations & Maintenance; New Construction] Certified [Silver; Gold; Platinum] rating or other acceptable standard within one (1) year of the lease commencement date. Upon such certification, Landlord shall promptly provide Tenant with proof of final certification. Landlord is entitled to reasonable extensions of the certification deadline if delays in obtaining certification are caused by third parties not controlled by landlord, and if Landlord can provide satisfactory evidence to Tenant that certification can and will be obtained within [a reasonable period of time].

3. Landlord obtains environmental certification

Landlord represents and warrants that the Building achieved a LEED [Core/Shell; Existing Buildings: Operations & Maintenance; New Construction] Certified [Silver; Gold; Platinum] or other such rating on [date of certification]. If requested by Tenant, Landlord shall provide proof of such certification.

Landlord represents and warrants that the Building has earned the ENERGY STAR label and has an energy performance rating of [69]. Landlord shall maintain an ENERGY STAR energy performance rating of [69] or better throughout the Lease Term, and shall provide to Tenant annually a Statement of Energy Performance in the form provided by the ENERGY STAR Portfolio Manager. In the event the Premises is separately metered for energy consumption or Landlord does not otherwise have access to energy consumption data for the Premises, Tenant shall provide Landlord with such data for the Premises upon request.

4. Tenant seeks certification

The Premises shall, at Tenant's sole cost and expense, subject to the application of any improvement allowance, be designed and constructed to achieve LEED for Commercial Interiors certification, in accordance with the Work Agreement. Within one (1) year of [substantial completion of Tenant fit-out/the lease commencement date/the rent commencement date], Tenant shall, at Tenant's sole cost and expense, subject to the application of any improvement allowance, obtain a LEED for Commercial Interiors rating for the Premises. Landlord shall, at no cost or expense

to Landlord, provide to Tenant an electronic copy of such Building documentation that Tenant reasonably requests to support such certification of the Premises.

Any and all Tenant Improvement Work and/or Alterations will be performed in accordance with Landlord's sustainability practices that NYU has accepted as part of the lease agreement, including any agreed upon third-party rating system concerning the environmental compliance of the Building or the Premises, as the same may change from time to time. Tenant further agrees to engage a qualified third party LEED or Green Globe Accredited Professional or similarly qualified professional during the design phase through implementation of any Tenant Improvement Work and/or Alterations to review all plans, material procurement, demolition, construction and waste management procedures to ensure they are in full conformance to Landlord's sustainability practices, as aforesaid.

5. Recertification:

Landlord shall undertake recertification of the Building under environmental programs (5) years of [the lease commencement date/ the rent commencement date/the date on which the Premises is awarded the required LEED certification/or some other mutually agreed upon time frame]; provided that at such time the Building meets the minimum program requirements to pursue certification under LEED for Existing Buildings: Operations & Maintenance. Tenant shall reasonably cooperate with Landlord's efforts to achieve such certification, at no cost to Tenant.

Annual Operating Expenses shall include: (i) all costs of maintaining, reporting, commissioning, and recommissioning the Building or any part thereof that was designed and /or built to be sustainable and conform with [the U.S. EPA's Energy Star® rating, the Green Building Initiative's Green Globes™ for Continual Improvement of Existing Buildings (Green Globes™-CIEB), the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, or other designated standard], and (ii) all costs of applying, reporting and commissioning the Building or any part thereof to seek certification under [the U.S. EPA's Energy Star® rating, the Green Building Initiative's Green Globes™ for Continual Improvement of Existing Buildings (Green Globes™-CIEB), the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, or other designated standard]; provided however, the cost of such certification shall be allocated as per agreement

Tenant and landlord shall allocate the costs of applying, reporting and commissioning of the Building or any part thereof to seek certification and the Landlord cost shall be

a cost capitalized and thereafter amortized as an Annual Operating Charge under GAAP or agreed upon payback analysis

6. Future Certification

This building is or may in the future seek certification from EnergyStar and/or the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, such as LEED for Existing Buildings or certified under other programs such as the Green Building Initiative's Green Globes™ for Continual Improvement of Existing Buildings (Green Globes™-CIEB), or other applicable standard. Landlord's non-capital costs and expenses arising from certification or recertification as described above shall be included as an Operating Expense.

7. Permitted Use

*Neither Landlord nor Tenant shall use or operate the Building or Premises in any manner that will cause the Building or any part thereof not to conform with agreed upon sustainability practices **as set forth in this lease** or the certification of the Building issued pursuant to the [the U.S. EPA's Energy Star® rating, the Green Building Initiative's Green Globes™ for Continual Improvement of Existing Buildings (Green Globes™-CIEB), the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, or other designated standard].*

Tenant, and its contractors, shall comply with all environmentally preferable policies and practices included in this Lease, as such policies and practices may reasonably be amended by Landlord from time to time. Such amendments shall be deemed unreasonable if they materially deprive Tenant of its rights and benefits under this Lease or materially increase Tenant's obligations under this Lease. Without limiting the foregoing, Tenant shall comply with and participate in the policies, plans and programs set forth in the Environmental Standards set forth in this lease. Tenant shall report when and how often in what form and to whom on sustainable practices and products utilized in the Premises as set forth in this Lease and as otherwise reasonably requested by Landlord.

IV. Benchmarking

Landlord and tenant should cooperatively benchmark energy use for both the leased premises and the building annually using EnergyStar Portfolio Manager (EPA PM) or another measurement tool that interfaces with EPA PM such as NYSERDA's Focus on Commercial Real Estate tool, as now required for many buildings under NYC law. Landlord should maintain records of the normative score, energy use intensity, and carbon intensity. NYU has started using the STARS® (Sustainability Tracking, Assessment & Rating System) as a metric for evaluation and benchmarking for all NYU owned properties, and use of STARS can be considered for leases space also. Alternatively, NYU can request a provision to ask for access to the data STARS needs. Whichever system is utilized, there should be a base year determination established upon completion of tenant improvements followed by annual benchmarking of performance

Tenant shall deliver to Landlord the following data and documentation relating to the Premises and the Premises occupants upon Landlord's request, but not more than once per year, such that Landlord may determine optimal Building operations, compliance with the Environmental Standards and for completion of an annual Environmental Performance Report. Landlord shall provide an annual Environmental Performance Report to Tenant, which shall include the following information regarding the Building's performance:

Annual Benchmarking for both building and leased premises shall include
(building owner shall comply with NYC 2010 legislation requiring benchmarking of buildings of 50,000 square feet)

- a. Energy Consumption (including electrical, gas and other) using EnergyStar energy performance rating or other agreed upon system
- b. Estimate of carbon and other greenhouse gas emissions
- c. Water Consumption
- d. Total gross waste generated by the Building, total gross waste sent to landfills or incineration facilities, total gross waste diverted from landfills or incineration facilities
- e. Environmental Characteristics (landscaping, bike rack, shading)
Cost and Benefits Allocation of any shared sustainability related projects
Additional Funding Received

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