NZE Lease Excerpts

Note: these are lease excerpts from existing NZE leases. While this language can be used as an example, a legal professional should review any leasing language to be included in new leases.

Lease excerpt from the Bullitt Center pertaining to its renewable energy management program (use if NZE leasing language is in separate document, separate from lease):

Compliance with Renewable Energy Management Program. Tenant shall cooperate with Landlord's efforts to implement and shall comply with the requirement and guidelines of the Renewable Energy Management Program attached hereto as Exhibit 7.1.1, as such program may be reasonably amended from time to time by Landlord. Tenant acknowledges that Landlord is currently updating its Renewable Energy Management Program. Tenant and Landlord agree to enter into an amendment to this Lease to incorporate the revised and updated Renewable Energy Management Program, provided that the updated program is to be applied to all future tenants of the Building in a consistent manner.

Lease excerpt from the Bullitt Center pertaining to its energy budget:

Tenant's kWh Consumption and the Total Tenant Load kWh Consumption shall each be based on the monthly "real time" data collected by Landlord through the Building Monitoring System, which tracks electricity consumption.

Tenant's kWh Allowance. Landlord estimates that the Building Services Area will consume approximately 115,000 kWh of electricity generated from the PV Array (the "**Buildings Load Allowance**"), leaving approximately 115,000 kWh to allocate among all the tenants of the Building (the "**Total Tenant Load**"). Tenant's kWh allowance is the number derived from (A) the Total Tenant Load, multiplied by (B) Tenant's Share of the Building (the "**Tenant's kWh Allowance**"). In the event of a multi-tenant floor, Tenant's kWh Allowance shall also take into account Tenant's percentage of the floor (including Shared Floor Area, if any).

If Tenant has not exceeded Tenant's kWh Allowance for that year, then Landlord shall reimburse Tenant 100% of what Tenant paid for Utility Costs that year (excluding connection fees and taxes, if any). Landlord shall reimburse Tenant by applying a credit toward future rent of by providing Tenant with a check. The form of payment to Tenant of the utility reimbursement by Landlord shall be at Landlord's sole discretion.

If Tenant has exceeded Tenant's kWh Allowance for that year, then landlord shall retain the total amount paid by tenant for Utility Costs for that year. Such retained amount shall be liquidated damages for Tenant's failure to meet the requirements of this Lease. In the event Tenant exceeds Tenant's kwh Allowance for two consecutive years, then Landlord shall have the option, in its sole discretion, to treat such event as a nonmonetary default by Tenant pursuant of Section 16.1.3, without notice and opportunity to curve, and may avail itself of any remedies described in Section 16.

Lease excerpt from Boulder Commons pertaining to its energy budget:

Electricity supplied to the Premises will be submetered by meters installed by Landlord as part of the Landlord's Work. As used in this Lease, the term "Plug Load Maximum" means 7 kBtu per Useable Square Foot of the Premises per calendar year for the initial plug loads of the Premises. Plug loads are defined as the loads on all circuits serving wall outlets in the Premises. If Tenant's use of energy and plug loads is in excess of the Plug Load Maximum, Landlord will purchase RECs to offset any energy use in excess of the Plug Load Maximum in order to maintain the NZE goal of the Premises, and the purchase price paid therefor will be billed directly to the Tenant and not as an Operating Expense. The actual cost of the RECs, without additional fees or markups, will be billed to Tenant and paid by Tenant either quarterly or annually (as determined by Landlord). As Additional Rent. The foregoing calculations will be provided in each Reconciliation Statement as a separate item, but included in the final amount of Tenant's Pro Rata Share of Expenses for purposes of calculating the amount owed by or to Tenant under Section 3.5 (Confirmation of Tenant's Pro Rata Share of Expenses). In order to assist in the goal of NZE, Landlord will have the right to adjust the Plug Load Maximum after the first year of occupancy of the Building, but no later than December 31, 2018.

Lease excerpt from Boulder Commons pertaining to its submetering:

Landlord, at Landlord's sole cost, will submeter Tenant's energy use. Energy use will be submetered for the Premises separately and will include one submeter for each primary electrical panel (which will enable Tenant to approximate energy use) the primary electrical panel(s) serving the Premises will exclusively serve the Premises. Tenant's heating and cooling energy use will be tracked separately and reported to Tenant, via the Mitsubishi central control system. The plug load consumption for all Project tenants will be separately metered for billing purposes. Landlord will make the submeter data available to Tenant at any time via online accessibility that provides history and tending.

Lease excerpt from the Bullitt Center pertaining to submetering:

…Landlord shall then provide main connection branches and submeters as follows:

Main connection branch (electricity, water and sewer) from Third Party Utility to the Building
Submeter (electricity, water and sewer) to Building Service Area as defined below
One submeter per floor for Tenant Lighting and Plug Load as defined below
One submeter to the Data Management Facility as defined below
One submeter per floor for water and sewer
Main connection branch from PV Array to Third Party Utiliy

Definitions. Building Service Area will include Building Service Areas and Floor Service Areas for the Building as defined further under BOMA Standards.

Tenant Lighting and Plug Load will include Occupant Area as defined further under BOMA Standards. Tenant shall utility the Energy Management Calculator to determine Tenant's anticipated plug load.

The Data Management Facility is the area designated by Landlord where Tenants will locate their telecommunications equipment.

Lease excerpt from Boulder Commons pertaining to recommissioning:

Annual Recommissioning and Review.

In order to maintain and enhance performance toward NZE, the Landlord will recommission the base building system of the Project once every calendar year from and after January 1, 208. The cost of recommissioning will be billed to all tenants of the Project as an Operating Expense. Each recommissioning will comply with ASHRAE Guideline 0.2 (for initial commissioning and re-commissioning of base building system) or ASHRAE Guideline 202 (for new commissioning of tenant fit out equipment). Specific commissioning standards will be evaluated annually and updated as appropriate. Recommissioning will address at a minimum: heating, ventilating, air conditioning and refrigeration systems and associated controls, lighting and lighting controls, and domestic hot water systems.

An annual report will be issued by Landlord to the Tenant. The cost of any changes or alterations to the Project and its systems due to the plan for corrective action or recommissioning will be promptly done by Landlord as an Operating Expense.

If NZE is not achieved Landlord will meet with all tenants of the Project and review energy use data, recommissioning outputs and recommendations and the effectiveness of efficiency programs and mutually establish an energy optimization plan, including energy management and cost effective savings opportunities for the Project and each premises therein. The cost of any changes or alternations to the base building HVAC or lighting systems and their controls due to the recommissioning will be promptly done by Landlord and billed as an Operating Expense.

If, and only if, Tenant's Plug Load Maximum is exceeded, Landlord will arrange for the Premises to be recommissioned and Tenant will provide access to the Premises and will cooperate with the recommission of the plug load equipment in the Premises. The cost of any changes or alternations to the Tenant plug load equipment and its controls due to the recommissioning will be promptly done by Tenant at its sole cost.

Recommissioning will occur annually, even if NZE is achieved, and a recommissioning report will be released to all tenants.

Prior to recommissioning each year, Landlord will have the opportunity to work with a Tenant point of contact (to be determined annually) to issue a survey to all occupants of the Premises to evaluate thermal comfort, functionality, transportation methods, health and productivity (among other factors0. Survey Results will be used to inform recommissioning to improve the functionality and comfort of the Premise. Surveys shall be coordinated through the designated Tenant point of contact and shall not occur more than once per calendar year. Interviews may be used to supplement the surveys, pending approval from the Tenant point of contact. Surveys will be reasonable in length and the process will not be a burden to Premises occupants.

Lease excerpt from Boulder Commons pertaining to energy use disclosure:

Landlord will provide to Tenant, no later than March 30 of each calendar year, an annual report for the amount of electricity generated and consumed at the Project.

Lease excerpt from the Bullitt Center pertaining to energy use disclosure:

> As soon as possible after the end of each calendar year, Landlord shall provide Tenant with an (i) annualized kWh statement outlining the total Tenant's kWh Consumption; and (ii) annualized statement outlining the total water consumption of Tenant's Premises.
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> Compliance with Building Monitoring System. Tenant shall participate in and cooperate with Landlord's implementation, operation and reporting of a Building Monitoring System. Landlord shall have the right to display and distribute real time data to the public as it pertains to the operation of the Building and the Premises therein.

Lease excerpt from 1400 Page Mill Road pertaining to tenant obligation to pay the landlord for solar electricity generated by the building:

> ...the costs of all utilities and services furnished to or used at the Property and not paid for directly by Tenant; provided however that utility costs for electricity will be based on the actual consumption of electricity as measured by Landlord and will be billed directly by Landlord at the same rate as if billed by the City of Palo Alto Utilities (or any replacement thereof), whether such electricity is furnished by City of Palo Alto Utilities or by any solar power generated at the Property.

Lease excerpts from PLANYC pertaining to a Model Energy Aligned Clause:

"Operating Expenses" means all costs, expenses, disbursements and expenditures (and taxes, if any, thereon) incurred by or on behalf of Landlord (and whether paid or incurred directly or through independent contractors or outside vendors) with respect to operating, maintaining, repairing, replacing, lighting, insuring, staffing, cleaning, safeguarding and managing the Building and all common areas and equipment or systems thereof, including, without limitation…(16) the cost of any Capital Improvement (as hereinafter defined) if and to the extent includable in Operating Expenses pursuant to Section 1.1(b) below, which cost shall be amortized on a straight line basis over the useful life of such Capital Improvement (such useful life to be determined in accordance with generally accepted accounting principles, consistently applied), except with respect to Capital Improvements described in Section 1.1(b)(i) below (which shall be amortized as provided in that subsection), with the annual amortization amount included in Operating Expenses for the Comparison Year in question…

"Projected Annual Savings" means the average annual base building utility cost savings anticipated to be generated by a Capital Improvement, determined using commonly applied engineering methods and an estimate provided in writing by the Independent Engineer.

Landlord may include the costs of certain Capital Improvements in Operating Expenses pursuant to Section 1.1(a)(v)(16) in accordance with the following:

(i) Capital Improvements Intended to Improve Energy Efficiency. In the case of any Capital Improvement that the Independent Engineer certifies in writing will, subject to reasonable assumptions and qualifications, reduce the Building's consumption of electricity, oil, natural gas, steam, water or other utilities, and notwithstanding anything to the contrary in Section 1.1(a)(v):

A. The costs of such Capital Improvement shall be deemed reduced by the amount of any NYSERDA or similar government or other incentives for energy efficiency improvements actually received by Landlord to defray the costs of such Capital Improvement, and shall further be reduced by any energy efficiency tax credits or similar energy-efficiency-based tax incentives actually accruing to Landlord as a result of such Capital Improvement.

B. For the purposes of this Section 1.1(b)(i), "simple payback period" means the length of time (expressed in months) obtained by dividing (x) the aggregate costs of any such Capital Improvement, by (y) the Projected Annual Savings. By way of example: If the aggregate costs of such Capital Improvement are $2,000,000 and the Projected Annual Savings are $500,000, then the simple payback period for such Capital Improvement is forty-eight (48) months.

C. Commencing with the first Comparison Year following the year in which such Capital Improvement is completed and placed in service, and continuing for the duration of the Adjusted Payback Period (as hereinafter defined), Landlord may include in Operating Expenses a portion of the aggregate costs of such Capital Improvement equivalent to eighty percent (80%)1 of the Projected Annual Savings, so that the aggregate costs of such Capital Improvement will be fully amortized over one hundred twenty-five percent (125%)2 of the simple payback period (such period of time, the "Adjusted Payback Period"). By way of example: If the aggregate costs of such Capital Improvement are $2,000,000, the Projected Annual Savings are $500,000 and the simple payback period for such Capital Improvement is forty-eight (48) months, then Landlord may include $400,000 of the aggregate costs of such Capital Improvement (i.e., an amount equivalent to 80% of the Projected Annual Savings) in Operating Expenses for five consecutive Comparison Years (i.e. sixty (60) months or 125% of the simple payback period).