

**GREENING THE PROFESSION:**

**REPORT OF THE**

**ENVIRONMENTAL SUSTAINABILITY TASK FORCE**

**BOSTON BAR ASSOCIATION**  
**September, 2012**

## BBA ENVIRONMENTAL SUSTAINABILITY TASK FORCE MEMBERS

|                                      |  |
|--------------------------------------|--|
| Benjamin J. Ericson, <i>Co-Chair</i> | Massachusetts Department of Environmental Protection |
| Michelle N. O'Brien, <i>Co-Chair</i> | Mackie Shea O'Brien, PC                              |
| Amy E. Boyd                          | Foley Hoag LLP                                       |
| Christopher P. Davis                 | Ceres, Inc.  |
| Gary Davis                           | Executive Office of Energy & Environmental Affairs   |
| Jonathan M. Ettinger                 | Foley Hoag LLP                                       |
| Pamela D. Harvey                     | Massachusetts Department of Environmental Protection |
| James W. Hunt, III                   | City of Boston                                       |
| Carolyn S. Kaplan                    | Nixon Peabody, LLP                                   |
| Michael J. Koehler                   | Keegan Werlin LLP                                    |
| Wendy Levine                         | National Grid  |
| Cynthia Lewis                        | U.S. Environmental Protection Agency                 |
| Michael E. Mooney                    | Nutter, McClennen & Fish, LLP                        |
| Colin Owyang                         | National Grid  |
| Carolyn Rosenthal                    | Goodwin Procter LLP                                  |
| Dylan Sanders                        | Sugarman, Rogers, Barshak & Cohen, P.C.              |
| Julie A. Taylor                      | Noble & Wickersham LLP                               |
| Danah Tench                          | Massachusetts Department of Environmental Protection |
| Robert Tuchmann                      | Wilmer, Cutler, Pickering, Hale & Dorr LLP           |
| Colin G. Van Dyke                    | Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  |

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## EXECUTIVE SUMMARY

The mission of the Boston Bar Association (BBA) includes advancing the highest standards of excellence for the legal profession. Professional excellence entails excellence not just in what we do, but in how we do it. Attention to diversity and inclusion and a commitment to pro bono work have now become well-recognized attributes of excellence in the legal profession. Likewise, a concern for environmental sustainability in the practice of law is increasingly becoming a hallmark of the most forward-looking legal practices and organizations.

Recognizing that building a sustainable future for our profession and our communities is a shared responsibility and that the BBA is uniquely positioned to advance that goal, President Lisa C. Goodheart and the BBA Council convened an Environmental Sustainability Task Force in September 2011. President Goodheart appointed Benjamin Ericson, then the Brownfields Unit Chief in the Environmental Protection Division of the Office of the Attorney General,<sup>1</sup> and Michelle N. O'Brien, a shareholder at Mackie Shea O'Brien, PC, to lead the Task Force. In addition to its co-chairs, the Task Force had 18 members whose professional work settings included law firms of various sizes, government environmental agencies, and non-profit organizations. The membership included Nixon Peabody's Chief Sustainability Officer, Goodwin Procter's Pro Bono Coordinator, and the City of Boston's Chief of Energy and Environment.

The Task Force had three primary goals. In order to promote "green" practices for lawyers and legal organizations, the Task Force set out to gather, evaluate, and present tips to promote environmental sustainability in various practice settings. The Task Force also sought to highlight the BBA's focus on environmental sustainability by organizing some public service events that featured BBA members doing good work in the community. Finally, the Task Force attempted to identify and publicize information about available pro bono opportunities for lawyers that entail environmental sustainability issues.

Through its Sustainability Survey and the experiences of its members, the Task Force learned that there is a lot of proactive work already being done to support sustainable initiatives. The Task Force also learned that there is a misconception that sustainability costs money. Although some measures may require additional resources at the outset, there can be tremendous cost savings associated with employing sustainability measures such as energy efficiency and waste reduction, as well as modifying personnel and transportation policies. The Task Force identified a need for ongoing education and information-sharing concerning sustainability initiatives.

During the course of the year-long Task Force, the BBA, as an organization, embraced sustainability and became an example of how an organization can change its thinking on sustainable practices. With top level engagement and a commitment to making improvements in the area of sustainability, the BBA staff identified ways to incorporate sustainability measures into their work. The BBA building underwent an energy audit and adopted new "green"

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<sup>1</sup> In November of 2011 Ben Ericson became the Assistant Commissioner for Waste Site Cleanup at the Massachusetts Department of Environmental Protection.

practices. These changes included converting exit sign light bulbs to Light-Emitting Diode (LED) lights, disseminating more information electronically, and recycling used coffee K-cups, among other things.

The BBA example serves as an excellent lesson for all law firms and legal organizations that desire to become more sustainable. Not unlike any other initiative undertaken by an organization, engagement of top-level management is critical for success. In addition, fostering an environment of communication allows the sustainability message to trickle down to those who actually manage the facility or organization.

No firm or organization is too small or too large to embrace sustainability and incorporate sustainability measures in its daily work. There are tremendous resources available at the click of a computer mouse to learn about how to make an office or organization more sustainable.

This report contains the results of the Task Force's efforts in identifying "best practices" for improving sustainability in the legal profession and increasing participation in public service opportunities promoting sustainability. In its compilation of Best Practices for Sustainability in Law Firms and Legal Organizations, the Task Force first identifies ideas and resources for firms to get started in becoming more sustainable. For firms and organizations already doing those things, the Task Force offers suggestions for longer term investments and goals. This report also includes a summary of the public service events where BBA members engaged in efforts that promote a more sustainable environment throughout the past year. The highlight was a Public Service Symposium with two panels and a keynote speaker who discussed their efforts in promoting sustainability through pro bono work and public service in government and non-profit organizations. In addition, this report contains a list of pro bono legal services opportunities in the environmental arena.

The Task Force recommends that the BBA's Environmental Law Section become the gatekeeper and cultivator for the work of the Task Force and take the lead in providing information about sustainability and opportunities for engaging in sustainable initiatives. Specifically, the Task Force recommends that the Pro Bono/Public Service Committee of the Environmental Law Section have responsibility for continuing the Task Force's goal related to increasing participation in public service opportunities promoting sustainability. The Environmental Law Section has traditionally sponsored public service projects, and it is well within the capabilities of that Section, in conjunction with other sections and BBA staff, to extend opportunities for participation more broadly within the BBA membership. In addition, the Environmental Law Section should maintain its relationship with the Massachusetts Environmental Justice Assistance Network (MEJAN), which recruits attorneys to provide legal services to clients largely identified by Alternatives for Community and Environment (ACE), an environmental organization based in Roxbury. Finally, the Task Force suggests that the Environmental Law Section consider updating the information on best practices for sustainability some time in the future, to the extent that there are new or better resources available for dissemination.

## **I. INTRODUCTION**

The concept of sustainability – viewed in the broad sense of cultivating the long-term health of our profession and communities – has been embraced by the Boston Bar Association (BBA) as an important principle and has shaped many of the BBA’s significant efforts in recent years. The BBA’s investment in and commitment to a sustainable future stems from the understanding that building a sustainable future for our profession and our communities is a shared responsibility and the right thing to do.

Consistent with the idea of a sustainable future, BBA President Lisa C. Goodheart convened a task force to look at the issue of environmental sustainability and how the BBA can contribute to the “greening of the profession.” The BBA is well-situated to help lawyers address the subject of environmental sustainability in law practices. As “the hub of Boston law,” the BBA brings lawyers together to learn from each other and work together to address common challenges. President Goodheart recognized that there was already a lot of admirable work surrounding environmental sustainability within the BBA membership, across a wide range of practice settings and types of organizations. This meant that the BBA could foster and grow its sustainability efforts by gathering and sharing the best ideas and best practices, for the benefit of all BBA members.

Looking for opportunities to help BBA members practice law in greener and more sustainable ways is important because it is increasingly likely that attention to environmental sustainability will become a way to recognize excellence in the legal field. This is because professional excellence entails excellence not just in what we do, but in how we do it.

Encouraging lawyers to enhance the environmental sustainability of the way we work is also important because we have an obligation, as citizens, to engage in the work we do in a responsible way. Working to green our profession is part of meeting that responsibility, and it reflects the BBA’s mission “to serve the community at large.” The BBA can also play a useful role in providing its members with meaningful public service and pro bono opportunities that focus on environmental sustainability.

## **II. GOALS OF THE TASK FORCE AND THE PROCESS FOR ACHIEVING THEM**

### **A. The Primary Areas of Focus**

At the direction of BBA President Goodheart, the Task Force set out to accomplish two main objectives: 1) to gather, evaluate, and present to BBA members tips for promoting environmental sustainability in the practice of law in various practice settings; and 2) to identify and promote pro bono and public service opportunities for lawyers pertaining to environmental sustainability issues. The Task Force members created two subcommittees to address the objectives.

The full Task Force met on four occasions from October of 2011 through June of 2012. Each of the two subcommittees also met on several occasions during that time.

### **B. Sustainability Survey Results**

Because the concept of sustainability is not new, the Task Force wanted to get a sense of what BBA member firms and organizations were already doing to make their practices and work places more sustainable. The Best Practices Subcommittee, with the assistance of the BBA staff, distributed a sustainability survey.

The BBA received responses from 30 law firms or organizations. Approximately one third of respondents indicated that their firm (or their firm's Massachusetts offices) had between 26 and 50 employees. Firms of all sizes responded to the survey, ranging from one employee to more than 1,000.

Of the respondents, 97% of the firms rent their office space. Approximately 80% of the firms that rent their office space have a lease with three or more years remaining. Many of the offices are provided with recycling bins by the building or landlord (70%), and the other 30% of respondents use their own recycling bins.

All of the survey respondents indicated that some form of recycling takes place in the office. A significant portion of firms recycle paper, cans, plastic, and glass items. Other firms are beginning to recycle K-Cups, batteries, light bulbs, and electronic waste (such as computers, printers, etc.). All of the firms indicated that they also purchase office supplies that are made of or contain recycled content. The most frequently purchased recycled content supplies are paper, printer toner, toiletries, and other office supplies. Some firms indicated that they use kitchen/cooking utensils containing recycled content.

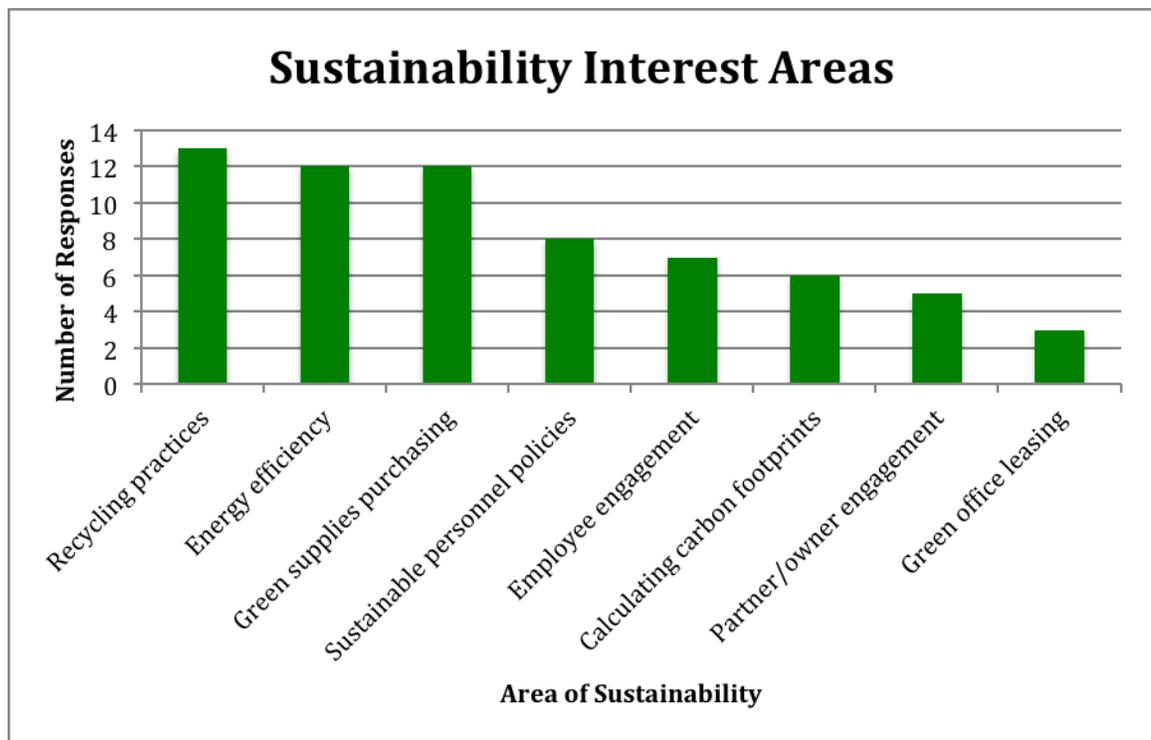
Approximately two thirds of respondents have some kind of personnel policies that promote sustainability. Many use telecommuting policies and video conferencing, but almost 70% use commuting policies. These policies include subsidies for carpooling, Zipcar membership, bike storage, and MBTA pass discounts. Although most firms use some form of commuting policy to promote sustainability, few firms indicated membership in a Transportation Management Association (TMA). This could be because not many firms are aware of what a

TMA is and the services it provides. (See Best Practices section, below, for more information on TMAs.)

Many firms are also utilizing operational policies and energy-saving equipment. A vast majority of firms have installed ceiling lights with motion sensors to save energy. A significant portion of respondents have requirements to ensure that everyone shuts off his/her computers and monitors when they are not in use. Some firms have installed compact fluorescent lights and Light-Emitting Diode (LED) lights, both of which last longer and are more energy-efficient. Other firms are banning the use of plastic bottles, utensils, and dishes in favor of filtered water dispensers and real silverware and dishes.

The perceived barriers to implementing sustainability initiatives were also examined. The most frequently cited barrier was cost (70%). This is particularly troubling and counterintuitive because “green” techniques and supplies are more cost-efficient in the long-term. Some techniques can be expensive to implement at first, but most are not. The perception seems to be that only large-sized firms can afford to implement these techniques. However, many small to mid-sized firms stated that cost is never a barrier, and many of the large-sized firms indicated that cost is a barrier. In reality, no firm is too small to implement sustainability measures as they benefit the firm financially and, most importantly, they benefit the environment.

The following chart displays the areas in which firms indicated they were interested in receiving more information to improve office sustainability practices.



Finally, firms were asked to share sustainability practices that they have implemented. Many firms listed the standard practices of recycling bottles, cans, and paper. Many shared some

innovative techniques, however. Some firms have taken Energy Star and NSTAR initiatives such as replacing all fluorescent light bulbs and replacing them with LED bulbs, installing motion sensors, and using energy-efficient appliances. An easy and low-cost method cited was reusing old stationary to create note pads and other usable scrap paper. Others were recycling more electronic materials such as batteries, printers/supplies, and computers/accessories. One firm leads the way in food recycling by collecting unused cooking oil and composting food.

### C. Best Practices Subcommittee

The Best Practices Subcommittee set out to find examples of sustainability practices currently used by law firms and legal organizations, as well as resources that firms and organizations could turn to for information on how to become more sustainable. The subcommittee found there are many resources available. For example, the BBA already had a **Green Office Program** checklist developed by the Environmental Law Section in 2008. The Massachusetts Bar Association and the American Bar Association also had toolkits for promoting sustainability. The Oregon Lawyers for a Sustainable Future ([www.sustainablelawyers.org](http://www.sustainablelawyers.org)) developed a checklist for sustainable practices in law offices. Closer to home, Boston's "**A Better City**" provides a tremendous amount of information on sustainability through its Challenge for Sustainability and Toolkit for Sustainable Business. "A Better City" is a nonprofit membership organization committed to improving the economic competitiveness and quality of life of the Boston region by advancing significant transportation, land development and environmental policies, projects and initiatives ([www.abettercity.org](http://www.abettercity.org)). Some of the toolkits and checklists identified by the Task Force are:

- i) A Better City Sustainability Toolkit: <http://www.abettercity.org/toolkit/index.html>
- ii) Canadian Bar Association: Greening Your Law Firm Checklist: <http://www.cba.org/cba/practicelink/Bsky/greenchecklist.aspx>
- iii) MBA toolkits: eco challenge guidelines: <http://www.massbar.org/media/252221/greenguidelines0108.pdf>
- iv) MBA toolkit on Landscape Management: [http://www.massbar.org/media/497317/eco\\_land-gg.pdf](http://www.massbar.org/media/497317/eco_land-gg.pdf)
- v) Oregon lawyers for Sustainable Future Law Office Sustainability Tools: [http://earthleaders.org/olsf/office\\_practices](http://earthleaders.org/olsf/office_practices)
- vi) California State Bar: [http://environmental.calbar.ca.gov/Portals/15/documents/2011-03\\_model-law-office-sustainability-guidelines-r.pdf](http://environmental.calbar.ca.gov/Portals/15/documents/2011-03_model-law-office-sustainability-guidelines-r.pdf)
- vii) Pennsylvania State Bar: <http://www.pabar.org/public/sections/envco/PLUSProgramGuidelines.pdf>
- viii) Green leaf sustainability program at Harvard (implementation checklist): <http://green.harvard.edu/green-office>

- ix) Legal Sector Alliance: Example actions  
<http://www.legalsectoralliance.com/exampleactions>
- x) Avery Green Office Week tips and ideas: <http://greenofficeweek.eu/About-Green-Office-Week/GOW-2012/>
- xi) Meritas Leadership Institute:  
[http://www.greenbiz.com/sites/default/files/document/Meritas\\_Green\\_Practice.doc](http://www.greenbiz.com/sites/default/files/document/Meritas_Green_Practice.doc)  
[http://www.greenbiz.com/sites/default/files/document/Meritas\\_Green\\_Practice.doc](http://www.greenbiz.com/sites/default/files/document/Meritas_Green_Practice.doc)  
[http://www.greenbiz.com/sites/default/files/document/Meritas\\_Green\\_Practice.doc](http://www.greenbiz.com/sites/default/files/document/Meritas_Green_Practice.doc)
- xii) Green Resources (checklist/links, specific to Boston area):  
<http://sustainablebusinessleader.org/green-resources>

The Best Practices Subcommittee generated lists of resources, arranged in different categories, and evaluated the information. The best practices are summarized in Section III, below.

#### **D. Pro Bono and Public Service Subcommittee**

The Pro Bono and Public Service Subcommittee focused on two goals related to increasing participation in public service opportunities promoting sustainability. Instead of planning for projects that might be implemented in the future, the subcommittee favored activities that could be accomplished during the year that the Task Force had been convened, with an eye toward projects that could be continued in the future by the Environmental Law Section. Indeed, the Environmental Law Section sponsored public service projects annually that could be extended to include participants from throughout the BBA.

In particular, the subcommittee sought to make information and opportunities available to non-environmental lawyers. Through its public service symposium, described in Section IV, the Task Force achieved its goal of reaching out to BBA members not traditionally involved in environmental or sustainability issues.

### III. BEST PRACTICES FOR SUSTAINABILITY IN LAW FIRMS AND LEGAL ORGANIZATIONS

The Task Force, through its Best Practices Subcommittee, identified a number of things attorneys can do to improve sustainability across the legal profession. This report focuses on seven areas of legal office operations in which relatively simple steps, and longer-term investments and policies, can lead to significant changes and impacts. The seven areas where law firms and legal organizations can make their offices more sustainable are:

1. [Buildings and Energy](#): Improve energy efficiency in the buildings, office spaces, and equipment, and take steps to incorporate “green lease” terms into office leases.
2. [Paper](#): Reduce the amount used, and increase paper recycling.
3. [Waste](#): Reduce the amount generated, and increase waste recycling.
4. [Sustainable Purchasing](#): Buy more sustainable products and services.
5. [Personnel Policies](#): Make office policies and practices more sustainable.
6. [Transportation](#): Make office travel policies and personnel commuting more sustainable.
7. [Education and Outreach](#): Get the whole office involved for success, camaraderie, and better publicity.

#### A. Buildings and Energy

Why should lawyers care about their office buildings? Because buildings are critical to energy challenges and climate change. Buildings account for more than 50% of total U.S. energy consumption (more than transportation). U.S. buildings emit more greenhouse gases than the U.S. transportation sector. Across the U.S., 40% of carbon emissions are from buildings, and buildings account for up to 75% of carbon emissions in urban areas such as New York and Boston.

The legal community can reduce those figures. Improved building design, construction, and operations can reduce energy impacts of heating, cooling, lighting, and equipment. “Greening” buildings is especially important in Boston, because we use more heating oil and gas than the national average.

Any law office can become more energy efficient. Reducing the use of electricity is a good place to start – replace lights, get more efficient copiers and printers, use software to automatically shut off lights and equipment at night and on weekends, increase task lighting (rather than overhead lighting), and use timers for thermostats for heating and cooling.

One energy-saving step that is very easy to take provides big benefits: changing an office incandescent bulb to a compact fluorescent light (CFL) or LED bulb saves energy (75 to 90% savings) and generates far less heat (so less cooling is needed in the summer). Similarly, turning off a laser printer when it is not in use can save up to \$130 per year. Computers, printers, copiers, and lights can be configured to turn off automatically at night and on weekends (with a manual override so people can use equipment and lights after the normal shut-off time, if necessary).

Another green idea is to put someone in the office in charge of energy efficiency issues. He or she can look at no-cost and low-cost practices like the ones noted above, and provide such

information to the rest of the office. The person in charge should follow up to make sure that the chosen steps to improve efficiency are actually taken, and that the return on investment is as predicted.

If a law firm is looking to make even more of an impact on energy-efficiency, it should start with an energy audit for the whole office. (See [this helpful article](#) for more on energy audits) Audits provide more personalized ideas on savings and efficiency, and they can help target the areas with the highest reductions specific to the office and provide expert tips. For example, “screen savers” on computers generally do not save energy (and may double energy use versus putting a computer in “sleep” mode).

A law firm can also take steps to incorporate “green lease” terms into its new or existing lease (you don’t need a new lease in a new “green building”). For more information, see the Green Lease Guide developed by the 2012 Green Lease Workgroup of the Environmental and Real Estate Sections of the Boston Bar Association ([attached](#)).

## **Ideas and Resources To Get Started**

### Switch it Out and Turn it Off:

- Change overhead and task lighting to use CFL or LED light bulbs, rather than incandescent light, and remind everyone to turn off lights when they leave the room.
- Upgrade computers and other technology to [Energy-Star level equipment](#). The [American Bar Association’s Energy Star program](#) encourages efforts to reduce electricity usage by 10% by using such efficient equipment.
- Put lights on motion sensors to ensure that they are on only when they need to be, and can turn off when they are not needed. For more information, see [A Better City’s guidelines on motion sensors](#).
- Pay particular attention to areas with lights and equipment that are always on. For instance, the [BBA discovered that its exit signs were an energy hog](#). Did you know that [vending machines](#) could be one of the biggest energy wasters in an office?
- Use sunlight effectively. Because lawyers primarily work during the day, they can use the sun’s power to provide light and heat. On the other hand, lowering window shades in unused rooms can help prevent indoor solar heat gain and UV rays, which can damage furnishings and carpets. For more information on the right use of the sun’s rays, see [A Better City’s toolkit on window shading](#).

### Impacts Beyond Energy:

- Reducing use of water can save significant money, in addition to conserving fresh water. Track, monitor, and improve the office’s use of water by implementing a [water use plan](#).
- Offices with landscaping can participate in the [Massachusetts Bar Association’s Landscape Management Plan](#) as an Eco-Challenge Partner.

## Longer Term Investments and Goals

If a law firm's office has already taken initial steps to reduce energy use, here are links with information about longer-term investments and options that might be considered:

- Create an [Energy Management Plan](#), a map designed to help maximize a building's productivity while minimizing its energy use, and track it with the use of [energy management tools and software](#).
- Track the office's carbon footprint, and work to reduce it. For more information, see the [Legal Sector Alliance's Carbon Footprint tools](#).
- If the law firm is a tenant that does not pay its electricity bill directly, consider setting up a [sub-meter for the firm's office space alone](#). This will help recoup some of the firm's energy-efficiency investment.
- Purchase renewable power through a local utility provider and qualify for the [ABA's Green Power Partnership Program](#). For those who are really committed, and have the space, install distributed renewable generation. Clients who are interested in solar panels, microturbines, and on-site anaerobic digesters will know that a firm means business when it has them, too.

### B. Paper Reduction and Recycling

One of the easiest ways to make a law practice more sustainable is to reduce, reuse and recycle paper products, which make up the bulk of a law office's waste. Perhaps the first step should be to set printers to default to double-sided printing. The difference between making double-sided printers available and changing the default is one of degree; setting the default to double-sided eliminates the need for people to think about it each time they hit print and shows the firm's commitment to sustainability. A lot of people may not notice, while others will be pleased with the change and may have wanted to set it up themselves. Even if certain people object to the changed default, it is not hard to change it back, and most people will still print double-sided most of the time. In fact, this small change could reduce a law office's paper use by 30-45%. That means, if the office uses 2,000 reams of paper a month, a savings of \$40,000 to \$60,000 per year. If the office does not have double-sided capable printers, consider this savings when deciding whether to replace them.

### Ideas and Resources To Get Started

- Reduce toner use by using "draft" or "quick" mode of printing (600 dpi). This will not have a meaningful effect on print quality but can save substantial amounts of toner.
- Purchase recycled paper. Ensure all office paper products are at least 30% postconsumer recycled content (and try for 100%).
- Eliminate legal sized paper, pouches and files. While there are exceptions, for most practice areas, legal size is obsolete. Letter size saves paper!
- Encourage attention to behavior with paper.

- Encourage limited use of meeting handouts; they can be emailed later.
  - Encourage printing only the pages needed, not the whole document every time.
  - Avoid wasted pages with software such as [GreenPrint](#), which prompts the user before printing pages that might not be wanted.
- Simplify electronic document storage. Choose software that makes electronic storage and retrieval easy, reducing the need to print and file hard copies.
  - Use E-Cards for holidays. It may seem impersonal at first but many lawyers who have switched to e-cards report that clients and other contacts like them. Because it is easier to reply to an e-card than a paper card, e-cards often result in more contact.
  - Print firm advertising on recycled stock (and point out that it is recycled stock).
  - Keep mailing lists up to date. This reduces unused, returned mail, which makes work more efficient and saves on printing and mailing costs.
  - Use electronic dockets and other file sharing systems.
  - Distribute through routing, rather than duplication. For non-time-sensitive information that must be distributed in paper form, consider printing less and using distribution lists, as many firms now do with printed periodicals.

### **Longer Term Investments and Goals**

- Set and hit goals for amounts recycled. ABA's Climate Challenge [WasteWise Program](#) recommends recycling at least 90% of discarded mixed office paper. Report to the whole office regularly, so that people know how they are doing and are motivated to keep moving toward the goal.
- Review and revise file storage policies. Files take up space, which uses resources and costs money. Eliminating unnecessary storage will save money. Access archived inventory to determine whether documents can be electronically stored, and the originals shredded and recycled.
- Develop or enhance paperless practices such as using the intranet for in-house communications, desktop and pdf faxing, and electronic pay stubs. A paperless practice, [or as close as one can get](#), can save money and make it easier to find files and other documents.

### **C. Waste Reduction and Recycling**

The first step to reuse and recycling is to reduce consumption, and to not create waste initially. The amount of waste generated by lawyers and firms can be minimized in relatively easy and cost-effective ways.

Take, for instance, a law firm's morning coffee ritual. The firm could eliminate the use of disposable Styrofoam and plastic cups. Styrofoam cups and other containers for single

serving use purposes generate huge amounts of long-lasting waste and are made from petroleum, taking more than 500 years to biodegrade. Using Styrofoam alternatives such as paper, cornstarch-based containers, or biodegradable EcoFoam containers greatly reduces this harmful waste. (This [toolkit from A Better City](#) has more information on reasons to minimize your use of foam and ideas on how to do it.)

Or, even better, use real mugs (along with other durable plates, glasses and utensils in the kitchen and conference rooms). Stock up on ceramic mugs to let guests use, and sneak some advertising in. Ask employees to show their personality by bringing their favorite coffee cup from home. Reusable mugs and utensils potentially save money over the long-run, since disposable items will not continuously need to be purchased. Many clients also prefer permanent service items over disposables, as it imparts a sense of superior quality.

These may be small changes, but they can have a particularly powerful impact, because every time people reach for their coffee cups, they will think about what they can do for the environment. Along the same lines, law offices could eliminate single-serve crème and sugar packaging, and instead use bulk canisters that are more affordable, in addition to creating less packaging waste. Coffee machines can also be green – see how you can create a Keurig K-cup recycling program through “Grounds to Grow On” [like the BBA did](#).

### **Ideas and Resources To Get Started**

- Provide filtered water dispensers and pitchers of water at meetings, rather than bottled water. Because people tend to drink more water from pitchers and larger containers, a law office will get the added benefit of healthier, hydrated workers, as well as reduced costs and waste. For more information, see [A Better City’s toolkit on bottled water](#).
- Create an internal reuse center for supplies such as binders, redwelds and file folders. Why throw out perfectly good supplies? Reuse them, and avoid the cost of having to buy new.
- Larger resources such as books, furniture and file cabinets can also be reused. Create a freecycle program to allow employees to use them. Or consider donating them to charity or a pro bono business client. For more information, see [A Better City Toolkit](#).
- Tell janitorial staff to allow full use of toilet paper rolls, rather than discarding the rolls on a particular timetable. Here, too, avoided waste equals avoided expense.
- Install efficient hand dryers and remove single use paper towel dispensers. This change will save money for both waste disposal and purchasing. For more information, see [A Better City’s toolkit on handryers](#). Alternatively, if someone is willing to do the laundry, use cloth hand and dish towels.
- Recycle aluminum and plastics: collecting and redeeming recyclables can put money back in your pocket, and help the environment, too.
- Put recycling bins everywhere there are trash cans: Placing recycling bins in kitchens and offices encourages employees to recycle with ease and convenience. Bins that are small and uniform in color will be easily used and recognized. For more information see [A Better City’s toolkit on recycle bins](#).

- Implement single-stream recycling to collect all recyclables in one place for sorting later at a recycling center. It is more efficient and greatly increases recycling rates at facilities, often reducing waste hauling expenses. For more information, see [A Better City's toolkit on single-stream recycling](#).
- Ask your supplier to pick up old printer cartridges for reuse and purchase remanufactured cartridges from them (confirming that the warranty is still in effect). Many manufacturers and distributors offer rebates to encourage use of such programs. For more information, see [A Better City's toolkit](#) on recycling consumables.
- Recycle pens, pencils and markers, too. [Send back your used up writing instruments](#) and earn points to donate to the non-profit organization or school of your choice.
- Other recycling ideas: <http://earth911.com/> provides dozens of recycling programs.

### **Longer Term Investments and Goals**

- **Deskside Recycling, Centralized Waste:** Switch the usual plan and make people work harder *not* to recycle. Design a waste disposal system that removes individual waste bins from employee desks, leaving only the recycling bins, and centralizes larger waste bins in common areas. This can reduce waste by building awareness and decrease janitorial expenses.
- **Conduct annual audit of waste stream.** Conducting an annual waste stream audit provides an analysis of what makes up a law office's solid waste, its sources, and how it is collected and treated. It allows a law firm to plan for the most efficient ways to manage wastes, and to see where recycling programs and waste reduction programs can be improved and streamlined. For more information, see [A Better City's toolkit](#).
- **Compost!** Composting is nature's process of recycling organic materials into a rich soil. Without much effort, a law office's food scraps can generate highly fertile soil, which can be given to employees for their own gardens, or used in outdoor landscaping. Offices can place compost bins designed specifically for the office environment in a kitchen or cafeteria. For more information, see [A Better City's Composting Toolkit](#).
- **Create a "No Landfill E-Waste" policy and remarket, donate, or recycle all electronics.** Most electronics (e.g., computers and their components, audio and stereo equipment, fax machines, photocopy machines, phones, televisions) contain hazardous materials that should not be disposed of in landfills.
  - Recycling electronics helps keep toxics out of the soil and groundwater. Several local organizations provide low cost opportunities for recycling these materials appropriately. For more information, see [A Better City's toolkit](#).
  - Policies like this save money, as electronic disposal costs add up quickly. For example, the [Massachusetts Trial Courts saved](#) more than \$174,000 in disposal costs through their e-waste recycling program in 2011.

## **D. Sustainable Purchasing**

Lawyers and law offices, big and small, are consumers at the end of long, sometimes complicated, and energy intensive supply chains for a host of products and services. These include paper and other office supplies, cleaning supplies, food and beverages, computers, monitors and other office equipment and infrastructure, and third party vendor services. Moreover, lawyers in public and private practice consume large volumes of these products and services. The production, packaging, and transportation of these products consume energy and precious resources and may, to various degrees, adversely impact the environment as well as human health.

As consumers in the marketplace, lawyers must make choices regarding what they buy. To make a difference, and to be responsible stewards, lawyers have to be conscious in making those choices. Paying more attention to what is purchased, how much is purchased, how it is packaged, how much energy it uses, where it comes from and how it is delivered provides our profession with the invaluable opportunity to reduce our environmental footprint and set an example for others.

According to Energy Star, a joint program of the U.S. Environmental Protection Agency and Department of Energy, if all computer displays sold in the U.S. were Energy Star qualified, the energy savings would be approximately \$1 billion each year and the reduction in greenhouse gas emissions equivalent to taking nearly 1.5 million vehicles off the road. In addition, implementing sustainable purchasing policies can have an important multiplier effect in the marketplace for green products and services.

Expressing preferences for sustainability in the products and services law firms purchase will stimulate the production and diversity of those products and services. In turn, this may lower their costs, making more sustainable products and services more widely available.

### **Ideas and Resources To Get Started**

- Sustainable purchasing works best with a plan, which everyone understands. A plan allows for purchasing decisions to be consistently focused. The first step is to create a program and write down achievable goals. For more information, see [A Better City Toolkit](#).
- In a large firm or legal organization, a person, or a team, should be put in charge of evaluating the firm's current purchasing choices as a sustainability coordinator. Reward and recognize his or her work on this important assignment.

### **Products and Purchasing:**

- When purchasing – or leasing – computers, copiers, displays, appliances (e.g., refrigerators, stoves, and other kitchen appliances) and other energy intensive equipment, pay attention to the rating from [Energy Star](#), a joint program of the U.S. Environmental Protection Agency and Department of Energy. For copiers alone, one of the more energy intensive devices common in law offices, preferring higher Energy Star ratings can

reduce the machine's electrical consumption by more than 50%. For more information, see [Energy Star's Find A Product](#).

- Purchase office paper products that are at least 30% postconsumer recycled content (and try for 100%) and that are certified by [Green Seal](#).
- Eliminate bottled water (often packaged in plastic and transported over distances) in favor of easily available tap water.
- Use organic or "fair trade" coffee. Organic coffee and tea come from beans and leaves that were grown and harvested using certified organic farming criteria, without any artificial fertilizers, herbicides, or pesticides. They are also grown on land that has not been severely degraded to help incentivize farmers not to damage virgin forests (typically rainforests) to grow crops.
- Purchase in bulk: Bulk purchasing is most commonly applied to toilet paper, paper towels, cleaning supplies, soap, detergent, condiments, glassware, and food (e.g., coffee, sugar, creamer). Bulk-packaged items require less packaging than the equivalent amount of individually-packaged goods, minimizing the energy and natural resources required to manufacture containers and packaging. Buying in bulk will also save money because bulk items are typically discounted.
- Stock unbleached paper towels, napkins and restroom paper products. Paper bleached with chlorine may contribute to dioxin in waterways.
- Purchase durable, non-disposable plates, cups, glasses, and utensils.

#### Supplies and Vendors:

- Buy locally, to reduce pollution caused by transporting goods. Local products also often have less packaging. For more information, see [A Better City Toolkit](#).
- Research sustainable products and alternatives. Deal only with suppliers who also demonstrate sustainable practices. For more information see [Green Seal](#).
- If the firm has a lunch room or cafeteria serviced by an outside vendor, pay attention to that vendor's practices. Does the vendor use recycled and/or sustainable products and organic, locally grown food whenever possible?
- Use cleaning supplies that are certified by [Green Seal](#) or meet EPA's environmental standards, like [EPA Environmentally Preferable Purchasing](#).
- Try a green printing service. Green printing services that adhere to strict environmental standards use paper that comes from well-managed forests, or recycled paper, and other environmentally-friendly materials (e.g., vegetable-based inks, alcohol-free components, etc.). For more information, see [A Better City Toolkit](#).
- Make an impact with greener event planning for big client meetings, conventions, and holiday parties. Consider patronizing green catering services, preferably ones that also prefer using locally grown food, and plan ahead to minimize your event's footprint and impacts. For more information, see [A Better City's Toolkit](#) and [Oregon Lawyers for Sustainable Future's Green Event Guidelines](#).

## Longer Term Investments and Goals

- Once a law firm has experimented and had success meeting its goals, those goals should be made part of a broader procurement policy, one that includes establishing relationships with preferred vendors who are local and committed to sustainable products, services and practices. Inform suppliers of the firm's choice to work with green companies. For more information, see [A Better City Toolkit](#).
- Check out the resources, tools and examples from [Massachusetts' Environmentally Preferable Products \(EPP\) Procurement Program](#).

### E. Personnel Policies

The daily actions and decisions of individual employees will determine the success of a law firm's efforts to achieve sustainability. A firm's policies and practices shape these actions, meaning it is essential that firms seeking to achieve sustainability adopt policies and practices promoting the concept and describing how it can be achieved. It is equally important that employees be aware of these policies and practices and that they commit to adopting them on an individual level. Asking employees to commit to sustainability in the workplace creates a sense of accountability that increases participation and a sense of camaraderie that encourages working toward a common goal.

When a law firm promotes sustainability through its policies and practices, and its employees commit to adopting those policies and practices, there is a ripple effect. Individual employees, who have learned about and committed to sustainable practices in their workplace, carry that knowledge and commitment into their homes and their communities to share with family, friends and colleagues, who can be inspired to adopt sustainable practices in their own homes and workplaces.

## Ideas and Resources To Get Started

- Adopt a firm-wide **sustainability policy**. A sustainability policy typically defines sustainability and the firm's vision for achieving sustainability. It also provides a general outline of the basic sustainability principles that the firm is adopting, rather than a detailed description of specific sustainability initiatives, which will be set out in the firm's practices. Two examples of such policies are:
  - [ABA Model Sustainability Policies](#)
  - [Oregon Lawyers for a Sustainable Future Policy](#)
- Encourage individual employees to sign a **sustainability pledge**, which is a formal commitment to adhere to the firm's sustainability policies and practices. Employees can complete a pledge card promising to participate in specific sustainability strategies, such as carpooling or recycling. The pledge can either be standardized throughout the firm or written by each employee. A sustainability pledge program provides an incentive to adopt

sustainable practices and accountability for each employee in order to make a difference. For more information, see [A Better City Toolkit](#).

- Organize **sustainability competitions** among employees or departments to see who can achieve the greatest level of sustainability within a given period of time. The quantification of results of individual sustainability efforts has the effect of maximizing employee effort for the period of the competition.
- Launch an **engagement campaign** that increases awareness of the firm's aim of achieving sustainability within the office. This will change employee behavior and encourage employee feedback or suggestions on efficiency and conservation goals. Campaign literature could be created for distribution to new employees that are hired after the campaign.

### Longer Term Investments and Goals

- Hire or designate a **sustainability officer** or **coordinator** dedicated to promoting the firm's aim of achieving sustainability. This person will provide focused leadership, bring together a team, implement procedures, develop resources and monitor results. For more information, see [A Better City Toolkit](#).
- Offer employees the option of **flex time scheduling**. Flex time scheduling can take many forms, including compressed work scheduling, which gives employees the opportunity to complete a full-time work week in fewer than five days, and core hour scheduling, which gives employees the opportunity to start and finish work early (*e.g.*, 7 am-4 pm) or late (*e.g.* 10 am-6 pm). Flex time scheduling can help reduce the number of vehicle miles traveled by employees and reduce traffic congestion during peak travel times.
- Promote **telecommuting** (sometimes referred to as teleworking), which is the practice of connecting electronically to the workplace from an offsite location via telecommunications technology. Often, employees arrange with their managers to carry out part of – or even all – their work away from their normal place of business, usually from home or a telework center. Telecommuting reduces travel-related carbon emissions.
- Invest in **technology to support off-site work** (*e.g.*, videoconferencing). In order to take advantage of the sustainability benefits of telecommuting, it is important that the firm's employees be able to effectively perform their regular work duties and fully participate in meetings and conference calls. For more information, see [A Better City Toolkit](#).

### F. Transportation: Business Travel and Commuting

Transportation is one of the most significant contributors of greenhouse gas emissions, comprising approximately one-third of all carbon dioxide emissions from fossil fuel production.<sup>2</sup> Lawyers play a role in this equation. Not only do lawyers travel to and from work, they often travel by car or plane to client meetings and other events. Much of this travel may be necessary,

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<sup>2</sup> <http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2012-ES.pdf>

particularly where there is a client or other strong business imperative. Even so, there are tremendous opportunities for lawyers to change their commuting habits and reduce business travel.

In addition to reducing emissions and having a positive environmental impact, modifying a law firm's approach to travel can result in cost savings for the organization and its employees. For example, using video or teleconferencing for business meetings can reduce hotel, airline, and other related travel costs. Commuters who don't drive to work can save money on parking, gas, and wear and tear on their vehicles. Biking and walking from home or transportation hubs also provide employees with an additional opportunity to exercise, resulting in a healthier workforce.

Clients are increasingly paying attention to the sustainability of their service providers. As an added bonus, clients may appreciate a law firm's efforts to reduce the emissions relating to its legal services.

## **Ideas and Resources To Get Started**

### Business Travel

- The best way to reduce travel emissions is not to travel in the first place. Before booking a trip, evaluate whether travel is truly necessary, because a **teleconference or videoconference** may be a satisfactory alternative. Not only do these save time and reduce travel costs, they minimize carbon emissions from airplanes and other vehicles. For more information, see [A Better City's Toolkit](#).
- **Preferred hotels** are often selected by firms and other organizations based on location and cost. Consider their sustainability practices as well. For more information about green hotels around metro Boston, see [Boston Green Tourism](#).
- Include a **sustainable car service** provider in the firm's list of preferred car services. Identify services whose fleet includes alternative fuel, hybrid or electric vehicles. For more information, see [A Better City Toolkit](#).
- Encourage the use of **car sharing services**. Consider paying for a group membership so personnel can travel at reduced rates for business travel. To help ensure vehicles will be available near a law firm's office, ask the property manager to provide spaces for car sharing vehicles in the building garage or parking lot. For more information, see [A Better City Toolkit](#).
- When **renting a vehicle**, select economy class, unless traveling in a large group that requires a larger vehicle. Encourage hybrid cars when the cost is reasonable as compared to a non-hybrid car of the same class.
- Utilize bicycle couriers to deliver parcels.
- Encourage the use of **public transportation** when feasible. Perhaps out of habit, attorneys often hire a taxi when traveling to the airport or meetings. Instead, ask for information on public transportation when making travel arrangements. Use the many helpful travel apps for mobile devices. Time-consuming traffic jams might be avoided! For more information, see

- [Public Transportation](#)
  - [Google Directions](#)
  - [NextBus](#)
  - [MBTA](#)
- Ask your firm’s travel company if they can provide information about the **travel carbon footprint** of office personnel. Many travel companies include this information in their standard services. By reviewing the data, a law firm might identify additional opportunities to reduce travel and can **purchase offsets** for emissions that cannot be eliminated. For more information, see
    - [NRDC](#)
    - [WWF Gold Standard](#)
  - **Encourage bike sharing** for nearby trips. Buy a few bikes for office use or take advantage of local bike sharing programs, such as [Hubway](#), enabling employees to rent a bicycle for a short period of time and return the bike to its original location or another drop-off point. Consider paying for a group membership so employees can take advantage of reduced rates. Not only will the law firm save money and reduce emissions, but employees will be healthier! For more information, see [A Better City Toolkit](#).

### Commuting

- Join a **Transportation Management Association (TMA)** and take advantage of a variety of commuter benefits. A law firm’s building manager may already be a TMA member, enabling the firm to participate at no additional cost! A TMA is a nonprofit consortium of business owners, employers, property managers, and others, who work together to address issues of employee transportation and improving air quality and traffic in a geographic area. A TMA provides incentives and programs to member companies that help encourage employees to take transit, carpool, bike, or walk into work. These incentives and programs help lower the cost of commuting transportation, improve air quality, and reduce traffic for all. TMAs also advocate on behalf of their member organizations for improved transportation services, access, and mobility. A Better City has a TMA (<http://www.abctma.com/>) as do the Seaport District (<http://www.seaporttma.org>) and the Kendall Square area of Cambridge (<http://charlesrivertma.org>).
- **Provide subsidies for mass transit.** Offer employees the opportunity to set aside pre-tax dollars to purchase transit passes or pay vanpool fares and/or subsidize the cost of monthly employee transit or vanpool expenses. Assist employees with auto renewal of monthly passes. Subscribe to service alerts from the transit service to give employees heads-up about potential delays. For more information, see
  - [A Better City Toolkit](#)
  - [MA Department of Revenue](#)
  - [MBTA Corporate Pass Program](#)

- Implement a **ride share/carpool** program. Carpooling reduces carbon emissions, traffic on the roads, and the need for parking spaces. Ride sharing reduces travel costs by sharing trip expenses such as gas, tolls, and car rental between the people traveling. A law firm can create a program for its own office or provide employees with information about existing ride matching programs. For more information, see [A Better City's toolkit on TMAs](#).
- Provide employees who don't drive to work with a “**guaranteed ride home**” in the event of emergency, illness, or unexpected overtime while at work. Take advantage of existing TMA programs that often provide a limited number of free trips to commuters who leave their cars at home. For more information, see [A Better City Toolkit](#).
- Consider providing a **complimentary shuttle service** to transport employees from transit hubs to work sites. This might be an opportunity to partner with a building manager and other tenants in the building on a joint sustainability initiative.
- Make it convenient and rewarding for your workers to **bicycle to work**. Building managers may be willing (and are sometimes required) to provide secure bike storage and showers for tenant use. The city or town where a law firm is located might have a program to install public bike racks in central locations. If the law firm is renovating or building out new space, consider installing a shower and a few lockers. Better yet, partner with a nearby health club that provides similar services. These links provide additional information on bicycling:
  - [Boston Complete Streets](#)
  - [City of Boston](#)
  - [A Better City Toolkit](#)
  - [MassBike](#)
- **Don't subsidize parking** if other modes of transportation are readily accessible. Instead, partner with the building manager to provide preferential parking for people who rideshare/carpool. If the law firm already provides free parking to its employees, consider a parking cash out. For more information, see
  - [A Better City Toolkit](#)
  - [MassRides](#)

### Longer Term Investments and Goals

- Consider formalizing the law firm's approach to travel. Amend the objectives of the firm's travel policy to include adoption of sustainable practices and update relevant provisions of the travel policy to mandate behavior change.
- Implement a flex-place policy allowing personnel to work remotely at home within specified parameters.
- Ask the law firm's property manager to implement a no idling policy and post appropriate signage for delivery vehicles, taxis, and livery vehicles, requiring drivers to

turn off their engines when parked outside the building for 30 seconds or more. For more information, see [A Better City Toolkit](#).

- Ask the property manager about the possibility of installing electric vehicle charging stations at the building.
- Develop employee engagement to modify behavior around travel. It may take some time to change long-standing habits!

## **G. Education and Outreach**

Creating the proper culture for the sustainable practice of law may not be “half the battle,” but it certainly is a necessary foundation for achieving an organization’s green goals. Without willing participation of employees and stakeholders, the organization will fall short. On the other hand, once the organization creates an atmosphere where sustainability is valued by everyone on the team, meeting goals and commitments will be that much easier. Furthermore, because of how hard lawyers work, and how much time lawyers spend *at* work, the workplace is a key opportunity for educating everyone lawyers come into contact with during the work day about the opportunities for and benefits of creating a more sustainable work environment.

## **Ideas and Resources To Get Started**

### Go Public!

- Green policies: Put sustainability policies and green commitments in writing, and distribute them to all employees as a measure of how important the policies are to the legal organization. Make sure the policies come from someone in management with the requisite “clout.”
- Create information resources, on the law firm’s intranet or elsewhere, where employees can learn not only about the firm’s policies and procedures, but other resources that will make employees’ lives more sustainable. Again, put someone in charge of this effort and reward, recognize and compensate him or her for this important work.
- Publicize what the firm is doing: Publishing (preferably paper-free on the web and through e-media) and displaying the firm’s green policies and procedures will provide employees, customers, and visitors with a clear understanding of the law firm’s commitment to sustainability. Make green commitments a source of pride. For more information, see [A Better City Toolkit](#).

### Green Perks for Employees:

- Reward and incentivize employees for participating in green initiatives and meeting green goals. Small rewards and incentives, both for participation and innovative ideas, can have a large impact. Or, consider rewarding the office as a whole for achieving the law firm’s goals.
- Encourage employees to get energy audits at home. Negotiate a preferred bulk price with a vendor for all employees. For more information, see [A Better City Toolkit](#).

- Hold an energy efficiency fair at work with group buying power/discounts, or green awareness day (or week!). For more information, see [A Better City Toolkit and Avery Green Office Week](#).
- Match employee donations to environmental nonprofit organizations.
- Start or participate in a “freecycle” program, where offices (or employees) drop off (and pick up) unwanted supplies or other items, providing an opportunity for reuse. For more information, see [A Better City Toolkit](#).
- Encourage use of reusable bags. Purchase them in bulk for employees. For more information, see [A Better City Toolkit](#).

Involve the Law Firm’s Clients and Community:

- Learn from clients who have successfully implemented sustainability measures. Invite them to teach and advise the firm for a change. Look at it as a marketing opportunity.
- Hold a team-building morning with a local farm or environmental non-profit.
- Invite and promote speakers on sustainability issues to be part of the firm training.
- Incorporate sustainability in the law firm’s business plan and encourage clients to be more sustainable. No, this is not appropriate for every client or every lawyer or firm, but there will be opportunities if key leaders are open to it. For more information, see Legal Sector Alliance Example.

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Sustainability is not a one-size-fits-all initiative. Some measures are easier to undertake than others. No law firm or legal organization is too small or too large to implement some sustainability measures, however, and there is really no good reason not to do so.

#### **IV. PROMOTING SUSTAINABILITY THROUGH PRO BONO AND PUBLIC SERVICE OPPORTUNITIES FOR LAWYERS**

The Pro Bono and Public Service Subcommittee focused on increasing opportunities for participation in public service events promoting sustainability. The subcommittee also identified opportunities for lawyers to engage in pro bono work involving sustainability.

##### **A. Public Service Projects**

Through the work of the Pro Bono and Public Service Subcommittee of the Task Force, BBA members participated in the following public service projects during the year:

- The Food Project, a nonprofit devoted to promoting urban as well as suburban sustainable agriculture in Roxbury. Participants spent the morning of June 16 assisting with the crops and learning from the youth that manage the volunteers. The Food Project manages 37 acres of farmland in Eastern Massachusetts, primarily through the work of teens and volunteers. At its Roxbury location, the Food Project is focused on providing access to fresh produce for city residents and education about food for urban youth. Task Force members Danah Tench and Dylan Sanders serve on the board of directors of the Food Project.
- Roslindale Urban Wild, is a plot of land owned by the Boston Conservation Commission and managed by the Boston Parks and Recreation Department. The Roslindale Urban Wild consists of ten acres of primarily forested wetland habitat. On April 20, participants spent the day removing invasive plant species, reworking trails, preparing land for future planting of native species, and moving boulders. The work was aimed at making the area more inviting for visiting city residents.
- Earth Day/Charles River Clean Up sponsored by the Charles River Watershed Association. The BBA New Lawyers Section organized this event, which involved participation in the annual effort to remove litter from the banks of the Charles as part of Earth Day activities. This year, the event was held on April 21.
- Red Sox Recycling sponsored by U.S. EPA. Together with EPA, BBA members and other participants encouraged the recycling of containers that would otherwise be disposed as trash in the Fenway Park waste stream.

The Urban Wilds and Red Sox Recycling events have been run annually by the Environmental Law Section for a few years and were continued during the tenure of the Task Force. The Charles River Clean Up had been identified as a worthy public service project by the subcommittee, but was independently pursued by the New Lawyers Section. The Food Project event was new this year.

The Environmental Law Section should be able to continue these projects in the future, by recruiting participants from the BBA as a whole.

## **B. Public Service Symposium**

As a second objective, the Pro Bono and Public Service Subcommittee sought a means to introduce BBA members with practices at least superficially unrelated to sustainability to opportunities to use their expertise to promote projects or organizations involved with sustainability. Many attorneys have the skills and motivation to promote sustainability, by representing an environmental justice group concerned about the siting of an industrial facility, assisting a local organization with transforming a vacant lot into a community garden, or serving on the board of a nonprofit organization at the forefront of sustainable action. The Subcommittee designed a public service symposium to provide an introduction to the range of opportunities for lawyers to offer their legal talent to make the world a more sustainable place.

The program, Promoting Sustainability Through Public Service, was held at the BBA on June 14, 2012 from 3:00 to 6:00 p.m. There were two panels of speakers and a keynote address. The first panel discussed Transactional Assistance for Sustainable Communities and the second panel focused on Promoting Sustainability through Nonprofit and Government Service. Greg Bialecki, Secretary of the Executive Office of Housing and Economic Development and a lawyer with impressive pro bono experience, gave a keynote address titled “A Sustainable Commonwealth.”

At the close of the public service symposium the BBA had a reception at which the Task Force’s Pro Bono and Public Service Subcommittee members and program organizers attempted to connect program attendees with representatives of organizations soliciting volunteers. The organizers presented information about MEJAN, the ongoing network of pro bono assistance around issues of environmental justice, as well as new opportunities. One new initiative brought to the attention of the Task Force is Green Pro Bono, the nation’s first non-profit dedicated to providing free legal aid for climate change initiatives. Established in late 2009, Green Pro Bono matches volunteer attorneys with green social enterprises and non-profit organizations. Groups or individuals interested in being matched with a lawyer or attorneys who would like to provide pro bono assistance in the climate change area should visit [www.greenprobono.org](http://www.greenprobono.org) or e-mail Green Pro Bono at [info@greenprobono.org](mailto:info@greenprobono.org).

## **C. Pro Bono Opportunities**

There are many opportunities for BBA members to contribute their time and talent to nonprofit organizations that work on environmental issues, some of which address sustainability. The Pro Bono and Public Service Subcommittee identified the following Massachusetts-based organizations with a potential need for pro bono assistance:

- Alternatives for Community & Environment and the Massachusetts Environmental Justice Assistance Network (MEJAN) (<http://www.ace-ej.org>)
- Conservation Law Foundation (<http://www.clf.org>)

- Environmental League of Massachusetts (<http://www.environmentalleague.org>)
- The Nature Conservancy Boston (<http://www.nature.org>)
- Woods Hole Research Center (<http://www.whrc.org>)

The following national and international organizations may also benefit from pro bono assistance from BBA members:

- American Rivers ([www.americanrivers.org](http://www.americanrivers.org))
- Center for Biological Diversity ([www.biologicaldiversity.org](http://www.biologicaldiversity.org))
- Chesapeake Bay Foundation ([www.cbf.org](http://www.cbf.org))
- Chesapeake Legal Alliance (CLA) ([www.chesapeakelegal.org](http://www.chesapeakelegal.org))
- Clean Water Action ([www.cleanwateraction.org](http://www.cleanwateraction.org))
- Defenders of Wildlife ([www.defenders.org](http://www.defenders.org))
- Earthjustice ([www.earthjustice.org](http://www.earthjustice.org))
- Environmental Defense Fund ([www.edf.org](http://www.edf.org))
- Environmental Law Institute ([www.eli.org](http://www.eli.org))
- Environmental Working Group ([www.ewg.org](http://www.ewg.org))
- Friends of the Earth ([www.foe.org](http://www.foe.org))
- Greenpeace ([www.greenpeace.org](http://www.greenpeace.org))
- Institute for Governance and Sustainable Development ([www.igsd.org](http://www.igsd.org))
- Land Trust Alliance ([www.landtrustalliance.org](http://www.landtrustalliance.org))
- National Audubon Society ([www.audubon.org](http://www.audubon.org))
- National Wildlife Federation ([www.nwf.org](http://www.nwf.org))
- Natural Resources Defense Council ([www.nrdc.org](http://www.nrdc.org))
- Oceana ([www.oceana.org](http://www.oceana.org))
- Pew Environment ([www.pewenvironment.org](http://www.pewenvironment.org))
- Rainforest Action Network ([www.ran.org](http://www.ran.org))
- Rainforest Alliance ([www.rainforest-alliance.org](http://www.rainforest-alliance.org))

- Sierra Club ([www.sierraclub.org](http://www.sierraclub.org))
- The Nature Conservancy ([www.nature.org](http://www.nature.org))
- Trust for Public Land ([www.tpl.org](http://www.tpl.org))
- World Resources Institute ([www.wri.org](http://www.wri.org))
- World Wildlife Fund ([www.worldwildlife.org](http://www.worldwildlife.org))

## V. THE SUSTAINABLE LAWYER: THE BBA'S BLOG

In support of the Task Force's efforts, the BBA staff launched a blog, [The Sustainable Lawyer](#), that (1) identifies best practices for law office sustainability; (2) highlights some ways in which individual lawyers can lead more sustainable lives; and (3) publicizes pro bono, volunteer, and board of directors opportunities through which attorneys can participate or support organizations advocating for sustainability efforts.

### A. The Sustainable Law Office

With respect to best law office sustainability practices, the Sustainable Lawyer ("SL") has described a variety of sustainability programs and strategies undertaken by public and private law offices, identified sustainability strategies in place at the Commonwealth's federal and state court houses, and even reviewed the BBA's own efforts to conserve resources and money. Topics covered by the BBA's blog included:

- The immediate upside of performing an [energy audit](#)
- The surprising benefits of [converting EXIT signs to LED lights](#)
- [The Keys to Green Leasing](#) and [why they work](#)
- The [Basics of LEED certification](#) and a look at [National Grid's Platinum-level LEED certification](#)
- [Sustainable options for event planning](#)
- The importance of [recycling e-waste](#)
- [Efforts to save energy and water at the Moakley Courthouse](#)
- [Sustainable practices at the Massachusetts Appeals Court](#)
- [Saving money by conserving resources in the State Trial Courts](#)
- [Improvements made by the BBA to reduce energy consumption](#)
- [Mackie Shea O'Brien embraces sustainability at a small firm](#)
- [Nixon Peabody invests in the sustainability leaders of tomorrow](#)
- [Lawyers promoting sustainability as a factor in corporate decision-making](#)
- [The City of Boston's efforts to promote energy efficiency improvements by smaller organizations](#)
- [The sustainable construction practices used in and the environmental benefits of EPA's renovation of the John W. McCormack Post Office and Court House](#)
- [How Nutter reduced waste and improved efficiency during renovation of its office space](#)
- [A Better City guides law firms toward a sustainable practice](#)

### B. The Sustainable Lawyer

The SL blog has provided information detailing some of the sustainable options available to individual lawyers:

- [Ways to save money and reduce waste when making or ordering your morning cup of coffee](#), including [putting K-cups to good re-use](#).

- [Everyday sustainability strategies](#), including [reducing your waste](#), [biking to work](#) and [others](#)
- Demystifying [the meaning of “organic”](#) in food labeling
- [“Green” gifts for Valentine’s Day](#)
- [The many benefits of car sharing for Boston lawyers](#)

### **C. Service in Support of Sustainability**

The SL blog promoted the Task Force’s efforts to recognize the many ways that lawyers can support sustainability and to create additional opportunities for lawyers to benefit the environment, including:

- a [forum](#) to identify opportunities for lawyers to benefit the environment or assist organizations dedicated to sustainability
- public service opportunities such as [tree planting](#), [river cleanup](#), and work at [local farms](#) and [local green spaces](#)
- providing [pro bono legal assistance](#)

Going forward, the Sustainable Lawyer will continue to be a helpful source of information and an effective means of highlighting the many ways in which law offices and lawyers can make a positive impact through sustainability.

## VI. RECOMMENDATIONS

The Task Force recommends that the BBA's Environmental Law Section become the gatekeeper and cultivator for the work of the Task Force. The Environmental Law Section should include sustainability among the things it works to provide information on and opportunities for.

Specifically, the Task Force recommends that the Pro Bono/Public Service Committee of the Environmental Law Section have responsibility for continuing the Task Force's goals related to increasing participation in public service opportunities promoting sustainability and identifying opportunities for legal pro bono work that entail environmental sustainability. The Environmental Law Section has traditionally sponsored public service projects and supported pro bono opportunities. It is well within the capabilities of that Section, in conjunction with other sections and BBA staff, to extend opportunities for participation more broadly within the BBA membership.

The Task Force envisions that the following events or programs will be continued:

- Massachusetts Environmental Justice Assistance Network ("MEJAN"), which recruits attorneys to provide services to clients largely identified by the Alternatives for Community and Environment ("ACE"), an environmental justice group based in Roxbury.
- The Food Project, a nonprofit devoted to promoting urban as well as suburban sustainable agriculture in Roxbury. The Food Project is focused on providing access to fresh produce for city residents and education about food for urban youth.
- Urban Wilds Project, which improves land owned by the Boston Conservation Commission and managed by the Boston Parks and Recreation Department. Participants spend the day removing invasive plant species, reworking trails, or preparing land for future planting of native species.
- Earth Day/Charles River Clean Up, sponsored by the Charles River Watershed Association. The annual effort to remove litter from the banks of the Charles as part of Earth Day activities.
- Red Sox Recycling, sponsored by U.S. EPA, a joint event with the BBA where participants encourage the recycling of containers that would otherwise be disposed as trash in the Fenway Park waste stream.
- Public Service Symposium, a program to provide an introduction to the range of opportunities for attorneys to offer their legal talent to make the world a more

sustainable place. The program may be offered as a brown bag lunch or perhaps every other year, as interest warrants.

The Pro Bono/Public Service Committee of the Environmental Law Section may offer additional opportunities for involvement as ideas emerge. For example, representatives of the U.S. EPA have expressed an interest in recruiting lawyers to assist municipalities with compliance with stormwater permits through the development of municipal bylaws. Such opportunities may be promoted through a Public Service Committee brown bag session.

In addition, the Task Force suggests that the Environmental Law Section consider updating the information on best practices for sustainability some time in the future, to the extent there are new or better resources available for dissemination.

# “Green Lease Guide: Issues, Sample Clauses and Leases, and Links”

August 13, 2012

A Report by the 2012 Green Lease Workgroup  
of the Environmental and Real Estate Sections of the Boston Bar Association  
(Chair: Julie Taylor; Katherine Murphy, Susan Kincaid, Jerome Garciano, and Michele Hunton)

## **Executive Summary.**

This Green Lease Guide was prepared by the Green Lease Workgroup, a joint activity of the Environmental Law Section and Real Estate Section of the Boston Bar Association (BBA).

This Guide aims to introduce and summarize green lease terms for attorneys so they can **use green lease terms** in their practice *or advocate for green leases* (in their own lease or as a public policy).

The Guide outlines green lease issues, offers sample green lease clauses and lease forms, and provides links to other resources on green leases; the focus is on office leases. More specifically, this Guide:

1. Explains *why greening our leases and building operations* is both *important AND feasible*:
  - a. Buildings account for 50% of U.S. energy use.
  - b. Buildings have major negative impacts on climate change and water supplies.
  - c. New technologies and building practices can reduce those impacts and provide long-term cost savings.
2. Offers *samples* of (a) green lease *terms* you can add to any regular lease and (b) a *full* green lease.
3. Lists *issues to address* (energy, recycling, cleaning, etc.) with a green lease or with green lease *clauses*.
4. Notes *tax aspects* of green leases (capital cost amortization, tax credits).
6. Provides *links to green lease forms and resources* (REALPac, US General Services Admin., etc.).

The Guide explains how you can make a lease greener and why green leasing is good policy.

## **1. Why “greening” leases and building operations is important - and feasible.**

Buildings are critical to our current energy challenges and to climate change. Buildings account for **over 50%** of total energy consumption in the U.S. (significantly more than transportation).<sup>i</sup>

In terms of climate change, about **40%** of U.S. carbon emissions are from buildings. In urban areas like Boston and New York, it’s far higher – perhaps more than 75%.

U.S. buildings emit more greenhouse gases (“GHGs”) than the transportation sector.<sup>ii</sup>

U.S. buildings (by themselves) emit more GHGs than any other country (ALL sectors) in the world (except China).<sup>iii</sup> This may not be surprising when one realizes that buildings accounted for 74% of total US electricity consumption in 2009,<sup>iv</sup> half of all electricity in the US comes from coal, and coal-fired power generation is the biggest source of GHG emissions in the US.<sup>v</sup>

Buildings also use staggering amounts of water - U.S. buildings use up more than 38 billion gallons of water every day.<sup>vi</sup>

Dramatic changes are underway in building technologies and operations that reduce the environmental and energy impacts of heating, lighting, and water use. Buildings are becoming “greener”.

**What’s a “green” building?** While “green building” is well-known, some call these “*high performance*” buildings. Green buildings provide environmental benefits compared to standard buildings, but they also perform better on measures for electricity and water use, offer advanced heating and cooling options, and can result in significant savings in operating costs. There is also evidence that they can improve morale and employee or student performance, perhaps through providing better air and lighting.<sup>vii</sup>

One definition of green building is: “The practice of (1) increasing the efficiency with which buildings and their sites use energy, water, and materials, and (2) reducing building impacts on human health and the environment, through better siting, design, construction, operation, maintenance, and removal – the complete building lifecycle.”<sup>viii</sup> Green building is especially important in Massachusetts as our offices use more heating oil and gas than the national average.

There are various green building measures and programs. The U.S. Green Building Council (USGBC) established the LEED program (Leadership in Energy and Environmental Design), a *voluntary* program that building owners or developers can elect to use for different types of buildings (new commercial, commercial renovation, interiors, LEED for Homes, etc.).<sup>ix</sup> LEED uses a list of categories on sustainability measures in buildings (energy use/conservation, water use/conservation, lighting, materials, site location, landscaping, etc.). Parties using LEED select green building options from the list.

There are increasing numbers of *mandatory* green building requirements. Some government owners - federal GSA (General Services Agency), state, and local - require LEED certification (or design and construction that would be eligible for LEED certification) or other green measures for certain buildings, either ones that they develop themselves or ones they fund (or provide other incentives for).

The International Code Council (ICC) has issued an International Green Construction Code (IgCC) that can be adopted, in whole or in part, by state or local jurisdictions in the U.S. The IgCC in essence takes the categories in the *voluntary* LEED program and allows a jurisdiction to adopt some or all of them as the *mandatory* code requirements for some or all buildings in a jurisdiction.<sup>x</sup>

**How can we make buildings greener?** Well-established energy efficient practices and technologies are now capable of achieving 15% to 25% savings over standard building operations.<sup>xi</sup>

McKinsey and Company did a study on “Reducing US Greenhouse Gas Emissions: How Much, At What Cost” in 2007. The report concluded that (1) improving energy efficiency in buildings and appliances provides the largest cluster of options to reduce greenhouse gases that are “negative-cost” (meaning these options lead to savings) and (2) improving energy efficiency in buildings could offset increasing demand for electricity, and thus largely negate the need for more coal-fired power plants.<sup>xii</sup>

**What about offices and leases?** This report focuses on leased commercial office buildings.

The operation and maintenance of office buildings in terms of energy efficiency and other green building criteria is important not only to building owners but also to tenants. This is true both for new buildings and for existing buildings that can be renovated (“retrofitted”) to be more energy efficient.

One key challenge in making building operations greener relates to barriers in how leasing works.

Green leasing barriers include financial issues (e.g., standard lease terms, capital upgrade costs), building infrastructure/technology issues (e.g., metering), and human behavior (landlords and occupants).

Building owners generally do not have a financial incentive to invest in energy efficiency to reduce electrical uses (to take one example) if under the typical commercial *net* lease the tenants pay the electric bills and tenants are therefore the ones who will save money from the energy efficiency investments. (In a *gross* lease, while the landlord may have an incentive to have the building be more efficient, the tenants have no incentive to conserve energy so the landlord might not have cost savings.)

Also, most leases for multi-story buildings just divide the total energy cost to heat the building by area leased and charge each tenant for its square footage. There is no financial incentive for the owner or a tenant to reduce its heating use, because the savings go to others.

A technical challenge is most buildings lack equipment for separate metering for different tenants. An operational challenge is occupant behavior (how to get “buy in” from office workers).

Greening office buildings can involve modifying either (1) infrastructure and improvements (the existing building and site) through audits and upgrades, (2) operations and behaviors (by the landlord, tenants, and property manager) through new policies and guidelines, or both (1) and (2).

One part of the solution is use a “green lease”, a set of “green lease terms”, or a “green lease addendum” that replaces or supplements standard long-term leases for commercial landlords and tenant by adding terms and incentives. These green lease terms and incentives can enable investments in energy-saving technologies, provide for sharing between landlords and tenants of long-term cost-savings, and institute “best practices” on non-capital intensive lease terms (such as cleaning of offices and recycling) that can improve building operations from both environmental and health perspectives.

Steps to take toward greening a building. This report provides information for landlords, tenants, and advocates on the first steps to take in greening a building and greening their lease.

Individual buildings owners, managers, and occupants can each take one or more steps in a wide range of categories to make an individual building “greener”. These include steps to address:

1. An audit of (a) overall energy use and (b) building practices (e.g, recycling, cleaning).
2. Overall energy use (electricity, heating and cooling of tenant spaces, hot water). Steps include an energy audit, installing thermal shades, using programmable thermostats, adding insulation, and doing periodic audits and/or commissioning of all energy systems.
3. Just electricity use. Steps include replacing lights, getting more energy efficient office equipment, and using software than automatically reduces electricity use in lighting, computers, copiers, etc. at night and on weekends.
4. Overall water use. Steps include audit, installing low-flush toilets, rainwater collection.
5. Recycling and waste reduction. Improve system by infrastructure changes and awareness (increase number of recycling bins, reduce size of wastebaskets, single stream).
6. Indoor air quality and materials. Use low VOC paints and carpets. Add more plants.
7. Cleaning products. Have building managers require use of healthier cleaning products.
8. Certifications and benchmarking. Seek green building certification. Provide building energy, etc. information for “benchmarking” (efforts to measure building performance).
9. Guides and Reminders for Tenants. Provide simple “green” guides for tenants on what measures have been taken to make building operations greener and what both organizational tenants and individual occupants can do to maximize sustainable features. Building managers can offer periodic reminders – in lobby or elevator, email alerts, etc.

People may feel a green lease is only worth considering if you have a new building or a new lease that you negotiate for a new space. But any lease (existing or new, commercial or residential, for a big law firm in an office tower or a low-income family in a multi-family residence) can be made greener.

## **2. Samples of a green lease CLAUSE (to supplement and be inserted into regular lease), a full (free-standing) green LEASE, and green lease ADDENDUM (to attach to regular lease).**

In the footnotes at the end of this Guide are links to two samples of commercial green leases. The first is a *clause* that one adds to an existing lease. The second is a *complete* green lease form. At the end of this Section (at “E” below) is an outline of sample “*Green Lease Addendum*” with simple terms you might consider adding as an attachment to supplement an existing lease.

A. The first sample is the clause added to an existing lease. It is a New York City model, developed by the administration of Mayor Bloomberg with input from the National Resources Defense Council and the real estate community.<sup>xiii</sup> It was used for a law firm’s 2011 lease at 7 World Trade

Center.<sup>xiv</sup> This green lease effort was part of New York City’s “PlaNYC” and its “Greener, Greater Buildings Plan”.

The two-page New York City green lease clause is called the “**NYC Model Energy Aligned Lease Language**”.<sup>xv</sup> It is a clause on capital improvements to improve energy efficiency. It amends a typical commercial modified gross lease. This approach is aimed for retrofits (modifying or upgrading energy systems) for existing offices. It can be added to an existing lease if landlord and tenant agree.

The NYC sample clause focuses on the definitions of “Operating Expenses” and “Capital Improvements.” It introduces the terms “Capital Improvements Intended to Improve Energy Efficiency” and “Projected Annual Savings” and includes an estimated savings with a payback. The functioning of the clause rests in part on an “Independent Engineer” (selected by Landlord from names recommended by the Tenant and the Landlord) who is to certify the Project Annual Savings and the payback period.

The concept behind the NYC green lease clause was to solve the “split incentive” problem and give incentives to *both* landlord and tenant to enjoy savings from energy efficiency upgrades.

**B.** The second sample was developed by the Real Property Association of Canada (REALpac). The **REALpac “Green” Office Lease for Single Building Projects**” is a full green lease.<sup>xvi</sup> The REALpac green lease may be most appropriate for a new building that is LEED-certified, but it is well worth reviewing for examples and ideas of various issues and clauses that might be adapted or adopted in existing leases or new leases for existing buildings.

REALpac’s standard green lease incorporates green lease concepts by referencing its Environmental Management Plan (EMP) throughout the lease and by incorporating the EMP itself into the lease as an attached schedule provision. (Note: Some REALpac terms reflect Canadian law, so appropriate modifications of the form to account for relevant law in Massachusetts must be considered.)

REALpac’s lease form gives the option to landlords and tenants to agree to either (1) incorporate the EMP as a part of the lease itself (it would operate as a covenant on the part of the landlord or tenant), or (2) decide a breach by the landlord or tenant of the EMP is not a default under the lease, and instead the parties can use commercially reasonable efforts to cooperate with the other to remedy a breach.

**C. Environmental Management Plan (EMP) – Schedule E of REALpac Lease.** The overall objectives of the EMP include a landlord’s intent to provide a productive and healthy indoor environment; reduce energy use and production of greenhouse gases; reduce use of potable water and increase use of recycled water; recycle tenant waste streams and divert waste from landfills; use ecological-friendly cleaning products; facilitate the use of alternative transportation options; and avoid the use of high-VOC emitting materials.

The REALpac lease incorporates LEED provisions and accordingly would be an appropriate guide for new LEED-certified buildings. The EMP requires a tenant to acknowledge the specific accreditations, ratings, or certifications that buildings have achieved including, among other things, LEED (silver, gold, platinum ratings) and ENERGY STAR ratings. A tenant agrees that a landlord is entitled to operate, manage, and maintain a building to retain a certain level of accreditation, including seeking other certifications to comply with changing laws.

A landlord also incorporates in the EMP specific objectives to reduce energy consumption where a landlord requires specific targets for and limits electricity use, natural gas consumption, water consumption, a waste diversion rate, and indoor carbon dioxide levels. A landlord has the authority to adjust the specific targets based on the type and intensity of space usage for the building, the energy or

other resource consumption profile of a tenant, and the change in use or energy consumption for various parts of the building. The EMP also provides for a landlord to modify specific targets with standards established pursuant to a certification such as LEED or ENERGY STAR. The specific targets can also be changed to comply with amended government regulations.

The EMP provides that whether a landlord or tenant receives carbon offset credits depends upon who is entitled to recovery as a result of their activities in accordance with the law. If a carbon offset cost is incurred, such cost shall be included in the operating costs in the main lease.

If there are issues of noncompliance of the EMP, a landlord can hire an expert to determine whether the building is on target to achieve its goals.

It is a tenant's primary responsibility to implement the EMP. A tenant is required to provide a comfortable, healthy, and productive indoor environment by allowing the landlord to undertake greenhouse gas monitoring and testing, and to also meet certain standards in a tenant's use of cleaning supplies, furniture, and fixtures. A tenant is required to reduce indirect and direct energy consumption and greenhouse gas emissions by installing electricity smart meters at the tenant's sole expense and by adopting conservation practices to minimize electrical consumption. A landlord can acquire shared electric power from sources with low greenhouse gas emissions. A tenant is required to reduce water consumption by agreeing to install water meters and check meters at a tenant's sole cost, and to strive to use treated recycled or natural water when potable water is not necessary. A tenant is entitled to use recycled materials for any improvements and alterations, and a landlord may refuse to collect or accept from a tenant's premises waste that is not sorted into the appropriate recycling container.

In the EMP, a landlord certifies that it will use commercially reasonable efforts to cooperate with a tenant, at a tenant's sole cost, in the certification of the premises pursuant to any rating scheme, and a tenant agrees to provide all reasonable information required by a landlord consistent with the accreditation. A landlord and tenant both agree to cooperate to meet the environmental objectives and to meet periodically to discuss progress.

**D. Incorporation of Environmental Management Plan in Main Body of Lease.** Terms and reference to the EMP are incorporated throughout the REALpac lease; for example, specific environmental terms are defined at the outset of the lease. Costs resulting from upgrading energy and water consideration equipment and carbon offset costs are included in the Operating Costs described in detail in Article 6.5. There are references to the requirement to meet standards in the EMP in Article 7 of the lease that addresses utilities. There are also requirements in Article 9 of the lease mandating that tenants at their sole cost pay for leasehold improvements, and that such improvements must comply with the EMP.

**E.** Here is a **sample Green Lease Addendum** the terms of which can be edited and the Addendum added as a supplement to any lease, as long as the landlord and tenant can agree on such terms:

“Green Lease Addendum

This Addendum modifies the attached Lease Agreement between Landlord and Tenant, who have agreed to cooperate on meeting sustainability and high performance building goals.

1. Landlord shall:

(a) Purchase [50% / or 75%/ or 100% ] “Green Power” (electricity from documented renewable energy sources) for the [ common areas / or/ entire building].

- (b) Set up an energy efficiency products buying pool for tenants (and for common areas), which shall maximize opportunities and discounts for products such as LED light bulbs, power strips, phantom load light switches (ensure no draw on electricity when switch is off), etc.
- (c) Always purchase Energy Star or comparably efficient appliances for [the building and/or unit].
- (d) Set up a building-wide infrastructure for materials recycling and supply a “Single-Stream” bin to Tenant for paper, metals, plastics. Landlord shall also provide electronics disposal bins for computers, etc.
- (e) Protect indoor air quality by using low-VOC paints and carpets and requiring office cleaners to use “green” and non-toxic cleaning products and providing appropriate plants in common areas.
- (f) Keep HVAC units tuned up to work efficiently, including annual commissioning of systems.
- (g) Publish an annual report on Green Lease and sustainability measures. This shall include monthly measurements of building energy and water use, and shall annual targets for those measures.
- (h) Re-issue this Green Lease Addendum annually to Tenant on the lease anniversary date.
- (i) Designate a representative for questions or suggestions on Green Lease sustainability issues.

2. Tenant shall:

- (a) Use best efforts to recycle by separating waste stream into Single Stream (paper, plastic, metals), and dispose of all electronic items (cell phones, computers, etc. in designated bins.
- (b) Give Landlord access to data on unit energy and water use for annual reports.
- (c) Use best efforts to help meet building-wide energy use reduction goals and minimize unnecessary use of electricity, water, heating, and air conditioning, including recommended use of window shades and curtains to keep out summer heat and keep in winter warmth.
- (d) Consider using the energy efficiency products buying pool that Landlord has set up and consider Energy Star or comparably efficient appliances for Tenant’s unit.

3. Landlord and Tenant agree that a material violation of this Green Lease Addendum that continues more than 30 days after written notice of such violation shall be considered cause for dispute resolution under the Lease Agreement, with potential set-offs, penalties, or consequences as set forth in the Lease Agreement.” *[end of Green Lease Addendum]*

**3. Sustainability issues to address in green lease terms or a green lease.**

This section of the Guide identifies key issues related to sustainability that can be addressed by green lease terms or by a green lease. These include issues related to:

- Operating expenses and tax provisions;
- The building’s LEED or other green building certification;
- Benchmarking of the building’s energy use or other reporting requirements;
- Cleaning, recycling, and building rules and practices;

For each issue, the Guide provides questions to consider how a lease might address the issue and what alternatives are available for a particular building, lease, or set of landlord and tenant.

**A. OPERATING EXPENSES AND TAX PROVISIONS:**

1. Who will pay the costs of performing energy efficiency and other sustainable improvements or upgrades?
2. Who will own the energy efficiency and other sustainable improvements or upgrades?
3. Who should receive the benefit of utility savings, tax credits and grants?
4. If tax grants and rebates are of shorter duration than the Lease Term, should these tax credits be reflected in the base year tax amount or in future tax year calculations?
5. Who should be responsible to perform and pay for government-mandated energy upgrades, such as required metering of utilities and installation of energy efficient lighting fixtures? Even if not required today, these may be implemented during the term of the Lease.
6. If costs qualify as operating expenses, what is the recovery period for these costs?

Also see Section 2 above for a discussion of (and link in the corresponding footnote to) the Plan NYC Model Energy Aligned Lease Provision for how it addresses the split incentive problem.

Other alternative clauses include some variations that permit Landlord to pass through the capital expenditures but with the pass through capped at actual savings. Difficulty exists in establishing clear terms on savings, especially in light of utility rate increases.

**B. LEASE MANDATES TO OBTAIN AND/OR MAINTAIN LEED OR OTHER SUSTAINABILITY CERTIFICATIONS:**

7. Should Landlord or Tenant be affirmatively required to design and perform its build out to comply with LEED or other rating requirements? What additional costs will this entail?
8. Should Landlord or Tenant be exposed to liability or a default if they fail to perform their build out and obtain a specified rating or certification?
9. Should Tenant be in default if its operations or actions adversely affect the Building's sustainability rating or certification? Should Landlord be in default if the LEED or other certification is lost during the lease term?
10. Should Landlord or Tenant have remedies (default, self-help, etc.) if the other party fails to obtain and maintain such ratings or certifications?

**C. BENCHMARKING AND OTHER REPORTING REQUIREMENTS:**

11. Changes in legislation may require benchmarking, reporting of energy and water use, including, in some areas, public posting of energy use, and reporting of material purchases, including the amount of recycled content, diversion of construction debris from landfill, geographic origin of materials and others. How will these requirements affect Tenant's business? How will Landlord obtain the necessary information and/or data?
12. LEED certifications may require future documentation to assess whether there are any gaps between the projected savings that were associated with a project and the actual savings achieved.
13. In order to fulfill reporting requirements, leases may require numerous reports and/or data from Tenants. Tenant or its contractor will need to keep these records and/or data.

**D. CLEANING, RECYCLING, AND BUILDING RULES AND REGULATIONS:**

14. As noted earlier in this report, cleaning and recycling – refer to REALPAC? Discussion below?
15. Rules and regulations should specify the construction and other mandatory requirements for operating in the Building and performing alterations to the leased premises in a manner consistent with the Building's LEED or other rating/certification and/or the Landlord's sustainability practices for the Building, including restrictions on types of materials used, geographic origin of

materials, green cleaning supplies, debris removal and other similar requirements. Tenants will need to evaluate the additional time and costs this may add to their initial build out and their operations in the Premises.

16. Are these rules and regulations in conflict with the way Tenant operates its business?

**E. COOPERATION AND FLEXIBILITY:**

17. Requirements are evolving and will likely continue evolving during the Term. Leases should contain requirements that Landlord and Tenant cooperate with each other and take actions reasonably required to preserve the sustainability ratings or certifications achieved by the other party.
18. The parties may also need flexibility to stray from Lease covenants and rules and regulations as needed to comply with changes in LEED or other agency requirements.

**F. CHANGES IN LAWS AND RATING REQUIREMENTS:**

19. Some jurisdictions may mandate reductions in utility usage and/or requirements to obtain certain percentages of energy from renewable sources.
20. What impact will these have on the operation of the Building, operating costs, and Tenant's business?
21. What if the requirements for obtaining or retaining a sustainability rating or certification change and require alterations or other changes? If major costs are involved, should a Landlord or Tenant have the option to abandon its respective rating or certification?

**4. Information about tax aspects of green leases (capital cost amortization, tax credits).**

This section of the Guide notes key issues related to tax aspects of leases that should be addressed or considered when using green lease terms or by a green lease. These include issues related to Capitalization, Depreciation, Income, Expense Deductions, and Energy Specific Tax Credits or Deductions (federal, and state in Massachusetts)

**A. Capitalization and Depreciation - Capital Improvement to Improve Energy Efficiency**

(1) Capital Improvement vs. Operating Expense – Capital improvements are distinguished from deductible operating expense repairs, which are more minor in nature (e.g. repairing a roof). For GAAP,<sup>xvii</sup> a capital improvement is generally a betterment to a building or equipment, which extends its life or increases its usefulness or productivity. For tax purposes, a capital improvement adds to the value of your property, prolongs its useful life, or adapts it to new uses (e.g. replacing a roof). Operating expenses, on the other hand, are deductible if they relate to a taxpayer's trade or business activity. In order to be a trade or business expense and qualify for a deduction, it be ordinary and necessary, paid or incurred during the taxable year in carrying on a trade or business activity. The Internal Revenue Code permits the deduction of business expenses in the taxable year in which those expenses are paid or incurred. This is in contrast to capital expenditures that are paid or incurred to acquire an asset and are amortized over a period of time. Be clear in the lease which is intended for specific energy efficiency improvements and to integrate the proper definition for any payment formulas established.

(2) Categorization of Improvements for depreciation purposes (equipment vs. real property) Realty is an ownership interest related to land, improvements, and fixtures. Fixtures are determined, based on the degree of permanence required to characterize a piece of property (e.g., a boiler or heat duct) as a fixture. Items that can be removed without significant damage or alteration to the rest of the property are

fixtures and therefore could qualify for tax incentives for real property. Likewise, property that is integral to manufacturing and certain other activities, such as fuel storage facilities, elevators, and escalators, is treated as personal property. Energy efficiency improvements may be categorized as one type or another.

(3) Who owns capital improvements and tax benefits (Landlord vs. Tenant) – There must be an analysis of the benefits and burdens relating to the use and/or ownership of property that govern the characterization of a transaction involving the property as a lease or some other contractual relationship that may retain or transfer tax-ownership of property in or between the parties. Some incentives reduce both the tax basis and the financial costs of the capital improvements. One must be clear who gets the costs and benefits of these tax basis reductions.

(4) Qualified leasehold improvement property – A qualified leasehold improvement property is any improvement to an interior part of a building that is non-residential real property, made under or pursuant to a lease either by the lessee or sublessee or the lessor of that portion of the building. The improved portion has to be occupied exclusively by the lessee or sublessee, and the improvement must be placed in service more than three years after the building was first placed in service. It does not apply to improvements enlarging the building, any elevator or escalator, any structural component benefitting a common area, or the internal structural framework of the building.

## **B. Rental Income and Expense Deductions**

(1) Improvements as in lieu of rents to Landlord - the value of an improvement made by a lessee to the lessor's property are not included in the lessor's gross income unless the improvements were made in lieu of rent. Factors indicating an intention to provide a rent substitute are a lease term shorter than the life of the improvement, or a lease terminable by the lessor.

(2) Special energy property related income for Landlord – Landlord may have unexpected income from energy property generating revenue.

## **C. Energy Specific Tax Credits or Deductions**

(1) Federal

a. Section 45 - Renewable Energy Production - The Federal Internal Revenue Code provides a business income tax credit in the amount of \$0.021 (2009) per kilowatt hour of electricity produced from qualifying renewable resources during a ten-year period. The tax credit is available to Taxpayers producing electricity from qualifying renewable resources and selling the electricity produced to an unrelated person. Taxpayer must produce electricity from qualifying renewable resources and sell the electricity produced to an unrelated person. Qualifying energy resources are wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, hydropower, marine and hydrokinetic renewables.

b. Section 48 - Investment in Energy Property - The Federal Internal Revenue Code provides a business income tax credit in the amount of 10 or 30% the basis of qualifying energy property investments. The tax credit is available to Taxpayer owners placing qualifying energy property in service. Qualifying energy property is fuel cell property, solar energy property, small wind energy property, geothermal property, geothermal heat pump systems property, microturbine property and combined heat and power system property.

c. Section 179D - Energy Efficient Commercial Buildings - The Federal Internal Revenue Code provides an income tax deduction in the amount of 100% of the cost of energy efficient commercial building property placed in service. The tax deduction is available to Taxpayer owners

placing energy efficient commercial building property in service. Taxpayer must place in service energy efficient commercial building property. Energy efficient commercial building property is depreciable property installed on or in a building located in the U.S. which is installed as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope and is certified as being installed as part of a plan designed to reduce the total annual energy and power costs of the building by 50% or more in comparison to a reference building that meets the minimum requirements of ASHRAE Standard 90.1-2001.

d. Section 168(e)(3) - Certain Energy Property - The Federal Internal Revenue Code provides an income tax accelerated cost recovery over 5 years for energy property. The tax deduction is available to Taxpayer owners placing in service energy property subject to cost recovery. Taxpayer must place in service energy property. Energy property is any property which is (1) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool; (2) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017; (3) equipment used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage; (4) qualifying fuel cell property or qualifying microturbine property; (5) combined heat and power system property, (6) qualifying small wind energy property; or (7) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

e. Section 25C - Nonbusiness Energy Property (EXPIRED) - The Federal Internal Revenue Code provides a personal income tax credit in the amount of 10% of the costs for qualifying building envelope components or residential energy property expenditures. The tax credit is available to Taxpayer individuals installing energy efficient property in the Taxpayer's principal residence. Taxpayer must install energy efficient property in Taxpayer's principal residence. Qualifying energy efficient property is energy efficiency improvements to the building envelope and residential energy property expenditures. The maximum tax credit amount is \$1,500 in total for 2009 and 2010, and \$500 in 2011.

f. Section 25D - Residential Energy Efficient Property - The Federal Internal Revenue Code provides a personal income tax credit in the amount of 30% the cost of residential energy efficient property, including qualifying solar electric property, qualifying solar water heating property, qualifying fuel cell property, qualifying small wind energy property, and qualifying geothermal heat pump property. The tax credit is available to Taxpayer individuals installing residential energy efficient property. Taxpayer must install residential energy efficient property. Residential energy efficient property includes solar electric, solar hot water, fuel cell, small wind energy, and geothermal heat pump. Qualifying solar electric property uses solar energy to generate electricity for use in a dwelling unit. Qualifying solar water heating property heats water for use in a dwelling unit, if at least half of the energy used by the property for that purpose is derived from the sun. Qualifying fuel cell property is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, has an electricity-only generation efficiency of greater than 30%, and generates at least 0.5 kw of electricity. Qualifying small wind energy property is property that uses a wind turbine to generate electricity. Qualifying geothermal heat pump property is property that uses the ground or ground water as a thermal energy source to heat the dwelling unit or as a thermal energy sink to cool the dwelling unit, and meets the Energy Star program requirements in effect when the expenditure is made.

(2) State (in Massachusetts)

a. Solar Or Wind Powered Systems Tax Deduction - Massachusetts provides a corporate excise tax deduction in the amount of 100% of the cost of any solar or wind powered climatic

control or water heating units used exclusively in a trade or business. The tax deduction is available to Taxpayer corporations placing solar or wind powered climatic control or water heating units in service used exclusively in a trade or business. Taxpayer must install a solar or wind powered climatic control or water heating units.

b. Renewable Energy Property Tax Exemption - Massachusetts provides a property tax exemption in the amount of 100% of the tax on solar and wind energy systems used as a primary or auxiliary power system. The tax exemption is available to Taxpayer owners of solar and wind energy systems used as a primary or auxiliary power system.

c. Energy Conservation Or Alternative Energy Patents Tax Deduction – Massachusetts provides a corporate excise and personal income tax deduction in the amount of 100% of the income received from the sale or lease of a U.S. patent beneficial for energy conservation or alternative energy development and any income received from the sale or lease of personal or real property or materials manufactured and subject to the approved patent. The tax deduction is available to Taxpayer corporations or individuals with income from a qualifying patent beneficial for energy conservation or alternative energy development. Taxpayer must derive income from a qualifying patent. Income from a qualifying patent is any income, including royalty income, received from the sale, lease or other transfer of tangible, intangible, personal or real property or materials manufactured in the Commonwealth subject to such patent.

d. Renewable Energy Systems In Primary Residences Tax Credit - Massachusetts provides an income tax credit in the amount of 15% of the cost of a renewable-energy system installed on a primary residence. The tax credit is available to Taxpayer owners or tenants of residential property installed with renewable-energy system. Taxpayer must install renewable energy source property in residential property. Renewable energy source property is property that when installed in connection with a dwelling, transmits or uses solar energy or any other form of specified renewable energy, for the purpose of heating or cooling the dwelling, providing hot water for use within the dwelling, or for producing electricity for such purposes, or wind energy for non-business, residential purposes. Renewable energy source property include solar water and space heating, photovoltaics (PV), and wind-energy systems. The maximum tax credit amount is \$1,000.

## **5. Information about/ links to green lease forms, legal educational resources prepared by others.**

There are a few green lease forms and a wide variety of educational materials available on the Internet. Here are links to a few helpful resources on green lease issues:

(a) Calif. Sustainability Alliance “Green Leases Toolkit 2.0”

[http://sustainca.org/green\\_leases\\_toolkit](http://sustainca.org/green_leases_toolkit)

(b) US GSA “Green Lease Policies and Procedures”

<http://www.gsa.gov/portal/content/103656>

(c) REALPac (Real Property Assoc of Canada) “Green Lease Guide”

<http://www.realpac.ca/assets/Uploads/Research/Leases/Green-Office-Leases/GreenLeaseGuideFinal05Feb10.pdf>

(d) The NYC Model Energy Aligned Lease Language can be found at

<http://newyork.uli.org/Community%20Building/Sustainable%20Building%20Council/~media/DC/New%20York/NY%20Docs/Green%20lease%20language.ashx>

- (e) Green Real Estate Law Journal “Green Lease Guide”  
<http://www.greenrealestatelaw.com/tag/boma-green-lease-guide/>
- (f) Seattle “Quick Guide to Green TI (Sustainability Tenant Improvements)– Green Lease”  
[http://www.seattle.gov/dpd/cms/groups/pan/@pan/@sustainableblding/documents/web\\_informational/dpdp016422.pdf](http://www.seattle.gov/dpd/cms/groups/pan/@pan/@sustainableblding/documents/web_informational/dpdp016422.pdf)
- (g) Green-Buildings.com “Green Leases: Five Must Have Items”  
<http://www.green-buildings.com/content/78338-green-lease>
- (h) Building Owners and Managers Association: “BOMA International Commercial Lease: Guide to Sustainable and Energy Efficient Leasing for High-Performance Buildings”  
<http://shop.boma.org/showItem.aspx?product=GL2011&session=961836F9C2674B9ABE37644AE403A4F4>
- (i) U.S. GSA “Potential Cost Effective Energy Efficiency and Conservation Improvements for Leased Buildings” <http://www.gsa.gov/portal/content/103656>
- (j) US Green Building Council “Green Office Guide: Integrating LEED Into Your Leasing Process”  
[http://www.usgbc.org/Store/PublicationsList\\_New.aspx?CMSPageID=1518](http://www.usgbc.org/Store/PublicationsList_New.aspx?CMSPageID=1518)
- (k) US GSA “Energy Savings and Performance Gains in GSA Buildings: 7 Cost-Effective Strategies”  
[http://www.gsa.gov/graphics/pbs/GSA\\_SevenStrategies\\_090327screen.pdf](http://www.gsa.gov/graphics/pbs/GSA_SevenStrategies_090327screen.pdf)

## **Conclusion.**

Interest in green leasing is growing. Any lease can be made greener or more sustainable if a landlord and tenant agree. Any office can become greener or more sustainable by adopting simple practices. Any building can become greener or more sustainable with help from architects or engineers.

This Green Lease Guide provides initial information for lawyers, landlords, tenants, and advocates on relevant issues, plus samples and links for how to get started.

Please feel free to contact any of the authors of this Guide<sup>xviii</sup> for more information.

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<sup>i</sup> In 2009, U.S. buildings (commercial and residential) were responsible for over 50% of total annual US energy consumption. US Energy Information Administration, Annual Energy Outlook 2009 Early Report, see page 372 of Practicing Law Institute Green Real Estate Summit 2011 (“PLI”) (“Municipal Efforts to Improve Building Energy Efficiency” by J. Cullen Howe and Michael Gerrard at page 2). (For more current information, see the U.S. Energy Information Administration website at <http://www.eia.gov/>.) See also Daniel Yergin, *The Quest: Energy, Security, and the Remaking of the Modern World* (Penguin Press 2011), at 647. Yergin notes on pp. 630 – 631 that U.S. commercial building energy consumption has nearly doubled since the 1970s; reasons include air-conditioning, “gadgiwatts” (more and more electricity is consumed by gadgets that did not exist in the 1970s - computers, printers, fax machines, microwave ovens, telephones, smart phones and devices that need to be recharged), and data centers with servers that generate heat thus needing cooling just to remove the heat from servers. The US transportation sector is responsible for approximately 30% of GHG emissions. Jody Freeman, “The Obama Administration’s National Auto Policy: Lessons from the Car Deal,” 35 Harvard Environmental Law Review 343, 366 (citing EPA 430-R-11-005, Inventory of US Greenhouse Gas Emissions and Sinks: 1990 – 2009, ES-8 (2011)). (For more information on GHG emissions, see EPA’s climate change website at <http://www.epa.gov/climatechange/>)

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- <sup>ii</sup> US Dept of Energy (DOE), 2009 Buildings Energy Data Book, cited in PLI at 372.
- <sup>iii</sup> Id.
- <sup>iv</sup> Id.
- <sup>v</sup> Id., at 375.
- <sup>vi</sup> Id. at 374.
- <sup>vii</sup> A 2010 study by the University of Michigan concluded occupants who moved from conventional offices to a LEED Certified building increased productivity by 39 hours per year. Cited in “What Color is Your Lease” at <http://www.cassidyurley.com/research/white-papers>
- <sup>viii</sup> Id at 374. Definition by US Office of the Federal Environmental Executive. See <http://www.ofee.gov/>
- <sup>ix</sup> Learn more about LEED and the USGBC at <http://www.usgbc.org/>
- <sup>x</sup> Learn more about the International Green Construction Code (IgCC) at <http://www.iccsafe.org/cs/igcc/pages/default.aspx>
- <sup>xi</sup> US DOE 2009 Buildings Energy Data Book (see 2 above) at 200. Daniel Yergin’s book (see 1 above) notes on p. 632 that a major shopping mall operator reduced its energy use by 25 percent (between 2003 and 2009).
- <sup>xii</sup> Id. at 327
- <sup>xiii</sup> The NYC Model Energy Aligned Lease Language can be found at <http://newyork.uli.org/Community%20Building/Sustainable%20Building%20Council/~media/DC/New%20York/NY%20Docs/Green%20lease%20language.ashx>
- <sup>xiv</sup> The April 2011 press release for the WilmerHale lease in NYC is at this link <http://newyork.uli.org/Community%20Building/Sustainable%20Building%20Council/~media/DC/New%20York/NY%20Docs/April%205%202011%20Green%20lease%20for%207%20WTC%20tenant.ashx>
- <sup>xv</sup> The NYC “PlaNYC Green Lease Program” and links to the NYC “Greener, Greater Buildings Plan” are here <http://newyork.uli.org/Community%20Building/Sustainable%20Building%20Council/PlaNYC%20Green%20Lease%20Program.aspx>
- <sup>xvi</sup> The REALpac (Real Property Association of Canada) Green Office Lease and related information can be found here <http://www.realpac.ca/?page=GreenOfficeLeases>
- <sup>xvii</sup> “GAAP” is Generally Accepted Accounting Principles.
- <sup>xviii</sup> For more information, contact the authors of this report: Chair: Julie Taylor, Noble & Wickersham LLP, 1280 Massachusetts Avenue, Cambridge, MA 02138, [jt@noblewickersham.com](mailto:jt@noblewickersham.com), 617-491-9816; Katherine Murphy, Goodwin Procter LLP, 53 State St., Boston, MA 02109, [klmurphy@goodwinprocter.com](mailto:klmurphy@goodwinprocter.com), 617-570-1311; Susan Kincaid, WilmerHale, 60 State St., Boston, MA 02109, [susan.kincaid@wilmerhale.com](mailto:susan.kincaid@wilmerhale.com), 617 526 6577; Jerome Garciano, Klein Hornig LLP, 145 Tremont Street, Boston MA 02111, [jgarciano@kleinhornig.com](mailto:jgarciano@kleinhornig.com), 617 224 0623; and Michele Hunton, Lawson & Weitzen, LLP, Boston, MA, [mhunton@lawson-weitzen.com](mailto:mhunton@lawson-weitzen.com), 617-439-4990.