

Purpose

To help facilitate the lease negotiation process, it is important to introduce carbon emissions reduction and compliance with Local Law 97 (LL97) prior to the actual lease negotiation so that the other party isn't surprised to see it for the first time at the negotiation table.

If a Letter of Intent (LOI) is used, commercial real estate brokers can incorporate a simple and concise clause, such as the sample provided below, to ensure that both the building owner and tenant are committed to working together to implement carbon emissions reduction strategies. This resource is part of a series of actionable resources developed for the [Decarbonizing New York City Offices](#) project, an initiative dedicated to reducing carbon emissions in leased commercial spaces.

Sample Clause

The Landlord and Tenant will aim to lower carbon emissions and comply with Local Law 97 in a manner that equitably allocates the costs and benefits of compliance.*

*Local Law 97 can be replaced with other applicable laws, regulations, or environmental reporting requirements.

Justification for Inclusion

The sample clause above, which is broad enough to not delay or sidetrack a deal, positions attorneys for both the building owner and tenant to expand upon energy efficiency and carbon emissions reduction goals during lease negotiations.

- **What is the purpose of LL97?**
Over two-thirds of New York City's carbon emissions come from buildings. LL97, New York City's groundbreaking building performance standard, sets a cap on carbon emissions that takes effect in 2024 and becomes increasingly stringent thereafter. Most privately owned buildings over 25,000 square feet are subject to the law, and owners of these large buildings face significant penalties for noncompliance.
- **How does LL97 impact my lease?**
With the passage of LL97 in New York City and the emerging interest in building performance standards across the country, leases must expand beyond the standard green leasing practices—which encourage building owners and tenants to include energy-aligned clauses on a voluntary basis—to incorporate terms that mandate compliance with increasingly stringent energy and carbon emissions requirements.

Furthermore, including lease language that 1) defines the specific building target, 2) equitably distributes landlord and tenant responsibilities to meet the target, 3) ensures transparency between both parties, and 4) outlines consequences should either party fail to meet building performance goals will mitigate risk of noncompliance for both parties.

- **What if LL97 doesn't apply to my building?**

Including a building performance-related clause in the LOI can still be a beneficial tool to begin sustainability discussions prior to the lease negotiation and set up for long-term success over the lifetime of the lease. While this resource was created with LL97 in mind, the guidance is also applicable for organizations that are subject to other building performance standards, striving to meet their own sustainability goals, or must comply with other environmental reporting requirements.

- **Why is a traditional lease no longer adequate to address landlord and tenant risk?**

Many traditional leases include language that the landlord and tenant will adhere to all applicable laws and regulations. While LL97 may be included under this lease provision, this language alone is insufficient and does not address all of the actions needed to reduce risk and comply with LL97. Additionally, conventional commercial leases tend to lock in inefficient procedures which actually impede efforts to reduce carbon emissions. For example, while occupancy fell to historic lows during the pandemic in 2020, building energy use only dropped by roughly 10–30%. The explanation lies in lease terms that obligate landlords to fully condition and operate the space even when the space is not utilized.

- **How does adding this sample LOI clause benefit my organization?**

Adding high-performance, energy-aligned terms to a conventional lease—by starting with the inclusion of the above clause in the LOI—starts the conversation before the actual lease negotiation which can create a smoother business deal, make the negotiation more responsive to current conditions, contribute to a cleaner environment, reduce risk of noncompliance for both parties, and achieve cost savings for both building owners and tenants.

- **Why do building owners and tenants need to collaborate at this early stage of the leasing process?**

Tenants are often responsible for over 50% of energy use and associated carbon emissions in commercial buildings, but building owners are responsible for adhering to LL97 for the entire building. This presents a significant challenge for compliance, particularly when tenants are not currently engaged in energy efficiency and carbon emissions reduction measures in their spaces. The most successful results will arise from both parties working together throughout the entire leasing process to outline the responsibilities, accountability, and transparency needed to secure a win-win outcome.