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## GREEN BUILDINGS SUMMIT 2009

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### LEED and the Lawyer

Sustainable (or “Green”) design and construction have become vital concepts in today’s real estate and construction industries. Many developers now give serious consideration to the Green Building Council’s Leadership in Energy and Environmental Design (LEED) program, which quickly has become the standard in sustainable design. The demand for environmentally sensitive buildings has grown dramatically in recent years, perhaps driven most by the increasing demand among the tenant market. Businesses wish to market themselves as “eco-friendly” and can foster such an image by occupying sustainable space. Landlords (both commercial and residential) are discovering that sustainable buildings can be highly marketable to certain tenants. The design and construction of such buildings is largely within the expertise of architects, accountants and construction professionals. However, real estate and construction lawyers must be familiar with the trend if they wish to provide comprehensive services to their clients. But, what is the role of the lawyer in a “green” development or rehabilitation project?

First, any developer and its lawyer must be familiar with local ordinances. Throughout



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New Jersey and elsewhere, more municipalities are providing incentives for LEED certified buildings, sometimes in density—the currency of developers. Indeed, projects that may otherwise not have been approved are sometimes “pushed over the top” by LEED elements that make such projects more attractive to local land use boards. In the redevelopment arena, some municipalities are requiring that their designated redevelopers incorporate LEED elements into redevelopment projects. This trend requires that land use attorneys at least be familiar with the general principles of sustainable design and construction. The attorney must be able to give sound advice to developer clients with regard to the requirements that a municipality can lawfully extract from

such a project. Also, to the extent attorneys help evaluate different sites for development projects, attorneys must recognize that LEED certification gives credit for, among other things, selecting sites that will be redeveloped and remediated; selecting the right site can go a long way to qualifying for LEED certification.

In addition, the attorney must be able to help identify and apply for public funding assistance. In the nation’s current economic climate, all developers need whatever financial assistance is available for a project. While New Jersey has yet to adopt legislation to provide direct financial assistance for private LEED certified projects (such bills are pending in the State Legislature), there do exist funding programs at the State and Federal level for use of renewable energy and other concepts that fall within the LEED architecture. Furthermore, the recently implemented Energy Savings Improvement Program provides incentives for public entities to retro-fit public buildings with sustainable elements.

Importantly, real estate and construction attorneys need to know how to tailor professional services contracts, leases, and condominium documents for sustainable

projects. A developer’s AIA contracts must correctly allocate responsibility and liability for unique LEED elements of a project. Leases must carefully delineate the relative responsibilities of landlord and tenant to use, maintain, repair and replace the capital infrastructure that makes LEED work. Condominium documents must make accurate representations about the nature of sustainable building components, both from a marketing standpoint and the standpoint of detailing the responsibilities of the unit owner and the condominium association.

This is just a sampling of the reasons for which attorneys must be familiar with notions of sustainable design and construction and their impact on today’s development projects. With the Green Building Council scheduled to release its most recent iteration of LEED standards at the end of April 2009, more and more developers will have to be familiar with elements of sustainability to remain competitive. As sustainable design becomes more vital to the real estate and construction industries, the attorney’s role will only grow.

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