



## Who Billed the Electric Car – Contemplating Charging Stations in Shopping Center Leases

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As leasing attorneys, we're often tasked with clairvoyant drafting to create documents which contemplate industry changes and technological evolution. Since leases are enduring documents which can contain primary and extension terms spanning decades, it's a somewhat daunting task to keep them tightly drafted, yet sufficiently malleable, to contemplate operational changes in the years to come. Take a moment to think about the number of issues which many lease forms now contemplate, but were unheard of even twenty years ago. Wireless connectivity to a shopping center's network, cellular signal boosters, plasma television screens as window signage, and electronic pylon signage all come to mind with ease. As certain new technologies emerge and proliferate, it's always a worthwhile exercise to consider how these innovations should factor into our lease documents and corresponding shopping center operations.

One new consideration is the increasing popularity of landlord-provided electric car charging stations. Driving around our offices in Atlanta, Georgia, it occurred to me recently that the charging station is no longer a "green"-themed novelty amenity, but, instead, a year 2014 necessity for many cosmopolitan commuters. Teslas, Chevy Volts, and Fiskers are now zipping around town en masse. The number of Nissan Leafs surrounding me at stoplights have left me wondering whether they are, in fact, growing on trees. In response, the surging popularity of the electric car caused me to ask myself – where are these people getting a charge between evenings at home? And how are charging stations constructed, managed, maintained, and funded? Many of these drivers, it turns out, are grabbing a charge while going about their day-to-day shopping. As an increasingly important part of a modern day shopping center's operational infrastructure, it's only a matter of time before a client asks me to draft charging station language for incorporation into their form lease.

I started thinking about the need for a mid-day charge last year. In late 2013, I read a news article about a Georgia man sitting in his car in a public school's parking lot to watch his son's tennis match. With his electric vehicle running low on its charge, he decided to plug it into a nearby socket affixed to the school. A frugal on-looker quickly deemed this to be a theft of taxpayer resources and reported the incident to the local police. Ten days later, the unassuming driver was arrested for misappropriation of government property. The heisted electricity was estimated to be worth approximately 4-5 cents. While this real-world example certainly seems egregious, perhaps even silly, it demonstrates the increasing demand for electric vehicle charging between the nightly garagings. More importantly, it shows the true need for an amenity that a number of landlords and developers are now choosing to provide to their patrons.

Though maximum ranges vary, some electric vehicles get less than 90 miles per charge, even under ideal driving conditions. With regional and super-regional malls attracting customers from an ever-expanding trade area, could the availability of charging stations sway a potential customer's decision to patronize one shopping destination over another?

Atlantic Station, one of the Southeast's largest mixed-use developments, certainly thinks so. Atlantic Station has installed a free solar-powered charging station at its project which can charge up to five electric vehicles at once. In addition, the parking garage located below the development contains four chargers which cost users 85 cents for one hour's use; enough power to get an electric vehicle about 25 miles.

As developers and landlords elect to install electric charging stations for the use of their customers, the question naturally arises as to which parties should bear the cost of the installation, maintenance and operation of such stations? Tenants might argue that the construction of a charging station is a capital expenditure that should be borne by the developer. Landlords might argue that a charging station is just another shopping center common area maintenance amenity whose cost should be passed through to tenants. Similar to Atlantic Station's garage spots, a middle-ground argument might be that the costs associated with a charging station should be paid by the electric car's driver in a pay-to-park meter-type format.

But as developers and their tenants compete for shoppers, especially the affluent shoppers able to afford some of the more expensive electric car models, it's certainly a compelling argument that a few cents of electricity are a welcomed expense in exchange for attracting more desirable patrons with significant amounts of disposable income.

Regardless of whether your shopping centers currently offer electric charging stations, it may be well worth the effort to account for them in your lease form. Well-crafted language should consider the costs associated with the repair and maintenance of such stations, as well as the cost allocation of electricity consumption. Though one charge may only cost a few cents, multiple drivers using multiple charging bays will add up to a meaningful cost over the course of a fiscal year. The permitted location of any such parking spaces should also be addressed.

With the number of electric cars currently zipping around the roads, it has become quite obvious that this trend is here to stay. The need for a mid-day charge is certainly on the rise. Those landlords and developers offering their patrons an electric "fill-up" may just be giving themselves a new competitive advantage to increase electric vehicle traffic to their shopping destinations.

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