
NOTE: All recommended modifications to the Lease discussed below should be reviewed and approved by Tenant’s counsel. CyberLease, LLC is not a law firm, is not offering legal advice and is not acting as legal counsel to Tenant. Rather, these recommendations are based upon CyberLease’s business experience in the field of representing sophisticated commercial tenants in conducting lease compliance audits of their lease obligations and assisting those tenants in negotiating more favorable lease terms. All defined terms included below should be conformed to the terms and definitions contained in the Lease itself.

“DOWNSIZED” BUILDING OPERATING COST ADDENDUM (Version 33)
(for Expense Stop, Stipulated Base Amount or Office NNN Leases only, small rsf)

1. General Provisions.

- a. If there is any conflict or inconsistency between this Building Operating Cost Addendum (“BOCA”) and the other provisions of the Lease, then the provisions of this BOCA shall control and govern the interpretation of the Lease.
- b. Inasmuch as the Lease may contain certain terminology that may not be identical to the terminology contained herein, the following terms are hereby deemed to have the same meaning and can be used interchangeably: Expenses, Direct Expenses, Operating Expenses, and Operating Costs; Taxes, Tax Expenses, Tax Costs, Property Taxes and Real Estate Taxes; Landlord and Lessor; Tenant and Lessee; Lease Year and Comparison Year; Tenant’s Share and Tenant’s Pro Rata Share; Building, Property, Project and Building/Project.
- c. Landlord shall utilize accounting records and procedures conforming to generally accepted accounting principles, consistently applied, with respect to all aspects of determining Tenant’s Pro Rata Share of the Operating Costs and Real Estate Taxes.

2. Exclusions from Operating Costs. Notwithstanding anything to the contrary contained in the Lease, the following items shall be excluded from the calculation of Operating Costs and/or Real Estate Taxes, each as the case may be, as such applicable term(s) are defined by the Lease:

- a. **Corporate Overhead** - All costs associated with the operation of the business of the entity which constitutes Landlord or Landlord’s affiliated organizations or Landlord’s managing agent (as distinguished from the costs of the operations of the Building/Project) including, but not limited to, any entity’s general corporate overhead and general administrative expenses, legal, risk management or other departmental costs of off-site personnel, corporate and/or partnership accounting and legal costs, asset management fees, administrative fees, health/sports club dues, employee parking and transportation charges, placement/recruiting expenses for employees whether they are assigned to the Building/Project or not, employee training programs, costs of any business licenses, all costs associated with start-up or move of a management office due to sale of the building, change of management companies or leasing and any other costs that would normally be considered included in a management fee;
- b. **Leasing** - Any cost relating to the marketing, solicitation, negotiation and execution of leases of space in the Building/Project, including without limitation, promotional and advertising expenses (including tenant parties and gifts) real estate licenses and other industry certifications, tickets to special events, commissions, finders fees, and referral fees, all expenses relating to the negotiation and preparation of any lease, license, sublease or other such document, costs of design, plans, permits, licenses, inspection,

- utilities, construction and clean up of tenant improvements to the Premises or the premises of other tenants or other occupants, the amount of any allowances or credits paid to or granted to tenants or other occupants of the Building/Project;
- c. **Executive / Unrelated Salaries** - Wages, salaries, fees, fringe benefits, and any other form of compensation paid to any executive employee of Landlord and/or Landlord's managing agent above the grade of Building Manager as such term is commonly understood in the property management industry, provided, however, all wages, salaries and other compensation otherwise allowed to be included in Operating Costs shall also exclude any portion of such costs related to any employee's time devoted to other efforts unrelated to the maintenance and operation of the Building/Project;
 - d. **Competitively Bid/Arms Length Transactions** - Any amount paid by Landlord or Landlord's managing agent to a subsidiary or affiliate of Landlord or Landlord's managing agent, or to any party as a result of a non-competitive selection process, for management or other services to the Building/Project, or for supplies or other materials, to the extent the cost of such services, supplies, or materials exceed the cost that would have been paid had the services, supplies or materials been provided by parties unaffiliated with the Landlord or Landlord's managing agent on a competitive basis by reputable, professional firms customarily engaged in providing such services;
 - e. **Financing / Ground Lease** - Mortgage payments, debt costs or other financing charges, costs of defending any lawsuits, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interests in the Building/Project, bad debt loss, rent loss or any reserves thereof, any rental payments and related costs pursuant to any ground lease of land underlying all or any portion of the Building/Project, and any costs related to any reciprocal easement agreement, and/or covenant, condition and restriction agreement;
 - f. **Building Defects** - Any costs incurred in connection with the original design, construction, landscaping and clean-up of the Building/Project or any major changes to same, including but not limited to, additions or deletions of floors, renovations of the common areas (except as otherwise expressly permitted under this BOCA), correction of defects in design and/or construction of the Building/Project including defective equipment and the replacement of equipment or Building/Project components which have reached the end of their useful life;
 - g. **Capital** - All "Capital Expenditures" (as hereinafter defined), except those Capital Expenditures incurred which (i) actually reduce Operating Costs, or (ii) are required by governmental regulation or law enacted after the Commencement Date, or (iii) are necessary to maintain the general cosmetic appearance of the common areas of the Building/Project (i.e., routine painting of the common areas, replacement of carpet or wall covering in common areas, where the aggregate cost of such common area work does not exceed \$0.05 per square foot of rentable area in the Building, the cost of any of the foregoing to be amortized, net of the item's reasonably estimated salvage value at the end of its useful life, with interest at the lesser of the interest rate actually paid by Landlord or 7.0% per annum, on a straight-line basis, over the useful life of the Capital Expenditure in question, provided, however, the annual amortization for Capital Expenditures under subsection (i) of this paragraph shall not exceed the annual amount of Operating Costs actually saved as a result of such Capital Expenditure. For purposes of this Lease the parties agree Capital Expenditures shall be defined as any expenditure incurred by the Landlord which (x) provides a benefit in excess of one year, (y) is a non-recurring expenditure (i.e., such that the subject expenditure is not expected to recur in a two (2) year period), and (z) cost, in the aggregate including all associated and related expenditures for consulting fees, permits, installment payments, etc., in excess of \$0.05 per square foot per square foot of rentable area in the Building;
 - h. **Building Codes/ADA** - Any cost incurred in connection with upgrading the Building/Project to comply with insurance requirements, life safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including without limitation the Americans With Disabilities Act (or similar laws, statutes, ordinances or rules imposed by the State, County, City, or other agency where the Building/Project is located), including penalties or damages incurred as a result of non-compliance;
 - i. **Hazardous Material** - Any cost or expense related to monitoring, testing, removal, cleaning, abatement or remediation of any "hazardous material" including toxic mold, in or about the Building/Project or real property, and including, without limitation, hazardous substances in the ground water or soil;

- j. **Reimbursements** - Any cost of any service or items sold or provided to tenants or other occupants for which Landlord or Landlord's managing agent has been or is entitled to be reimbursed by such tenants or other occupants for such service or has been or is entitled to be reimbursed by insurance or otherwise compensated by parties other than tenants of the Building/Project to include replacement of any item covered by a warranty;
- k. **Benefits to Others** - Expenses in connection with services or other benefits which are provided to another tenant or occupant of the Building/Project and which do not benefit Tenant, including the repairs and maintenance of the common area of a multi-tenant floor (e.g. elevator lobby, restrooms and hallways) if Tenant is a full-floor tenant and such repairs and maintenance are not provided to Tenant without separate charge therefor;
- l. **Other Taxes** - Landlord's gross receipts taxes for the Building/Project, personal and corporate income taxes, inheritance and estate taxes, other business taxes and assessments, franchise, gift and transfer taxes, and all other Real Estate Taxes relating to a period payable or assessed outside the term of the Lease;
- m. **Special Assessment** - Special assessments or special taxes initiated as a means of financing improvements
- n. **Advertising/Promotion/Gifts** - All advertising and promotional costs including any form of entertainment expenses, dining expenses, any costs relating to tenant or vendor relation programs including flowers, gifts, luncheons, parties, and other social events but excluding any cost associated with life safety information or education services which are provided to the tenants of the Building/Project;
- o. **Fines & Penalties** - Any fines, costs, late charges, liquidated damages, penalties, tax penalties or related interest charges, imposed on Landlord or Landlord's managing agent;
- p. **Art** - Costs, other than those incurred in ordinary maintenance and repair, for sculptures, paintings, fountains or other objects of art or the display of such items;
- q. **Concessionaires** - Any compensation or benefits paid to or provided to clerks, attendants or other persons in commercial concessions operated by or on behalf of the Landlord;
- r. **Reserves** - Any reserves of any kind;
- s. **Cost Incurred Prior to Commencement Date** - Any cost incurred prior to the Commencement Date including, but not limited to, amortization of capital expense, taxes incurred for prior years but billed and paid after the Commencement Date, etc.

3. **Operating Costs and Real Estate Tax Adjustments.**

- a. **Expense Year Adjustments.** If the Building/Project is not at least ninety-five percent (95%) occupied during any Lease Year, Landlord shall make an appropriate adjustment to those Operating Costs which vary with occupancy for such year to determine what the Building/Project Operating Costs would have been for such year if the Building/Project had been ninety-five percent (95%) occupied during such year. Such gross up adjustments shall be made by Landlord by increasing only the variable portion of (i) janitorial contract, (ii) electricity and (iii) management fee costs which actually vary based upon the level of occupancy of the Building/Project.
- b. **Controllable Expenses.** Beginning with the first calendar year following the Commencement Date, Controllable Expenses (as hereinafter defined), shall not increase by more than three percent (3.0%) over the prior calendar year's Controllable Expenses. By way of example, if the Controllable Expenses for the calendar year in which the Commencement Date occurs equal \$100,000, the Controllable Expenses for the second calendar year shall not exceed \$103,000, and the Controllable Expenses for next succeeding calendar year shall be capped at three percent (3%) greater than either \$103,000 or the actual Controllable Expenses of the prior year, whichever is less. Controllable Expenses are defined as the sum of all Operating Costs, as determined in accordance with the terms of the Lease and this BOCA, other than (i) Real Estate Taxes, (ii) insurance premiums, (iii) utilities and (iv) snow and ice removal expenses.

4. **Tenant's Lease Compliance Audit Rights.**

Tenant must notify Landlord its right to audit one year after Tenant's receipt of the reconciliation statement or it is final and binding to both parties. If such audit discloses the amount paid as Tenant's Pro Rata Share of

Operating Costs and Real Estate Taxes for the Building/Project, or of other rental amounts payable pursuant to the Lease, has been overstated by more than three percent (3%), then, in addition to immediately repaying such overpayment to Tenant, with interest (at a rate of Prime plus 2.0%) from the date of overcharge, Landlord shall also pay the third-party costs incurred by Tenant in connection with such audit.