
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.

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

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. **Office & Parking Charges** - Any office rental and any parking charges, either actual or not, for the Landlord's and/or Landlord's managing agent's management, engineering, maintenance, security, parking or other vendor personnel;
 - g. **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;
 - h. **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;
 - i. **Other Capital** - Rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment, the cost of which if purchased would be excluded from Operating Costs as a capital cost, excepting from this exclusion equipment not affixed to the Building/Project which is used in providing janitorial or similar services and, further excepting from this exclusion such equipment rented or leased to remedy or ameliorate an emergency condition in the Building/Project;

- j. **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;
- k. **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;
- l. **Telecommunications** - Any cost incurred in connection with modifying, removing, upgrading, replacing, repairing or maintaining the Building's/Project's telecommunication systems, including the purchase, installation and operation of any informational displays in the Building's/Project's elevators or lobbies;
- m. **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;
- n. **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;
- o. **Real Estate Taxes** - Any increase of Real Estate Taxes and assessments due to any change in ownership including, but not limited to, the sale or any other form of full or partial transfer of title of the Building/Project or any part thereof, or due to the transfer of title of any leases in the Building/Project, or due to any renovation or new construction in the Building/Project or related facilities;
- p. **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;
- q. **Special Assessment** - Special assessments or special taxes initiated as a means of financing improvements to the Building/Project and the surrounding areas thereof;
- r. **Parking** - Expenses associated with the operation, maintenance and repair of the parking facilities serving the Building/Project, including, but not limited to, all expenses for parking equipment, tickets, supplies, signs, insurance, cleaning, resurfacing, restriping, business taxes, management fees and costs, maintenance, utilities, Real Estate Taxes, and wages, salaries, employee benefits and taxes for personnel working in connection with any such parking facilities, shall be reduced by the sum of all revenues received or receivable by Landlord or the operator of such parking facilities. If any entity receives free or abated parking while any other party is required to pay or does not receive free or abated parking, the full value of such free or abated parking shall be deemed revenue of the parking facilities for purposes hereof;
- s. **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;
- t. **Fines & Penalties** - Any fines, costs, late charges, liquidated damages, penalties, tax penalties or related interest charges, imposed on Landlord or Landlord's managing agent;
- u. **Contributions/Dues/Subscriptions** - Any costs, fees, dues, contributions or similar expenses for political, charitable, industry association or similar organizations, as well as the cost of any newspaper, magazine, trade or other subscriptions, excepting the Building's/Project's annual membership dues in the local Building Owners and Managers Association ("BOMA") ;
- v. **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;
- w. **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;

- x. **Insurance** - (i) The cost of any insurance coverage, whether or not required by the holder of any mortgage on the Property which is related, in whole or in part, to (a) property or casualty insurance coverage in amounts greater than the replacement cost of the Property, or (b) lease enhancement insurance or other credit enhancement-related insurance; (ii) to the extent Landlord incurs any losses covered by the insurance Landlord is required to carry pursuant to the terms of this Lease, Operating Expenses may only include those commercially reasonable deductibles paid by Landlord but not, in any event, in excess of an aggregate of \$50,000.00; (iii) any increase in the cost of Landlord's insurance caused by a specific use of another tenant or by Landlord;
- y. **Reserves** - Any reserves of any kind;
- z. **Environmental Certification** - If the Building does not have such certifications as of the Commencement Date, any expenses incurred by the Landlord in connection with its plans or efforts to obtain or renew any form of certification for energy efficiency or environmental responsibility from organizations or governmental agencies such as the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) certification, Energy Star, Green Globes, etc., including, without limitation, consulting fees, legal fees, architectural, design and/or engineering fees and submission fees. Notwithstanding anything to the contrary, however, Capital Expenditures associated with such efforts shall be treated in accordance with Section 1(h) immediately above;
- aa. **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. **Other Adjustments.**
 - (i.) **Net Expenses** - Building/Project Operating Costs and Real Estate Taxes shall be "net" only and shall therefore be reduced by all cash discounts, trade discounts, quantity discounts, rebates, refunds, credits, or other amounts received by Landlord or Landlord's managing agent, including any such related amounts from tenants of the Building/Project, for its purchase of or provision of any goods, utilities, or services;
 - (ii.) **Partial Year** - Building/Project Operating Costs that cover a period of time not entirely within the Term of the Lease shall be prorated based on the actual number of days in the year;
 - (iii.) **Vacancy Credit** - In the event Tenant ceases to occupy (but still leases) the Premises or any portion thereof, Tenant shall receive a credit against Rent equal to the cost of services, utilities and any other expense not incurred as a result of such vacancy;
 - (iv.) **Duplicate Charges** - Landlord shall not (i) profit by including items in Operating Costs and/or Real Estate Taxes that are otherwise also charged separately to others, or (ii) collect Operating Costs and/or Real Estate Taxes from Tenant and all other tenants/occupants in the Building/Project in an amount in excess of what Landlord actually incurred for the items included in Operating Costs;
 - (v.) **Utility Services** - If, as of the Commencement Date, the Landlord does not purchase electricity (or other utilities) from a so-called "clean" or "renewable" sources (whether in whole or in part), the Operating Costs (as well as separately metered or sub-metered electricity expenses), of subsequent years during the Term shall not include any incrementally higher cost associated with purchasing so-called "clean" or "renewable" utilities unless, and only to the extent, Tenant has previously provided its written consent to such costs being included in Operating Costs (or utility expenses). Tenant

shall have the right to withhold its consent to the inclusion of such higher costs in its sole and absolute discretion.

- c. **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.**

- a. The payment by Tenant of any Tenant's Pro Rata Share of Building/Project Operating Costs and Real Estate Taxes amount pursuant to this Lease shall not preclude Tenant from questioning the accuracy of any statement provided by Landlord.
- b. Landlord shall provide to Tenant in substantial detail each year the calculations performed to determine Tenant's Share of Operating Costs for the Building/Project in accordance with the applicable provisions of the Lease and this BOCA, including the total Operating Costs by category, and listing gross up adjustments, etc. Landlord's annual statement shall also provide its calculation of Tenant's Pro Rata Share of Building/Project Operating Costs and Real Estate Taxes by setting forth the ratio of the Premises rentable square feet to the Building/Project rentable square feet and shall provide the average Building/Project occupancy for such year.
- c. Tenant or its authorized agent shall have the right, at its own cost and expense, to inspect and/or audit Landlord's detailed records each year with respect to Building/Project Operating Costs and Real Estate Taxes, as well as all other rent payable by Tenant pursuant to the Lease for any Lease Year. Pursuant to the foregoing, Landlord shall be obligated to retain such records for all Lease Years associated with this Lease, regardless of whether or not such periods were prior to Landlord's ownership of the Building/Project, until two (2) years following the termination of the Lease. Within fifteen (15) business days of Tenant's written notice to Landlord of its desire to review Landlord's books and records, Landlord shall provide Tenant or Tenant's authorized representative a full and complete copy of the financial records reasonably necessary for Tenant to complete such audit or review. If, after the review of such documentation, Tenant desires additional information of Landlord's books and records including but not limited to, invoices paid by Landlord or service contracts, Landlord shall cooperate with Tenant making all pertinent records available to Tenant, Tenant's employees and agents for inspection. Tenant, Tenant's employees and agents, shall be entitled to make copies of such records and further provided that Tenant keeps such copies confidential and does not show or distribute such copies to any other tenants in the Building/Project.
- d. The results of such audit, as reasonably determined by both parties, shall be binding upon Landlord and Tenant. 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 amount 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 costs incurred by Tenant in connection with such audit.