

**For taxes and operating expenses.**

(a). The following definitions apply in this article:

1. The expression "operating costs" means each and every item of cost and expense of whatever variety or description paid or incurred for maintenance or operation of the land and building of which the leased premises form a part, including but not by way of limitation, real estate taxes levied against the land and building (which term "taxes" includes assessments for betterments and improvements); water rates; sewer rents; wages; employee fringe benefits of every kind (i.e., paid vacations, hospitalization, disability, etc.) required by law or under union contract to be paid to employees; social security payments and unemployment insurance payrolls and other taxes applicable to wages; cleaning, washing and rubbish removal; uniforms; elevator maintenance; air-conditioning maintenance; heating; insurance. There shall be excluded, however, costs of painting and decorating for any occupant's space; administrative wages and salaries; management fees and renting commissions; franchise taxes; income taxes. There shall also be excluded the cost of any item of replacement that by sound accounting practice should be capitalized on the books of the landlord, except that where such replacement results in the reduction of operating costs the cost of the replacement may be amortized over a reasonable period of time according to sound accounting practice and so charged to operating costs but not in an amount in any year greater than the actual cost saving in that year. Where the maintenance is performed by a general contractor, the contract price of the general contractor shall govern the cost of the item performed by such contractor, but if the latter is related to, or is associated or affiliated with the landlord, then such contractor's costs shall be used only to the extent that they do not exceed what would be charged by a reasonably prudent independent contractor in a comparable building.

2. "Base year" means the real property tax year, beginning \_\_\_\_\_ [year], and ending \_\_\_\_\_ [year].

3. "Subsequent year" means each real property tax year following the base year.

4. "Base year costs" means the operating costs for the base year adjusted, however; to reflect any projections that are needed to compensate for vacancies in the building during the base year, and adjusted further by adding to such costs the amounts that would have been incurred by landlord for servicing a particular occupant's premises where that occupant furnishes services in whole or in part—the amounts so to be added to be gauged by that which would be charged by a reasonably prudent independent contractor in a comparable building.

(b). Tenant shall pay as additional rental \_\_\_\_\_% ("area ratio") of the amount by which the operating costs for any subsequent year occurring during the term exceed the base year costs. If tenant shall have paid any such increase for any subsequent year and thereafter there is a reduction in operating costs in a subsequent year occurring during the term so that such costs come below the base year costs, then tenant, if not in default in a substantial obligation hereunder, shall be entitled to a payment equal to the area ratio applied to the reduction below the base year costs for the particular year concerned. All such payments to tenant shall not total more than the aggregate of the payments of increase in operating costs theretofore paid by tenant. In no event shall tenant be entitled to any payment that will result in the reduction of tenant's rent below the rental herein originally reserved, regardless of any reduction in operating costs. The obligation of tenant as well as that of landlord to make the payments required of them respectively as above set forth survive any termination of this lease, except that landlord's obligation does not survive if this lease is terminated because of tenant's default.

(c). As a condition to collecting any payment for increase in operating costs, landlord shall submit to tenant a statement ("escalation statement") as soon as may be reasonably practicable after the close of any subsequent year for which landlord claims there has been an increase in operating costs, which statement shall show the applicable increase for such year, and tenant's share thereof; and tenant's payment of such share shall be due within 20 days after the rendition of the statement.

(d). If tenant shall have paid any increase for a subsequent year, then landlord shall thereafter, as soon as practicable after the end of such subsequent year, submit an escalation statement for such subsequent year, as long as tenant may be entitled to share in any reduction in operating costs as above provided; and if tenant shall be entitled to share in any such reduction, the amount of tenant's share shall accompany the escalation statement.