
Selected Lease Provisions

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Commercial Real Estate Leases

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SAMPLE PROVISIONS FOR DETERMINING MARKET RENT

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Section 10. Current Market Rate. (a) For purposes of this Section, the following terms shall have the following meanings:

“**Comparable Building**” shall mean any of the following five office buildings in downtown Metropolis:

Bank of Metropolis Plaza
Metropolis Corporate Center
Elm Tree Plaza
Executive Center
100 Maple Drive

“**Consumer Price Index**” shall mean the revised Consumer Price Index for All Urban Consumers, Metropolis, All Items, published by the United States Bureau of Labor Statistics (1984=100).

“**Current Market Rate**” shall mean the then prevailing net or base rent per rentable square foot at which a financially responsible landlord and tenant would agree in an arm’s length transaction to a lease of (i) in the case of an expansion hereunder, the applicable portion of the Premises, for the remainder of the then-current Term, and (ii) in the case of a renewal hereof, all of the Premises for the applicable renewal Term. As used in this Lease, the Current Market Rate reflects net or base rent, and assumes payments of Additional Rent (including operating expenses, taxes and insurance as described in Section ___ hereof) with respect to the full Premises (in the case of renewal) or the Expansion Space (in the case of expansion).

“**Discount Rate**” shall mean, at any time, the rate of interest then in general use by the real estate community in downtown Metropolis in making present value calculations at such time.

“**Expansion Comparable**” shall mean a lease (but not a sublease) by a new tenant, or an expansion by an existing tenant

pursuant to a preexisting option to expand, of between 15,000 and 30,000 square feet occurring during the two (2) year period immediately preceding the date of determination. Expansion Comparables shall exclude any expansion at a rent agreed to at a prior date pursuant to a tenant's expansion option.

"Net Effective Rent" shall mean, with respect to any Renewal or Expansion Comparable, the monthly annuity payment (based on an interest rate equal to the Discount Rate) needed to produce a net present value to the landlord during the term of such Renewal or Expansion Comparable, as the case may be, equal to the net present value of all net or base rental payments less the net present value of the cost of all Tenant Concessions. In computing Net Effective Rent, present values of rental streams and the cost of Tenant Concessions shall be calculated using the Discount Rate with monthly compounding.

"Renewal Comparable" shall mean any new lease or renewal lease (but not a sublease) of office space in excess of 75,000 rentable square feet at the Building or any Comparable Building. Renewal Comparables shall exclude any expansion or renewal at a rent agreed to at a prior date pursuant to a tenant's expansion or renewal option.

"Tenant Concessions" shall mean, with respect to this Lease or the applicable Renewal or Expansion Comparable, (i) rent concessions, rent abatements, free rent, or similar rent relief thereunder, and (ii) all costs incurred by the landlord thereunder to provide tenant improvements, pay leasing commissions, assume existing lease obligations (after netting out the reasonable projected recovery thereon) and make any other payments to or for the benefit of the tenant thereunder.

(b) The Current Market Rate shall be determined for each exercise of Tenant's right to expand the Premises under Section 8 and Tenant's right to extend the Lease for the entire Premises under Section 9. If the parties to this Lease are unable to agree upon the applicable Current Market Rate in any situation, then at the request of either party the actual Current Market Rate shall be determined by arbitration pursuant to Section 11 hereof. Should such arbitration be necessary, the Current Market Rate shall be

determined in accordance with the parameters set forth in this Section.

(c) In determining the Current Market Rate in the case of a renewal of this Lease, the Current Market Rate shall be established by reference to Renewal Comparables. In considering Renewal Comparables, lease renewals shall be given greater consideration than new leases.

(d) In determining the Current Market Rate for an expansion of the Premises, the Current Market Rate shall be established by reference to Expansion Comparables. The primary Expansion Comparables shall be transactions in the Building qualifying as Expansion Comparables. However, if there are less than eight (8) Expansion Comparables in the Building, an additional number of Expansion Comparables from Comparable Buildings shall be considered to bring the number of Expansion Comparables considered up to eight (8). (The parties intend to include all Expansion Comparables from the Building in the determination of the Current Market Rate, and only the requisite number of additional Expansion Comparables from the Comparable Buildings.) In selecting such additional Expansion Comparables, the arbitrators shall select those which are most similar to the particular Required or Optional Expansion Space and the terms and circumstances of Tenant's leasing thereof, subject to the following criteria:

(1) Transactions qualifying as Expansion Comparables involving the exercise of an expansion option providing for rent at the then-current fair market rent shall be the primary Expansion Comparables.

(2) Transactions qualifying as Expansion Comparables involving the lease of space by a party not then a tenant in the subject Comparable Building shall be the secondary Expansion Comparables.

In the event that the total number of Expansion Comparables in the Building and the total number of additional Expansion Comparables determined as provided in the foregoing subsections (d)(1) and (d)(2) total less than six (6) transactions, the arbitrators shall select a sufficient number of transactions occurring during the immediately preceding two (2) year period involving the lease of

15,000 to 30,000 rentable square feet of space by a party then a tenant in the Building or in a Comparable Building but not pursuant to a preexisting expansion option, so as to bring the total number of transactions considered to six (6).

(e) The Current Market Rate shall be determined by first calculating the Net Effective Rent for the relevant Renewal or Expansion Comparables, as the case may be. The Current Market Rate for any renewal hereunder shall be the Net Effective Rent for the Renewal Comparables, adjusted as set forth in section (f) below; the Current Market Rate for any expansion hereunder shall be the Net Effective Rent for the Expansion Comparables, adjusted as set forth in Section (f) below. In each case, the Current Market Rate shall be stated as an annual amount per rentable square foot of space.

(f) The Current Market Rate for any renewal or expansion shall be adjusted, upward or downward, from the Net Effective Rent for the respective Renewal or Expansion Comparables, to reflect the following factors:

(1) If Tenant Concessions are made available to Tenant as provided in section (g) below, the Current Market Rate shall be increased to reflect the amortization of the cost of such Tenant Concessions over the term of such renewal or expansion, as the case may be, on a level-payment basis at the Discount Rate, compounded monthly.

(2) The Current Market Rate shall be adjusted to take into account:

(A) any differences in loss factors used in determining the rentable areas of the leased premises of the Renewal or Expansion Comparables considered and the subject portions of the Premises;

(B) any differences in the length of the term of the Renewal or Expansion Comparables considered and the term of this Lease; and

(C) any difference between the height and views of the Renewal or Expansion Comparables

considered in the Comparable Buildings and that of subject portions of the Premises in the Building.

(g) Each of Landlord and Tenant may require that any expansion or renewal include certain Tenant Concessions, as follows:

(1) In the case of either an expansion or renewal, Tenant may require that Landlord make available an allowance for improvements to the Premises (which allowance shall be applied solely to such improvements):

(A) in the case of a renewal, in an amount (expressed on a per rentable square foot basis) not exceeding the average tenant improvement allowance in the Renewal Comparables involving renewal leases which were considered in determining the Current Market Rate; and

(B) in the case of an expansion, in an amount (expressed on a per rentable square foot basis) not exceeding the average tenant improvement allowance in the Expansion Comparables which were considered in determining the Current Market Rate.

(2) In the case of either an expansion or renewal, Landlord may require that Tenant accept a rental concession having a present value, computed using the Discount Rate:

(A) in the case of a renewal, in an amount not exceeding the present value as of the commencement of the lease renewal term of the average Tenant Concessions in the Renewal Comparables involving renewal leases (but not new leases) which were considered in determining the Current Market Rate, less the amount of any allowance for tenant improvements requested by Tenant as provided in subsection (1) above; and

(B) in the case of an expansion, in an amount not exceeding the present value as of the commencement of the lease expansion term of the average Tenant Concessions in the Expansion

Comparables which were considered in determining the Current Market Rate (less the amount of any allowance for tenant improvements requested by Tenant as provided in subsection (1) above).

An example of the adjustment of the Current Market Rate to be made pursuant to this subsection (g) is set forth in Exhibit A.

(h) Once the Current Market Rate is determined, Landlord may cause the stated rents payable with respect to the expansion or renewal to be recalculated to reflect an annual percentage escalation of net or base rent over the remaining years of the Term not exceeding the greater of (i) two percent (2%), or (ii) a percentage equal to one-third (1/3) of the average annual percentage increase in the Consumer Price Index for the three (3) calendar years immediately preceding the calendar year in which the calculation of the Current Market Rate occurs; provided, however, that the net present value (using the Discount Rate) of the payments to be made by Tenant as so recalculated shall be equal to the net present value (using the Discount Rate) of the payments to be made by Tenant under this Section 10 prior to recalculation as provided in this subsection (h). An example of the recalculation of the stated rents permitted to be made by Landlord pursuant to this subsection (h) is set forth in Exhibit A.

Section 11. Determination by Arbitration. (a) In the event of the failure of the parties to agree as to any matter which under the terms of this Lease is to be determined by arbitration, such dispute shall be determined by arbitration as hereinafter provided. Landlord and Tenant shall each appoint a fit and impartial person as arbitrator who shall have had at least ten (10) years' experience as to the subject matter of the dispute. Such appointment shall be signified in writing by each party to the other. The arbitrators so appointed, in the event of their failure to agree within fifteen (15) days upon the matter so submitted, shall appoint an umpire within ten (10) days after said 15-day period. In the case of the failure of such arbitrators (or the arbitrators appointed as hereinafter provided) to agree upon an umpire, such umpire shall be appointed by the American Arbitration Association, or its successor, from its qualified panel of arbitrators, and shall be a person having at least ten (10) years' experience as to the subject matter in question. In case either party shall fail to

appoint an arbitrator within a period of ten (10) days after written notice from the other party to make such appointment, then the arbitrator appointed by the party not in default hereunder shall appoint a second arbitrator having at least ten (10) years' experience as to the subject matter in question. The two (2) arbitrators so appointed, in the event of their failure to agree upon the matter so submitted within fifteen (15) days thereafter, shall appoint an umpire within ten (10) days after said 15-day period.

(b) The arbitrators and umpire (when necessary) shall proceed with all reasonable dispatch to determine the question submitted. The decision of the arbitrators and umpire shall in any event be rendered within thirty (30) days after their appointment, and such decision shall be in writing and in duplicate, one counterpart thereof to be delivered to each of the parties who appointed them. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association (or its successor) and applicable Illinois law, and the decision of a majority of the arbitrators and umpire shall be binding, final and conclusive on the parties. If a majority of the arbitrators and umpire believe that expert advice would materially assist them in the resolution of the matter in dispute, they may retain one or more qualified persons, including, but not limited to, legal counsel, architects or engineers, to provide such expert advice. The fees of the arbitrators and umpire and the expenses incident to the proceedings shall be borne equally between Landlord and Tenant. The fees of respective counsel engaged by the parties, and the fees of expert witnesses and other witnesses called for by the parties, shall be paid by the respective party engaging such counsel or calling or engaging such witnesses.

(c) If Landlord and Tenant are unable to reach agreement on Current Market Rate in any situation, then prior to submitting their dispute to the arbitrator(s), Landlord and Tenant shall each simultaneously submit to the other its good faith estimate of Current Market Rate in such situation. If the higher estimate is not more than one hundred five percent (105%) times the lower, then the Current Market Rate shall be the average of the two estimates. If the higher estimate is more than one hundred five percent (105%) times the lower, then the arbitrators shall select from the two estimates of Current Market Rate submitted by

Landlord and Tenant the one that is closer to the Current Market Rate as determined by the arbitrators.

(d) Notice of appointment of the arbitrators shall be given in all instances to any mortgagee who prior thereto shall have given Tenant a written notice specifying its name and address. If a dispute shall be submitted to arbitration as hereinabove provided, such mortgagee shall have the right to participate in such arbitration proceedings; provided, however, that such participation shall be in association with Landlord and shall not be deemed to entitle such mortgagee to appoint an additional arbitrator nor to enlarge Landlord's rights in such arbitration proceeding, it being the intention of the parties that such mortgagee shall have the right to be present and participate in the arbitration proceeding solely on behalf of Landlord.

EXHIBIT A

Examples of Certain Current Market Rate Calculations

Example:

Exercise of First Optional Expansion Space (21,319 RSF) effective July 1, 2007. This example is intended solely to illustrate the determination of the Base Rent to be paid by Tenant after agreement (by the parties or through arbitration) on the then-current typical "Expansion Comparable" transaction. The rental rates, allowances and other amounts selected for purposes of this example do not in any way represent any agreement of the parties on the actual amounts that will be applicable in the future.

Assumptions:

1. Term of Expansion: 96 months
2. Discount Rate: 8% per annum
3. The typical "Expansion Comparable", after adjustment for the factors set forth in subparagraph (f)(2) of Section 10, has the following economic terms: Stated net rent of \$25.00 psf, an allowance of \$30.00 per rentable square foot for tenant improvements, additional Tenant Concessions of \$10.00 per rentable square foot and a 8 year term
4. Average Annual Percentage Increases in CPI for 3 prior years: 6.75% per annum
5. Average tenant improvement allowance on Expansion Comparables, calculated pursuant to subsection (g)(1) of Section 10: \$30.00 per square foot
6. Amount of tenant improvement allowance selected by Tenant pursuant to subsection (g)(1) of Section 10: \$15.00 per square foot, or \$319,785

7. Average present value of Tenant Concessions on Expansion Comparables, calculated pursuant to subsection (g)(2) of Section 10: \$40.00 per square foot
8. Present value of additional rental concession required by Landlord: \$10.00 per square foot pursuant to subparagraph (g)(2) of Section 10, or \$213,190

Sample Calculations:

Step 1: Calculate the net present value of the “Expansion Comparables” as of the lease commencement date for the expansion space: **\$2,309,982.80**

Step 2: Calculate the Net Effective Rent for the “Expansion Comparable” (the level monthly payments over 96 months, with interest at 8%, required to produce a net present value of \$2,309,982.80): **\$32,439.22/month**

Step 3: Calculate the Current Market Rate for the expansion space for the balance of the Term prior to adjustment pursuant to subsections (f)(1), (g)(1), ((g)(2) or subsection (h) of Section 10, stated as an annual amount per rentable square foot: **\$18.26/RSF**

Step 4: Calculate the adjustment to the Current Market Rate required on account of the tenant improvement allowance selected by Tenant (\$319,785) pursuant to subsections (f)(1) and (g)(1) of Section 10:

$$\mathbf{\$18.26/RSF + \$2.53/RSF = \$20.79/RSF}$$

Step 5: Calculate the further adjustment to the Current Market Rate required on account of the additional rental concession required by Landlord (\$213,190) pursuant to subparagraphs (f)(1) and (g)(2) of Section 10:

$$\mathbf{\$20.79/RSF + \$1.69/RSF = \$22.48/RSF}$$

Step 6: Calculate the monthly Base Rent payable for the expansion space at the Current Market Rate (adjusted as provided in Steps 4 and 5 above):

$$\mathbf{\$22.48 \times 21,319 \div 12 = \$39,937.59}$$

Step 7: Calculate the number of months of credit to Base Rent required to produce a net present value (using an interest rate of 8%) of \$213,190 @ \$39,937.59/month:

5.42 months of abatement of the Base Rent for the expansion space (5 full months and one month of \$16,785.49)

If Landlord determines to restate Base Rent for the expansion space as escalating over the remainder of the Term of the Lease as provided in subsection (h) of Section 10:

Step 8: Calculate the maximum annual escalation rate (the greater of 2% or 1/3 of 6.75%): **2.25%**

Step 9: Calculate the net present value (using an interest rate of 8%) of the Base Rent for the expansion space to be paid for the balance of the Term without regard to the abatement calculated in Step 7 above (96 months @ \$39,937.59/month): **\$2,843,938.09**

Step 10: Recalculate the Base Rent to be paid for the expansion space during the remainder of the Term such that (i) annual escalations equal 2.25%, and (ii) the net present value of the stream of Base Rent for the expansion space over the balance of the Term, as escalated, equals \$2,843,938.09:

Year	Rental Rate
<i>July 2007 to June 2008</i>	\$20.96
<i>July 2007 to June 2008</i>	\$21.43
<i>July 2007 to June 2008</i>	\$21.91
<i>July 2007 to June 2008</i>	\$22.41
<i>July 2007 to June 2008</i>	\$22.91
<i>July 2007 to June 2008</i>	\$23.43
<i>July 2007 to June 2008</i>	\$23.95
<i>July 2007 to June 2008</i>	\$24.49

Step 11: Recalculate the monthly Base Rent payable for the expansion space for the first 12 months (adjusted as provided in Step 10 above):

$$\mathbf{\$20.96/RSF \times 21,319 \div 12 = \$37,237.19.}$$

Step 12: Recalculate the number of months of credit to Base Rent required to produce a net present value (using an interest rate of 8%) of \$213,190 @ \$37,237.19/month:

5.812 months of abatement of the Base Rent for the expansion space (5 full months and one month of \$30,448.85)

SAMPLE PROVISIONS FOR OPERATING EXPENSES

Section ____. **Operating Expenses.**

(a) Tenant shall pay Landlord, in the manner described below, an amount equal to Tenant's Pro Rata Share of Operating Expenses, commencing on the Commencement Date.

(b) "Operating Expenses" mean all expenses, costs and amounts (other than Taxes as defined in Section ____) of every kind and nature that shall accrue or be payable by Landlord (properly chargeable in respect of any calendar year or portion of which occurs during the Term following the Commencement Date in a manner consistently applied in accordance with the Accounting Principles, and without duplication), because of or in connection with the management, repair, maintenance and operation of the Property during the Term following the Commencement Date (subject to the exclusions and other provisions of this Lease), including, without limitation, any amounts that accrue or are payable for: (i) utilities for the Property, including, but not limited to, electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, (ii) permits, licenses and certificates necessary to operate, manage and lease the Property (subject to the exclusions set forth below), (iii) insurance applicable to the Property, not limited to the amount of coverage Landlord is required or permitted to provide under this Lease, (iv) supplies, tools, equipment and materials used in the operation, repair and maintenance of the Property, (v) accounting services (but excluding any fees the property management company may charge for accounting services it may perform and any amounts of salary payable to the dedicated, on-site accountant for the Property), legal, inspection, consulting, concierge and other services, (vi) any equipment rental (or costs incurred under installment equipment purchase or equipment financing agreements) for janitorial or similar maintenance equipment, (vii) management agreements (limited to the cost of any management fee actually paid thereunder and the fair rental value (subject to limitations as set forth below) of any space devoted to

management, but excluding space devoted to leasing; (viii) wages, salaries and other compensation and benefits for all persons directly engaged in the operation, maintenance or security of the Property, and employer's social security taxes, unemployment taxes or insurance, and any other taxes which may be levied on such wages, salaries, compensation and benefits, (ix) operation, repair, and maintenance of all systems and equipment and components thereof (including non-capital replacement of components), (x) janitorial service, alarm and security service, window cleaning, trash removal, elevator maintenance, cleaning of walks, parking facilities and building walls, removal of ice and snow, (xi) replacement of wall and floor coverings, and light bulbs in lobbies, corridors, restrooms and other common or public areas or facilities, (xii) maintenance and replacement of shrubs, trees, grass, sod and other landscaped items (excluding any costs incurred prior to the first anniversary of the Commencement Date to replace trees or other permanent (as opposed to seasonal) landscaped items that fail to survive or are otherwise replaced due to poor health or condition before such first anniversary), irrigation systems, drainage facilities, fences, curbs, and walkways, and (xiii) roof repairs (except to the extent any of the foregoing are not expressly excluded below).

(1) All Operating Expenses shall be determined according to generally accepted accounting principles consistently applied ("GAAP") as such principles may, from time to time, be modified to conform to the provisions of this Lease (GAAP, as so modified, is herein called the "Accounting Principles").

(2) Costs incurred in one calendar year, but attributable to more than one calendar year, shall be equitably apportioned over such years in accordance with the Accounting Principles. As used herein, the phrase "comparable office buildings in the downtown Metropolis area" or words of similar import means at least five (5) "Class A", high rise office buildings occupied by more than one tenant, containing at least 750,000 square feet of rentable area, now or at any time during the Term hereof located within the area bounded by the west side of Elm Street, the north side of Main Street, the north side of Maple Street and the west side of Central Street. For example, as presently

operated or as presently intended to be operated, the following buildings are comparable office buildings in the downtown Metropolis area: Bank of Metropolis Plaza; Metropolis Corporate Center; Elm Tree Plaza; Executive Center; 100 Maple Drive. The parties acknowledge that the standard of maintenance, operation, or condition of a building, including the foregoing described buildings, whether now in existence or subsequently constructed, may change to such an extent that it should no longer be considered of a Class "A" character. Landlord may designate in writing to Tenant, from time to time, buildings, in addition to the foregoing described buildings, that it believes are comparable office buildings in the downtown Metropolis area, and such designation shall be binding, unless Tenant objects to any such designation within thirty (30) days after receipt of Landlord's designation. Disputes as to which buildings are comparable shall be settled at the request of either party by the Executive Director of the Metropolis Chapter of BOMA.

(c) Notwithstanding the foregoing, Operating Expenses shall not, however, include the following:

(1) depreciation and amortization charges (except as otherwise provided herein);

(2) principal or interest payment on and any other fees or charges (including, without limitation, attorneys' fees, court costs and other expenses) incurred in connection with obtaining or serving any loans related to any mortgages or any other debt costs or financing or refinancing costs (other than equipment rental (or costs incurred under equipment installment purchase or equipment financing agreements) for janitorial or similar Building maintenance equipment) or ground lease or master lease payments, if any;

(3) expenses relating to the leasing of space in the Building (including, without limitation, costs associated with Landlord assuming or taking over the obligations of a tenant under a lease in another building, legal fees, real estate brokerage and leasing commissions, space planner fees, alterations to tenant premises, tenant improvement allowances, rent abatements or other concessions, and

advertising and promotional expenses incurred in connection with the listing of space in the Building);

(4) costs incurred in connection with enforcement of leases, the Rules, disputes with actual or prospective tenants or with mortgagees or ground lessees and any other legal expenses or fees not related to the operation and management of the Building;

(5) costs (including permit, license and inspection fees) incurred in improving, renovating, altering, painting or decorating any tenant spaces;

(6) costs of providing any service (or level or amount thereof) in excess of those services that Landlord is obligated under this Lease to furnish to Tenant free of separate or additional charge (e.g., the cost of providing chilled or condenser water to any tenant and the cost of providing heating or air conditioning to any tenant outside of Regular HVAC Hours);

(7) costs for relocating tenants;

(8) costs attributable to retail areas in excess of the corresponding amounts that would have been incurred had such areas been used for office purposes;

(9) costs of any electricity, gas or steam for any tenantable space in the Building and the cost of any utility that is separately metered to tenants of the Building or for which Landlord is separately reimbursed;

(10) auditing fees, other than those incurred in connection with the preparation of statements required pursuant to this Lease and similar provisions of any other leases of space in the Building;

(11) costs to remediate Hazardous Materials incorporated in the construction of the Building or placed in the Building by Landlord, its agents or employees, or placed in or on the Property by or on behalf of Tenant or any other tenant or occupant of the Building;

(12) costs of any items to the extent Landlord receives payment, reimbursement or indemnity from (x) insurance (or would have received payment, reimbursement or indemnity (A) had Landlord maintained the insurance required by this Lease to be maintained by Landlord, (B) had Landlord timely filed a claim thereunder and with commercially reasonable diligence pursued such claim, or (C) had Landlord not been prevented from recovering on such claim by reason of the insurer being insolvent or otherwise financially unable to perform its obligations under such policy;

(13) costs for which Landlord is reimbursed by a third party other than from tenants paying to Landlord their respective share of Operating Expenses pursuant to rent adjustment provisions similar to this Article 3 (such payment, reimbursements or indemnity to be deducted from Operating Expenses in the year in which the same was received or would have been received as aforesaid);

(14) costs of insurance against, or the portion of Landlord's insurance premiums allocable to, acts of terrorism, in excess of \$1.00 per square foot of Rentable Area of the Building per annum, except, that the aforesaid limit shall increase on a cumulative and compounded basis by three percent (3%) per annum, commencing on the first anniversary of the Commencement Date and each subsequent anniversary thereof;

(15) costs resulting from any condemnation or other governmental taking;

(16) costs of constructing the Building and related facilities;

(17) costs of correcting defects in or inadequacy of the initial design or construction of the Building (except that the costs of normal repair and maintenance and non-capital replacements of components shall be included in Operating Expenses) or the discharge of Landlord's obligations under the Tenant Workletter or the workletters of other leases;

(18) rentals and other related expenses incurred in leasing, or costs of purchasing under an installment sales agreement or otherwise, air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature if purchased, except that short-term rental of equipment not affixed to the Building that is used in providing janitorial or similar Building maintenance services shall be included in Operating Expenses;

(19) the costs of utilities, services, or amenities provided to one or more other tenants in the Building, which items are not made available to Tenant, or are made available at a cost or for which Tenant is separately charged, or are provided to one or more other tenants to a materially greater extent or materially more favorable manner than provided to Tenant;

(20) costs for any goods and services (including, e.g., the utility and other costs of chilled water, condenser water, overtime heat or air conditioning, extra cleaning) sold or supplied to tenants and occupants of the Building for which Landlord either would be entitled under this Lease to charge Tenant if the same had been sold or supplied to Tenant or would have been entitled to charge the other tenant pursuant to its Lease;

(21) all costs of services provided to, or other expenses incurred in connection with, any specialty facility such as an observatory, any health or fitness center, broadcast facility, luncheon club, recreational club, cafeteria, restaurants, or day care facility and costs of any clerks, attendants or other persons in any commercial concessions operated by Landlord;

(22) salaries and benefits of any employee (whether paid by Landlord or Landlord's managing agent) above the grade of on-site property manager or on-site general manager or on-site building manager or similarly designated on-site individual who has responsibility for the management of the Building, and the wages and benefits of any employee who is not under the direct control of such manager of the

Building, or who is under the direct control of such manager, but who does not devote all of his or her time to the Building, unless such wages and benefits are prorated to reflect time spent on operating and managing the Building vis-à-vis time spent on matters unrelated to operating and managing the Building;

(23) costs of Landlord's general corporate overhead and general administrative expenses;

(24) costs of defending any lawsuits with any mortgagee or other lender;

(25) amounts paid to Landlord or to subsidiaries or Affiliates of Landlord, or to any party as a result of a non-competitive selection process, for goods supplied to the Building or for services (other than management services, whose fees are subject to limitation as set forth above) in or to the Building to the extent the same exceed the costs of such goods sold or services rendered by third parties that are not Affiliates on a competitive basis of a quality commensurate with the operations of comparable office buildings in the downtown Metropolis area;

(26) costs, other than those incurred in ordinary maintenance and insurance, for sculpture, paintings or other objects of art in located within Common Areas, and costs arising from Landlord's political or charitable contributions (other than as may be permitted by subclause 32 below);

(27) costs of painting or decorating in areas leased or intended to be leased to tenants (except, that the cost and expense of painting and decorating, but not including artwork, in all Common Areas will be included in Operating Expenses);

(28) costs of tools and equipment purchased for use in the operation, repair or maintenance of the Building to the extent purchased prior to the first year of operation of the Building, or to the extent such costs (whenever incurred)

constitute capital expenditures under the Accounting Principles;

(29) costs (including fines and penalties) to comply with any laws or regulations existing at the time of the Commencement Date;

(30) net rent and expenses that exceed the fair market rent and expenses associated with operating the management office in the Building of not more than 1,500 square feet of Rentable Area, which shall exclude any space devoted to leasing of the Building and shall be further equitably reduced to the extent such office is used by Landlord to operate or manage properties other than the Building and the Property;

(31) fines, penalties, interest, surcharges or any other similar costs incurred by Landlord on account of the failure to comply with any law or regulation, failure to make any payment of Operating Expenses when due, or breach of any contract or undertaking, unless such fine, penalty, interest, surcharge or other similar cost is incurred because of Tenant's failure to comply with any such law or regulation or the terms of this Lease;

(32) expenditures for repairs or maintenance that are reimbursed by warranties, guarantees or service contracts;

(33) advertising, promotional and marketing expenses;

(34) contributions to operating expense or tax or insurance reserves;

(35) bad debt losses suffered by Landlord;

(36) costs of client entertainment and entertainment of prospective tenants;

(37) costs of promoting Building tenant relations activities (e.g., holiday gifts, ice cream socials, lobby entertainment);

(38) costs incurred by Landlord in connection with the maintenance, operation, repair, replacement, or third-party management of the garage portion of the Building, including any equipment used in connection with the operation thereof;

(39) costs related to management of the Building that, under a market-based management agreement with an unaffiliated management company providing for a management fee at the rate provided for in this Lease, would be borne by the management company, including, without limitation, the manager's general corporate overhead and general administrative and home office expenses and accounting services;

(40) permits, licenses, fees, or assessments for public improvements related to the initial development or construction of the Building or Property or required as a condition to the initial occupancy of the Building;

(41) costs of insurance against loss of or damage to any improvements in tenantable spaces made by, on behalf of, or for, any tenant of the Building;

(42) janitorial services and costs of electricity attributable to HVAC for any portion of the Premises that is vacant for more than thirty (30) days, if such portion is either an entire floor or a partial floor that is separately demised from the balance of the floor and said portion of the floor is not being used in Tenant's business operations, other than as storage space;

(43) any other item excluded from (or limited in) the definition of Operating Expense in any other tenant lease or occupancy agreement for the Building that under the terms of which lease or agreement Operating Expenses are charged separately from base net rent; and

(44) costs of "capital improvements and other capital items," as those terms are defined under GAAP and used in accordance with the Accounting Principles.

(d) Operating Expenses shall be net of all discounts and reduced by all rebates actually received by Landlord. There shall be no duplication of costs or reimbursements. Landlord agrees not to change the method of determining Operating Expenses during the Term unless such change is made to comply with Accounting Principles or any applicable Laws and is applied uniformly as to all tenants of the Building.

(e) If the Property is less than 100% occupied during all or a portion of any calendar year, or if one or more tenants included in the Rentable Area of the Building provide their own services that are not provided to such tenants by Landlord and which, if provided by Landlord, would otherwise be included in Operating Expenses, then Landlord, in accordance with the Accounting Principles, may determine the amount of variable Operating Expenses (i.e., costs that vary with occupancy levels), which (subject to the last sentence of this Subparagraph) shall only be the costs and expenses for cleaning, janitorial and trash removal expenses and supplies, the electricity cost related to HVAC service to tenant floors, day porters that provide cleaning and other services to Building tenants, interior window washing, and utilities (including electricity, water, and chilled water charges), in each case, to the extent any of the foregoing vary with occupancy levels in the Building and that would have been paid had the Property been 100% occupied and had all of the tenants obtained such services from Landlord, and the amount so determined shall be deemed to have been the amount of variable Operating Expenses for such calendar year; except, that in no event shall Landlord collect from tenants of the Building more than 100% of the Operating Expenses actually incurred by Landlord in operating the Building during each respective calendar year by virtue of the foregoing gross-up or for any other reason.