

Make Reasonable Compromise for Insurance Deductible Pass-Through

A savvy tenant will argue that capital improvements aren't properly included in operating expenses, so the insurance deductible amount for them shouldn't be included either. A tenant may also argue that letting you pass through the insurance deductible removes your incentive to buy insurance with a low deductible; you'll instead pick the insurance package with a high deductible and low premiums. That high-deductible, low-premium strategy helps you keep the average monthly operating expense number low and make your building or center look more attractive.

But if the insurance policy is ever triggered, the tenant will be left footing a substantial bill if a tenant must suddenly pay its share of a very high deductible. To compromise so that neither you nor the tenant is financially jeopardized, ask your attorney about adapting a variant of this property insurance clause for your lease's insurance provisions.

INSURANCE

- 1. Landlord's Property Insurance.** Throughout the Term, Landlord will maintain as an Operating Expense: (a) all-risk property insurance covering the building, building standard tenant improvements (to a maximum of \$*[insert dollar amount, e.g., \$35]* per usable square foot), and all equipment owned by Landlord and used in connection with the Building in an amount not less than its full replacement value; (b) boiler and machinery insurance; and (c) if Landlord so elects, earthquake, flood, and/or terrorism insurance. Such insurance coverage shall not materially differ from insurance coverage maintained by landlords of comparable first-class buildings in the vicinity of the Building.
- 2. Insurance Deductibles.** Landlord may pass through to Tenant property insurance deductibles as an Operating Expense; provided, however, that in no event shall Landlord pass through to Tenant any insurance deductibles in excess of \$*[insert dollar amount or varying dollar amounts]* in any calendar year. The portion of the deductibles in excess of the aforesaid amount (if any) for any calendar year shall be amortized and paid by Tenant over the useful life (as reasonably determined by Landlord) of the improvements being repaired or replaced with the proceeds of Landlord's insurance coverage, together with a commercially reasonable interest factor, consistent with that used by other landlords of comparable first-class buildings in the vicinity of the Building or consistent with Landlord's own financing costs.