

MODEL LEASE CLAUSE

List Books and Records Tenant May Review

The following clause was drafted with the help of real estate expert Deborah E. Harry. Put it in your leases to limit access by a tenant or its auditor to your books and records during an audit. This clause is similar to a percentage rent audit clause, which requires a retail tenant to make certain records available to you.

Paragraph a lists the books and records that you must make available for review to a tenant or its auditor during an audit. Paragraph b lists books and records that the tenant may not review during an audit, including any item not listed in Paragraph a. You may need to adapt these lists to fit your situation.

Show this clause to your attorney before using it. **CLLI0033**

BOOKS AND RECORDS

a. Landlord's Books and Records. Landlord shall make available to Tenant or Tenant's lease auditor, the following books and records:

- (i) Operating expense ledger;
- (ii) Reconciliation of operating expense ledger and amount billed as [*Operating Expenses/CAM Costs*];
- (iii) Cash disbursements journals;
- (iv) Accounts payable or distribution journals;
- (v) Journal entries relating to [*Operating Expenses/CAM Costs*], as shall be reasonably requested by Tenant;
- (vi) Accounts payable and accruals;
- (vii) Copies of paid real estate property tax bills;
- (viii) Vendor paid bills;
- (ix) Vendor contracts;
- (x) Management agreement and calculations of management fees;
- (xi) Calculations of Tenant's Rent increase based on CPI or porter's wage;
- (xii) Gross-up calculations, if applicable;
- (xiii) Work order tickets;
- (xiv) Paid and outstanding billings to Tenant;
- (xv) Pending and received recoveries from insurers, vendors, others;
- (xvi) Documentation regarding insurance claims;
- (xvii) Occupancy records, if applicable;
- (xviii) Sub-metering records, if applicable;
- (xix) HVAC overtime records;
- (xx) Payroll records, limited to the following:
 - (A) Census of number of employees by category (*e.g.*, maintenance, janitorial, security, administrative, and building engineers);
 - (B) Allocation to other properties or to departments not included in [*Operating Expenses/CAM Costs*];
 - (C) Total annual compensation by category; and
 - (D) Report (from the payroll service bureau) of the final payroll period of the year, with a reconciliation due to employee turnover, change in number of personnel per department, and change in rates;
- (xxi) Identification of electrical meters;
- (xxii) Method and details for expense allocations;
- (xxiii) Method of space measurement;
- (xxiv) Copies of reports of independent CPAs, if applicable; and
- (xxv) 'As built' plans.

b. Excluded Books and Records. Tenant acknowledges and agrees that neither Tenant nor Tenant's lease auditor shall have the right to review any income tax returns of Landlord, leases of other tenants in the [*Building/Center*], and books or records not listed in Paragraph a hereof.