

MODEL LEASE CLAUSE

Add Capital Replacements Language to Operating Expense/CAM Cost Clause

The following clause was drafted with the help of San Francisco attorney Richard C. Mallory and New Jersey attorney Marc L. Ripp. Put it in your operating expense/CAM cost clause to get certain rights and protections if you must make capital replacements at your building or center, including the right to pass through the cost of legally required, cost-saving, or securi-

ty-related capital replacements plus interest. You will need to define “Building System” or “Center System,” whichever is used, elsewhere in the lease.

Show this clause to an attorney in your area before putting it into your lease.

CAPITAL EXPENDITURES

a. Capital Expenditures. *[Operating Expenses/CAM Costs]* shall not include expenditures of a capital nature for the replacement of the *[Building's/Center's]* structural components, except to the extent that such expenditures are Pass-Through Capital Replacement Expenditures, as defined in Paragraph b hereof.

b. Pass-Through Capital Replacement Expenditures. For purposes of this Clause, “Pass-Through Capital Replacement Expenditures” shall mean those expenditures:

- (i) Required under any legal requirement or governmental law or regulation in effect after the date hereof;
- (ii) Intended to cause a reduction in any item of *[Operating Expenses/CAM Costs]* or improve the utility, efficiency, or capacity of any *[Building/Center]* System; or
- (iii) Necessary, in Landlord's sole discretion, to enhance the security systems and improve the security measures at the *[Building/Center]*.

c. Landlord's Determinations. Landlord shall determine, in its sole and absolute discretion, whether an expenditure:

- (i) Is of a capital nature;
- (ii) Funds a replacement of the *[Building's/Center's]* structural components; and
- (iii) Is a Pass-Through Capital Replacement Expenditure.

d. Amortization of Pass-Through Capital Replacement Expenditures. Tenant and Landlord agree that Pass-Through Capital Replacement Expenditures shall be deemed *[Operating Expenses/CAM Costs]*. Landlord shall amortize on a straight-line basis over the useful life (as determined by Landlord, in its sole and absolute discretion) of the work funded by the Pass-Through Capital Replacement Expenditures. Tenant shall pay Landlord, during the calendar year of the Lease in which such work is commenced and in each subsequent calendar year of the Lease, an amount equal to:

- (i) Tenant's Proportionate Share of such amortized cost of performing the work funded by the Pass-Through Capital Replacement Expenditures; and
- (ii) Interest at an annual rate equal to the floating commercial loan rate announced from time to time by *[insert name of bank, e.g., Bank of America]*, or its successor, as its prime rate, plus *[insert amount, e.g., two hundred (200) basis points]* per annum on the unamortized cost of performing such work.

e. Expenditures Necessitated by Tenant's Acts, Omissions. If, however, any expenditure of a capital nature, including, but not limited to, the Pass-Through Capital Replacement Expenditures, is, in Landlord's sole and absolute discretion, necessitated by Tenant's acts or omissions, then Landlord shall perform the repair, replacement, or improvement work at Tenant's sole expense and the amounts payable from Tenant to Landlord therefor shall be deemed Additional Rent and shall be due in full upon Landlord's demand.