

**MODEL LEASE
CLAUSE****Impose Cost Cap, Other Protections to
Limit Lease Takeover Risks**

If you want to bring in an attractive business that's currently in a lease at another location, you might consider agreeing to pay for that tenant's remaining obligations under that lease. Taking over a lease may make financial sense, provided that you don't end up getting saddled with additional costs that you don't foresee. The good news is that you can structure a takeover arrangement that minimizes these risks via the inclusion of a cost cap and other lease protections. Here's a Model Lease Clause drafted and used successfully by a Colorado attorney that you can adapt, with the help of counsel, to your own situation and needs.

LANDLORD'S TAKEOVER OF TENANT'S CURRENT LEASE

- a. Tenant Representations and Warranties.** Tenant represents and warrants to Landlord that attached hereto as Exhibit A and incorporated herein by this reference is a true, complete, and accurate copy of a lease ("Tenant's Current Lease") executed on _____, between Tenant as lessee and _____ as lessor. Tenant further represents and warrants to Landlord that Tenant's Current Lease has not been amended or modified in any respect from that shown in Exhibit A, that the current monthly rent payable under Tenant's Current Lease is \$____ per month, that Tenant is not in default of any of its obligations thereunder, that the lessor under said lease is not in default thereunder, and that no deposits or prepayments have been paid to the lessor in excess of the \$____ security deposit described therein.
- b. Tenant's Continuing Liability.** Tenant agrees that notwithstanding any provision of this Article to the contrary, Tenant does and shall remain liable for all obligations of the lessee under Tenant's Current Lease that have arisen or will arise at any time and that no conduct of Landlord under this Article, or the execution of this Lease by Landlord, shall constitute an assignment to or assumption by Landlord of any obligation of Tenant under Tenant's Current Lease, or impose any liability upon Landlord in favor of the lessor under Tenant's Current Lease.
- c. Communications under Tenant's Current Lease.** Tenant agrees that it shall immediately deliver to Landlord a copy of any communication Tenant receives from the lessor under Tenant's Current Lease.
- d. Special Default Provision.** Tenant acknowledges that all of the representations and warranties being made by it under this Article are material inducements to Landlord's execution of this Lease, and that therefore a breach by Tenant of any such representations and warranties, or any breach by Tenant of its obligations under Tenant's Current Lease, shall be deemed a material default by Tenant under this Lease. The indemnity provisions of Article __ of this Lease shall specifically, but not by way of limitation, be deemed to apply to any claims, liabilities, costs, and expenses (including attorney's fees) that may be incurred by Landlord as a result of Tenant's default described in the preceding sentence, and/or as a result of claims asserted by the lessor against Landlord relating in any way to Tenant's Current Lease.
- e. Landlord's Monetary Obligations.** So long as Tenant is in full compliance with its obligations under the Lease and is in full compliance with its obligations under Tenant's Current Lease, Landlord shall pay to Tenant on a monthly basis, commencing on _____ and continuing through _____, and subject to the provisions of this Article, the sum of \$____ to be used solely by Tenant toward satisfying its monthly obligations to the lessor under Tenant's Current Lease (with the understanding that the lessor of Tenant's Current Lease is not a third-party beneficiary of this Article). Any additional obligations owing by Tenant as lessee under Tenant's Current Lease shall be the sole responsibility of Tenant, and in the event that in any month the amount paid by Landlord exceeds for any reason the amount then due for the month by Tenant as lessee under Tenant's Current Lease, Tenant shall immediately refund to Landlord such excess amount. Upon Landlord's request from time to time, Tenant shall give evidence satisfactory to Landlord of all sums paid by

Tenant to the lessor of Tenant's Current Lease. Tenant shall agree to no amendment, modification, or other change to any of the terms and provisions of Tenant's Current Lease without first securing the prior written consent of Landlord, and Tenant shall not exercise any option to renew, extend, or expand under Tenant's Current Lease without first securing Landlord's prior written consent.

Tenant acknowledges that the nature and extent of its financial obligations under Tenant's Current Lease are material to Landlord and that therefore any approvals Tenant seeks to obtain under this Article from Landlord may be withheld by Landlord in its sole and arbitrary discretion. Tenant and Landlord acknowledge and agree that the sole intent of the payments to be made to Tenant under this Article is to provide Tenant with funds to pay some of its obligations as lessee under Tenant's Current Lease, and not to provide Tenant with funds to be used for any other purpose, and all provisions of this Article shall be construed to give effect to such intent.

- f. Assignment, Sublease, or Termination of Tenant's Current Lease.** At the discretion and request of Landlord at any time and from time to time for as long as Landlord has any obligation to make payments to Tenant under the preceding subsection d, Tenant agrees that it shall:
- (i) reasonably cooperate with Landlord to secure the agreement of the lessor under Tenant's Current Lease to consent to the termination of such lease and release of Tenant's liabilities thereunder in consideration for the prepayment to lessor of such amount as Landlord determines in its sole discretion; and
 - (ii) reasonably cooperate with Landlord to enter into one or more assignments or subleases of Tenant's Current Lease to a party deemed suitable by Landlord, and to reasonably attempt to obtain the lessor's consent thereto as may be required under the terms of Tenant's Current Lease.

Landlord agrees that in connection with obtaining approval of any such assignment or sublease of Tenant's Current Lease by the lessor thereunder, Landlord shall pay any approved leasing commission Tenant shall execute such form of assignment or sublease for Tenant's Current Lease as may be prepared by Landlord and approved by the lessor under Tenant's Current Lease, provided that the assignment or sublease does not impose any additional material obligations on Tenant. Tenant agrees that all consideration received by Tenant as assignor or sublessor shall be immediately paid to Landlord.

- g. Additional Rent.** Tenant and Landlord agree that all payments to be made by Tenant to Landlord under this Article are to be deemed additional rent due from Tenant under this Lease.