

**MODEL LEASE
CLAUSE****Get Tenant's Agreement to Make Required Representations in Estoppel Certificate**

A tenant's unwillingness to sign an estoppel certificate demanded by a prospective purchaser or lender can destroy a landlord's efforts to sell or obtain financing on the building. The best way to minimize these risks is by addressing a tenant's concerns proactively before you even enter into any purchase or finance agreements. How? By including a clause in the lease that requires the tenant to sign an estoppel certificate within 10 days and lists the specific items or "representations" such a document will likely include.

Here's a Model Lease Clause that provides for 22 common representations, including a catchall providing for additional information that you may reasonably request. Speak to your attorney about adapting this clause to your own situation. Thus, for example, if you're in a strong bargaining position, you may want to consider adding teeth to the clause by providing for liquidated damages for each day past the 10-day deadline the tenant fails to sign or even by having the tenant give you power of attorney to sign the estoppel certificate on its behalf.

ESTOPPEL CERTIFICATE

Tenant shall within no more than ten (10) days after receipt of written request by Landlord furnish to Landlord a duly acknowledged estoppel certificate certifying the veracity of and affirming any or all of the following information as of the date of execution of said estoppel certificate:

- a. Date of Lease and Description of Space.** That Tenant executed and exchanged the Lease with Landlord dated *[insert date]* (a copy of the Lease along with any amendments and/or modifications may be required as an exhibit to the estoppel certificate) covering the Premises, as shown crosshatched on the plan annexed hereto as Schedule ___ in the Building located at *[insert address of building]*.
- b. Lease in Full Force and Effect.** That the Lease consisting of ___ pages, plus Exhibit X (___ pages), is in full force and effect and has not been modified, amended, altered, or changed in any respect, or if it has been modified, amended, altered, or changed in any respect, Tenant shall certify as true the terms, dates, and number of pages of each such modification, amendment, alteration, or change.
- c. Commencement and Termination Dates.** That the Lease term commenced on *[insert date lease term commenced]* ("Lease Commencement Date"), that the rent commencement date, if different from the Lease Commencement Date, is *[insert date of rent commencement]* ("Rent Commencement Date"), and that the Lease term shall expire on *[insert date of lease expiration]*.
- d. Tenant Renewal or Extension Options.** Whether Tenant has any option(s) to renew or extend the Lease term. In the event that Tenant has any such option(s), Tenant shall certify as true the terms of such option(s) and whether any option has been exercised and the date(s) of exercise.
- e. Other Tenant Options and Rights.** Whether Tenant has any option(s), right(s) of first refusal, or right(s) of first offer to expand the Premises or purchase the Building. In the event that Tenant has any such option(s) or right(s), Tenant shall certify as true the terms of such option(s) or right(s) and whether any such right or option has been exercised and the date of exercise.
- f. Tenant in Possession.** Whether Tenant has accepted and is now in full possession of the Premises and is paying full rent under the Lease, or if Tenant is not in full possession, whether Tenant has assigned the Lease, sublet all or any portion of the Premises, or otherwise transferred any interest in the Lease or Premises. Tenant agrees to provide a copy of such assignment, sublet, or transfer upon request.
- g. Current Minimum Rent.** The current *[select one of the following: monthly or annual]* Minimum Rent payable under the Lease, the current *[select one of the following: monthly or annual]* Additional Rent, and the date to which the Minimum Rent and all Additional Rent and other charges required to be paid under the Lease have been paid.
- h. No Prepaid Rent.** That no Minimum Rent or Additional Rent under the Lease has been paid for more than thirty (30) days in advance of its due date.
- i. Rent Concessions.** Whether Tenant is currently receiving any rental concessions, rebates, or abatements; and if so,

the terms of such concessions, rebates, or abatements, including, without limitation, the date when the concession, rebate, or abatement shall expire. Tenant shall also confirm whether it is entitled to any future rent concessions, rebates, or abatements under the Lease and if so, the terms of the future concessions, rebates, or abatements.

- j. Alterations Are Complete.** That all alterations, improvements, additions, buildouts, or construction required to be performed under the Lease have been fully and adequately completed in accordance with the plans and specifications in the [select one of the following: Lease or Work Letter] attached to the Lease as Exhibit X.
- k. No Landlord Defaults.** That there are no defaults existing under the Lease by the Landlord and that no circumstances currently exist that would constitute a default solely upon the service of notice or the passage of time, and that there is no existing basis for Tenant to cancel the Lease or exercise any other remedies available to it by virtue of a default by Landlord.
- l. Tenant Has No Claims or Defenses.** That there are currently no valid defenses, counterclaims, offsets, credits, deductions in rent, or claims against the enforcement of any of the agreements, terms, or conditions of the Lease.
- m. No Material Adverse Change in Tenant's Financial Condition.** That there has been no material adverse change in Tenant's financial condition between the date of the execution of the Lease and the date hereof.
- n. No Pending or Imminent Bankruptcy.** That there are currently no bankruptcy or reorganization actions, whether voluntary or involuntary, pending against the Tenant under the Bankruptcy Laws of the United States or any state thereof or any imminently contemplated plans to seek bankruptcy protection.
- o. Tenant's Claims Are Subordinate.** Either or both of the following:

 - i.** That any disputes with Landlord giving rise to claims against Landlord are claims under the Lease only and are subordinate to the rights of the holder of any superior mortgage or ground lease and shall be subject to all of the terms, conditions, and provisions thereof.
 - ii.** That any disputes with Landlord giving rise to claims against Landlord are claims under the Lease only and are subordinate to the rights of any purchase pursuant to any contract of sale, and any such claims are not offsets to or defenses against enforcement of the Lease.
- p. Purchaser or Lender Not Responsible for Landlord Violations.** That any claims relating to matters currently in existence which were known to, or which are readily ascertainable by, Tenant shall be enforced solely by money judgment and/or specific performance against the Landlord named in the Lease and may not be enforced as an offset to or defense against enforcement of this Lease.
- q. Tenant Acknowledgement of Prospective Sale/Financing.** Either or both of the following:

 - i.** Tenant acknowledges that Landlord has informed Tenant that Landlord has entered into a contract to sell the Building to a purchaser and that no modification, revision, or cancellation of the written Lease or amendments thereto shall be effective unless a written consent thereto from the purchaser is first obtained.
 - ii.** Tenant acknowledges that Landlord has informed Tenant that an assignment of Landlord's interest in the lease has been or will be made to a mortgagee, and that no modification, revision, or cancellation of the Lease or amendments thereto shall be effective unless a written consent thereto from the mortgagee is first obtained.
- r. Estoppel Certificate Is Inducement.** That Tenant acknowledges that the estoppel certificate is made to induce a purchaser to consummate a purchase of the Building and/or to induce a mortgagee to make and maintain a mortgage loan secured by the Building, as the case may be, knowing that said purchaser or mortgagee, as applicable, shall rely upon the truth of the estoppel certificate in making and/or maintaining such purchase and/or mortgage, as applicable.
- s. Authorization of Signer.** That the person who signs the estoppel certificate on behalf of Tenant is a duly authorized agent of Tenant.
- t. Other Information Requested.** Any other information reasonably requested by Landlord.