

**MODEL LEASE
CLAUSE**

Consider Cumulative Rather than Traditional Month-by-Month Percentage Rent

The traditional method of calculating percentage rent on a month-by-month basis may cause cash flow problems for tenants whose sales fluctuate in the course of a year. These cash flow issues may also bounce back on you to the extent you must refund percentage rent overpayments at the end of the lease year. You may be able to resolve these problems, without reducing percentage rent revenues, by calculating monthly percentage rent on a cumulative basis. Here's a Model Lease Clause you can use to establish a cumulative percentage rent arrangement. Talk to your attorney about adapting it to your own unique situation.

PERCENTAGE RENT

- a. **Amount of Percentage Rent:** Tenant shall pay to Landlord, as Percentage Rent, the amount, if any, by which __ percent (__%) of Gross Revenue for each Rental Year exceeds the Minimum Rent that is payable for the Rental Year.
- b. **Payable Monthly:** Percentage Rent is payable monthly at Landlord's head office, or at any other place designated by Landlord, without demand, and without deduction, abatement, set-off, or compensation.
- c. **Due Date:** The first payment of Percentage Rent is due on the tenth (10th) day after the end of each calendar month of the Term, as well as the tenth (10th) day of the calendar month immediately following the end of the Term.
- d. **Payment Calculation:** The amount of each payment of Percentage Rent shall be equal to the excess, if any, obtained by:
 - (i) applying the percentage referred to in paragraph a above to the total stated Gross Revenue for all preceding calendar months of the Rental Year, and
 - (ii) deducting from that percentage the sum of all payments of Minimum Rent made in those months and any payments of Percentage Rent made in those months.
- e. **Reconciliation:** In the event that the Annual Statement furnished by Tenant at the end of a Rental Year discloses that the total Percentage Rent paid by Tenant for the Rental Year exceeds or is exceeded by the total Percentage Rent payable by Tenant for the Rental Year, then Tenant shall pay any deficiency at the same time it furnishes the Annual Statement, or Landlord shall pay any excess due to Tenant within __ days after receiving Tenant's Annual Statement, provided that Tenant is not then in default under any term or condition of the Lease.