

MODEL LEASE CLAUSE

Establish Conditions for Financing Tenant Improvements

This Model Lease Clause is landlord-friendly and may have to be modified if you lack the bargaining leverage to command as-is, TIA payment-at-lease-commencement, and other favorable provisions. In any event, make sure you review the clause with your attorney to ensure it's right for your particular deal and situation.

IMPROVEMENT ALLOWANCE

Landlord shall lend to Tenant the sum of \$[insert amt.] to be used solely, and for no other reason, as an allowance for making improvements to the Premises ("Improvement Allowance") to prepare the Premises for Tenant's initial occupancy (the "Initial Alterations"), the nature and location of which are more fully described in Attachment A hereto, in accordance with the following terms and conditions.

- 1. Time of Payment.** Subject to the conditions set forth in Section 2 below, Landlord's disbursement of the Improvement Allowance shall be made within twenty (20) days after the latest of:
 - (i) Completion of the Initial Alterations, and Tenant's acquisition, at its sole cost and expense, of an unconditional, permanent Certificate of Occupancy;
 - (ii) Commencement of the Lease Term.

Tenant shall provide Landlord written request of the Improvement Payment no later than [list deadline] before such payment is due. Tenant's failure to provide such notice will result in waiver of its right to receive the payment, provided that Landlord gives Tenant written notification reminding Tenant of the request deadline date no later than 30 days before its scheduled occurrence.

- 2. Conditions of Payment.** Landlord's obligation to pay the Tenant the Improvement Allowance is conditional upon the Landlord's determination, in its sole discretion, that all of the following conditions and requirements have been met:
 - (i) Tenant has not defaulted in performing any of its obligations under this Lease;
 - (ii) Tenant furnishes to Landlord all documents and information required by Landlord to evidence the completion of, and payment for, the Initial Alterations in accordance with the terms of this Lease, including, but not limited to, bills, cancelled checks, and receipts;
 - (iii) Tenant furnishes to Landlord lien waivers and releases, in form and substance satisfactory to Landlord, from all contractors, subcontractors, vendors, and materialmen who have worked on, or provided materials for, Tenant's Initial Alterations;
 - (iv) The Initial Alterations have been completed within [insert #, e.g., six (6)] months of the Commencement Date, TIME BEING OF THE ESSENCE;
 - (v) Tenant furnishes to Landlord all "sign-offs," letters of completion, certificates, permits (including equipment use permits), and approvals required by law

in connection with the Initial Alterations and any equipment installed by Tenant;

- (vi) Tenant furnishes to Landlord "as built" plans and specifications covering the Initial Alterations; and
- (vii) Tenant furnishes to Landlord a written confirmation that acknowledges Tenant's acceptance of the Initial Alterations in their "as-is" physical condition.

3. Tenant's Use of Improvement Allowance

- (i) Tenant may use the proceeds of the Improvement Allowance toward the cost of Initial Alterations. Such costs shall include "hard" construction costs for labor and materials (Hard Costs) and "soft" construction costs, such as architectural fees, engineering fees, design fees, consultant fees and filing fees (Soft Costs). Notwithstanding the foregoing, Landlord shall not be required to contribute toward Soft Costs an amount in excess of [insert %, e.g., ten percent (10%)] of the Improvement Allowance amount.
- (ii) No portion of the Improvement Allowance may be applied toward the cost of Tenant's personal property or equipment, including, without limitation, furniture, computers, or other equipment.

4. Tenant's Obligation to Repay Improvement Allowance.

Tenant's repayment of the Improvement Allowance shall be made to Landlord in equal, constant monthly installments of \$[insert amt.], on the first day of each month, for the entire Lease Term. Landlord and Tenant hereby agree that all unpaid amounts of the Improvement Allowance are Base Rent (as that term is defined elsewhere in this Lease). Nothing herein obligates Landlord to increase the amount of the Improvement Allowance in the event that the actual costs of the Initial Alterations exceed the Improvement Allowance amount, in which case, Tenant shall be solely responsible for completing the Initial Alterations at its sole expense. In the event that the Improvement Allowance exceeds the actual costs of the Initial Alterations, that excess shall be deemed the property of Landlord and Tenant shall promptly refund the excess amount to Landlord that it has received.

- 5. Improvements.** Tenant shall have the right to choose the contractor to carry out the Initial Alterations, provided that Landlord approves the contractor in writing, which approval shall not be unreasonably withheld. All plans, drawings, and specifications for the Initial Alterations

(continued on p. 2)

IMPROVEMENT ALLOWANCE (continued)

must be approved in writing by Landlord prior to the commencement of the work. Tenant warrants that all work, materials, and labor used for the Initial Alterations shall meet [*list specific construction quality standards*]. Tenant agrees to commence the work promptly upon Landlord's approval of such plans, drawings, and specifications. Upon completion of the work, Tenant shall submit to Landlord a written invoice accompanied by waivers of all contractors,' subcontractors,' mechanics,' and material-men's liens.

6. Effect of Opening for Business. By opening for business, Tenant shall be deemed to have:

- (i) Accepted the Premises;
- (ii) Acknowledged that the Premises are in the condition required under the Lease; and
- (iii) Agreed that the obligations of the Landlord imposed hereunder have been fully performed.

7. Mechanic's Liens. Work performed for the Initial Alterations shall not in any way be deemed to be for the immediate use and benefit of Landlord so that no mechanic's or other lien shall be allowed against the estate of Landlord by reason of any consent given by Landlord to Tenant to improve the Premises. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor or subcontractors on or about the Premises. In the event any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record or bonded to the satisfaction of Landlord. Failure by Tenant to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord including reasonable attorney's fees incurred by Landlord either defending against such lien or in procuring the discharge of such lien, together with interest thereon at the Default Rate, shall be due and payable immediately by Tenant to Landlord as Additional Rent.

8. Remedies. Notwithstanding anything contained herein to the contrary, if Tenant fails to pay Landlord any monthly installment of the Improvement Allowance in a timely manner, such nonpayment of Base Rent shall constitute a material, monetary event of default for which Landlord may, at its option, exercise any or all of its remedies at law, in equity or under this Lease, including, but not limited to, the right to:

- (i) Demand that the remaining unpaid balance of the Improvement Allowance become immediately due and payable;

- (ii) Revoke, withdraw, or cancel all or any options, privileges, concessions, rights, or accommodations provided to Tenant under this Lease;

- (iii) Increase all late fees by [*insert #, e.g., two hundred (200)*] percent; and

- (iv) Reduce by [*insert #, e.g., three (3)*] days all of Tenant's grace and cure periods measured in calendar days, and reduce by [*insert #, e.g., two (2)*] business days all of Tenant's grace and cure periods measured in business days

9. Landlord's Security Interest. Tenant shall execute on the date hereof a security agreement in the form attached hereto as Exhibit [*insert #*] whereby Tenant shall grant to Landlord a security interest in all goods, inventory, equipment, fixtures, and other personal property belonging to Tenant that are placed in or on the Premises during the Lease Term and all proceeds of the foregoing. Tenant shall execute any and all additional documents necessary to preserve Landlord's security interest, including any and all UCC-1 Continuations prior to the expiration date of the previous UCC-1. Tenant shall pay all filing and administrative costs related to Landlord's security interest. The security interest shall be used to secure Tenant's obligation to repay the Improvement Allowance as well as rent and other damages, penalties, or amounts for which Tenant is responsible under the Lease. Upon Tenant's default, Landlord shall have all the remedies available under the laws of the State, including, but not limited to, the right to take possession of the above mentioned property, without liability for trespass or conversion, and sell the same at public or private sale, after giving Tenant reasonable notice at Tenant's last known address of the time and place of any public sale, or of the time after which any private sale is to be made, at which sale the Landlord or its assigns may purchase it. The proceeds from any such disposition, less any and all expenses conducted with the taking of possession, holding and selling of the property, shall be applied as a credit against the indebtedness secured by the security interest granted in this Section.

10. Personal Guaranty. Tenant's principal(s) shall execute a personal guaranty in the form attached hereto as Exhibit [*insert #*] evidencing its obligation to repay the full amount of the Improvement Allowance.

11. Surrender of Initial Alterations. All of the Initial Alterations, including any replacements thereof or additions thereto, including but not limited to any heating, ventilation, and air-conditioning systems, shall become the property of Landlord and shall remain upon, and be surrendered with, the Premises as a part thereof upon the termination or conclusion of this Lease, without compensation to Tenant.