

MODEL LEASE CLAUSE

Get Remedies in Case Percentage Rent Falls Below Expectations

Don't get locked into a long-term lease with a tenant that fails to pay the percentage rent you expected when you negotiated the lease. Here's a Model Lease Clause you can use to get out of the lease or at least increase the fixed rent to the levels you anticipated receiving with tenants whose percentage rents fall short of a make-or-break target amount over a stated test period. Speak to your attorney about adapting this language to your own specific needs and situation.

MINIMUM PERCENTAGE RENT

- a. Termination for Percentage Rent Deficiency.** In the event that the Percentage Rent payable by Tenant for the first *[insert # of years of test period]* years of the term of this Lease amounts to less than *[insert make-or-break amount percentage]* percent of the Fixed Rent payable by Tenant for such period, then within six (6) months after the expiration of said period, Landlord shall have the right to terminate this Lease by giving Tenant ninety (90) days of prior written notice.
- b. Percentage Rent Deficiency Paid.** Such notice of Lease termination shall be ineffective if Tenant, within fifteen (15) days after receipt of Landlord's notice, pays to Landlord the amount of such deficiency (the "Percentage Rent Deficiency") and, at the same time, agrees in writing to increase the annual Fixed Rent, as provided in paragraph c. below.
- c. Increased Fixed Rent in Lieu of Percentage Rent.** Simultaneously with the payment of the Percentage Rent Deficiency, Tenant shall agree in writing to increase the annual Fixed Rent by *[insert make-or-break amount percentage]* percent (the "Increased Fixed Rent"), in lieu of paying any Percentage Rent. Tenant shall pay such Increased Fixed Rent from *[insert the date that the test period expires]* until the date that this Lease expires.
- d. Additional Rent If Percentage Rent Rises.** In the event that in any lease year in which Increased Fixed Rent is due the sum of the Percentage Rent that would have been payable pursuant to Section ___ of this Lease plus the original Fixed Rent that would have been payable pursuant to Section ___ of this Lease is greater than the Increased Fixed Rent, then Tenant shall also pay Landlord the difference between such sum and the Increased Fixed Rent at the same time and in the same manner as Percentage Rent was due and payable pursuant to Section ___ of this Lease.
- e. No Release of Other Obligations.** Except for the payment of the Increased Fixed Rent, nothing herein shall relieve Tenant from any other obligations set forth in this Lease with respect to percentage rent including, but not limited to, Tenant's duty to report gross sales and Landlord's right to inspect and audit Tenant's records.