

## MODEL LEASE CLAUSE

### Extend Option to Keep or Remove Big Tenant Installations

The following lease clause, which was drafted by New York City attorney Barry Levine, should be used if your tenant makes a big installation—such as an internal staircase or drive-thru window. The clause lets you extend your option of removing the installation, at the tenant’s expense, or keeping the installation until after the lease

ends. This will give you more flexibility when you try to re-let the space. Put this clause in the “Alterations” section of the lease, and insert a cross-reference to it in the “Surrender of Premises” section. Show this clause to your attorney before putting it in your lease.

#### EXTENDED INSTALLATION REMOVAL OPTION

- a. Tenant May Install Installation.** Tenant, at its sole cost and expense, may install *[insert description of installation]* (the “Installation”), in a location to be approved by Landlord, subject to:
1. Landlord’s prior written approval of Tenant’s plans and specifications as prepared by an independent licensed architect at Tenant’s sole cost and expense and in accordance with the terms, covenants, conditions, and provisions of this Lease;
  2. Tenant’s compliance with all federal, state, and local governmental and quasi-governmental requirements including, without limitation, receipt of all necessary permits and licenses; and
  3. Tenant’s compliance with the terms, covenants, conditions, and provisions of this Lease.
- b. Landlord May Elect to Either Remove or Keep Installation.** Within *[insert #]* days after the expiration or sooner termination date of the Lease Term, Landlord may elect (“Election Right”), by written notice given to Tenant, to either:
1. Retain such Installation as a part of the Premises; or
  2. Remove such Installation and restore the Premises and any other installations appurtenant thereto to their condition existing prior to the installation of the Installation (the “Restoration Work”). Such Restoration Work shall be performed by Landlord at Tenant’s sole cost and expense.
- c. Election Right Survives the Lease Term.** Such Election Right by Landlord shall survive the expiration or sooner termination date of the Lease Term.
- d. Tenant Transfers Clean Title.** In the event Landlord elects to retain the Installation, Tenant covenants that it will be the sole owner of such Installation and will have good right to surrender same. Tenant further covenants that the Installation and all appurtenances thereto will be free of all liens and encumbrances.
- e. Landlord Retains Security Deposit Until Election.** Notwithstanding anything in Article *[insert # of lease’s security deposit article]* to the contrary, Landlord may retain Tenant’s Security Deposit after the expiration or sooner termination of the Lease Term until the earlier of the following events:
1. Landlord elects to retain the Installation pursuant to Section b(1); or
  2. If Landlord elects to restore the Premises pursuant to Section b(2), such Restoration Work is complete and Tenant has fully reimbursed Landlord for all costs related to the Restoration.
- However, if Landlord does not exercise in a timely manner the Election Right pursuant to Section b, then Landlord shall retain such installation as part of the Premises and the Security Deposit shall be returned to Tenant pursuant to Article *[insert # of lease’s security deposit article]*.
- f. Landlord Can Apply Security Deposit.** In the event that Tenant fails or refuses to pay all costs of the Restoration Work within *[insert #]* days of Tenant’s receipt of Landlord’s notice and all invoices, Landlord may apply all or any portion of such Security Deposit toward the payment of such unpaid costs relative to the Restoration Work. In the event that the Security Deposit exceeds the unpaid costs, such excess shall be returned to Tenant pursuant to Article *[insert # of Lease’s security deposit article]*.
- g. No Limit on Right to Sue Tenant.** The retention or application of such Security Deposit by Landlord pursuant to this Section does not constitute a limitation on or waiver of Landlord’s right to seek further remedy under law or equity.