

MODEL LEASE CLAUSE

Set Conditions for Financing Tenant Improvements

Here's a Model Lease Clause, drafted by New York City attorney Nancy Ann Connery, Baltimore attorney Morton P. Fisher Jr., and New Jersey attorney Marc L. Ripp, that you can adapt and use when you provide a tenant improvement allowance (TIA) to a tenant.

Paragraph a says you don't have to start disbursing the TIA to the tenant until after the tenant meets certain conditions. Paragraph b says TIA repayments are considered base rent. Paragraph c lists your remedies if the tenant misses repayments

of the TIA. Paragraph d requires the tenant to sign a separate agreement giving you a security interest in its fixtures and inventory. Paragraph e requires a principal of the tenant to give you a personal guaranty. Paragraph f requires the tenant to give you an additional cash deposit. Paragraph g requires the tenant to pay your legal fees and costs relating to the TIA documentation. (Make sure you define "Law" elsewhere in the lease.)

Show this clause to your attorney before using it. **CLL10094**

IMPROVEMENT ALLOWANCE

- a. Improvement Allowance.** Landlord shall lend Tenant the sum of \$[insert amount] ("Improvement Allowance") to be used solely, and for no other reason, toward the cost of alterations and improvements made by Tenant to the Premises (the nature and location of such alterations and improvements are more fully described in Exhibit [insert #], attached hereto) to prepare the Premises for Tenant's initial occupancy (the "Initial Alterations"). Provided Tenant is not in default hereunder, Landlord's disbursement of the Improvement Allowance to Tenant shall be made within [insert #, e.g., twenty (20)] days after Landlord determines, 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.
- b. Tenant's Repayment of Improvement Allowance.** Tenant's repayment of the Improvement Allowance shall be made to Landlord in equal, constant monthly installments of \$[insert amount], 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).
- c. Remedies.** Notwithstanding anything contained herein to the contrary, if Tenant fails to timely pay Landlord any monthly installment of the Improvement Allowance, then 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.
- d. 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 on or after the

(continued on p. 4)