

MODEL GUARANTY CLAUSE

Guaranty Cap Decreases Only if Certain Conditions Are Met

The following Model Guaranty Clause was drafted by New York City attorney Robert P. Reichman, New Jersey attorney Marc L. Ripp, and Denver attorney Mark A. Senn. Use it if your tenant demands that you cap its guarantor's liability and then decrease the amount of the cap over time.

Paragraph a sets out the terms of the dollar cap. Paragraph b sets out conditions that must be met for a dollar cap decrease to take effect. Paragraph c sets out conditions that must be met for the elimination of the dollar cap. Paragraph d indicates that the guarantor won't be released from obliga-

tions accruing before the dollar cap is eliminated. Make sure you define "Lease" elsewhere in the guaranty. Be aware that the Model Guaranty Clause assumes the dollar cap will decrease twice during the lease term—the first decrease resulting in a one-half reduction in the initial dollar cap and the second decrease resulting in the elimination of the dollar cap. You'll need to revise the clause to fit your situation.

Show this clause to your attorney before requiring the tenant put it into the guaranty. **CLLI0117**

DECREASING DOLLAR CAP

a. Dollar Cap. Guarantor's total monetary liability under this Guaranty will not exceed \$[insert #] ("Dollar Cap"), exclusive of Landlord's costs of collection and attorney's fees, and all of Landlord's costs, liabilities, fines, damages, penalties, judgments, and losses arising from:

- (i) Tenant's default under Clause [insert # of clause discussing tenant's environmental duties and liabilities] of this Lease; or
- (ii) Tenant's negligent or willful misconduct.

b. Decrease in Dollar Cap. If the following three conditions are met, then Guarantor may decrease the Dollar Cap to \$[insert amount that is one-half of initial dollar cap] as of the [insert date, e.g., the first (1st) anniversary] of the Commencement Date (as defined in Clause [insert #] of the Lease):

- (i) Landlord receives from Guarantor a written notice, at least [insert #, e.g., three (3)] months, but not more than [insert #, e.g., six (6)] months, prior to the [insert date, e.g., the first (1st) anniversary] of the Commencement Date, demanding that the Dollar Cap be reduced to \$[insert amount];
- (ii) Guarantor has not defaulted under any term of this Guaranty on or prior to the [insert date, e.g., the first (1st) anniversary] of the Commencement Date; and
- (iii) Tenant has not defaulted under any terms of the Lease on or prior to the [insert date, e.g., the first (1st) anniversary] of the Commencement Date.

c. Elimination of Dollar Cap. If the following three conditions are met, then Guarantor may decrease the Dollar Cap to zero as of the [insert date, e.g., the fifth (5th) anniversary] of the Commencement Date (as such term is defined in the Lease):

- (i) Landlord receives from Guarantor a written notice, at least [insert #, e.g., three (3)] months, but not more than [insert #, e.g., six (6)] months, prior to the [insert date, e.g., the fifth (5th) anniversary] of the Commencement Date, demanding that the Dollar Cap be eliminated;
- (ii) Guarantor has not defaulted under any term of this Guaranty on or prior to the [insert date, e.g., the fifth (5th) anniversary] of the Commencement Date; and
- (iii) Tenant has not defaulted under any term of the Lease on or prior to the [insert date, e.g., the fifth (5th) anniversary] of the Commencement Date.

d. No Release. Neither the decrease in the Dollar Cap in accordance with Paragraph b hereof nor the elimination of the Dollar Cap in accordance with Paragraph c hereof will constitute a release or discharge of Tenant or Guarantor with respect to:

- (i) Any obligation or liability that is outstanding or unsatisfied as of the date of the decrease in the Dollar Cap in accordance with Paragraph b hereof or as of the date of the elimination of the Dollar Cap under Paragraph c hereof, whether such obligation or liability is unbilled or calculated, accrued or incurred under the Guaranty or the Lease, including, but not limited to, the payment as and when due of Base Rent and Additional Rent (as such terms are defined in the Lease) and any other charges and damages payable by Tenant under the Lease; or
- (ii) Guarantor's obligation to pay any and all expenses and fees excluded from the Dollar Cap, as required to be paid by Guarantor under Paragraph a hereof.