

MODEL LEASE CLAUSE

Set Limits on Big Tenant's Flexible Use Clause

The following Model Lease Clause was drafted with the help of Denver attorney Bonnie Larson-de Paz. Put it in the lease of a big tenant that wants a flexible use clause.

Make sure that you define "Governing Documents" elsewhere in the lease. And make sure your lease's def-

inition of "Tenant" includes the tenant's assignees and successors, so that subsequent parties must follow the procedure set out in the clause, too.

Show this clause to an attorney in your area before putting it into your lease.

PERMITTED USE

a. Primary Use. Tenant shall initially open its store for business to the public in the Premises for the primary purpose of [*insert primary purpose, e.g., the retail sale of sporting goods*] (the "Primary Use") and, incidentally, for any other lawful retail use not otherwise prohibited herein. Tenant shall devote at least [*insert # or % of square feet*] of the sales area of the Premises to the Primary Use. Tenant shall not, at any time, use or permit the use of the Premises for any use, sales, or services described in Clause [*insert # of prohibited use clause*] hereof, restricted by the exclusive or prohibited uses listed on Exhibit [*insert #*] attached hereto, or prohibited by the Shopping Center's Governing Documents.

b. Intention to Change Primary Use. If Tenant, or any of its proposed assignees or subtenants, intends to change the Primary Use of the Premises, Tenant shall give Landlord notice, in writing, of its desire to change the Primary Use ("Tenant's Notice") at least [*insert #, e.g., thirty (30)*] days prior to the effective date of such change. Landlord shall have the option to terminate this Lease, which option shall be exercisable by giving written notice thereof to Tenant within [*insert #, e.g., thirty (30)*] days of receiving Tenant's Notice, or at any time if Tenant changes its Primary Use without notice to Landlord. If Landlord timely exercises its right to terminate the Lease, this Lease shall terminate upon the [*insert #, e.g., sixtieth (60th)*] day (the "Termination Date") after the date on which Tenant receives Landlord's termination notice, as if the Termination Date was originally set forth herein as the expiration date of the Term.

c. Tenant's Right to Nullify Use Change. Notwithstanding anything to the contrary set forth herein, if Landlord elects to terminate the Lease after receipt of a requested change in the Primary Use from Tenant, Tenant shall have the right within [*insert #, e.g., thirty (30)*] days after the date of Landlord's termination notice to nullify Landlord's termination notice by notifying Landlord in writing that it has withdrawn its request to change the Primary Use of the Premises.