

MODEL LEASE CLAUSES

Spell Out Required Books and Records

You can use the following audit clauses, provided by Kenneth S. Lamy, an international financial management consultant and president of Louisiana-based The Lamy Group, to get the right to audit your percentage rent tenant's books and records. Check with your attorney before adapting these provisions for your lease.

CLAUSE I: TENANT RECORDS

- a. Records Tenant Must Keep.** Tenant covenants and agrees that it shall prepare, keep, maintain, and preserve (and shall cause all subtenants, concessionaires, and licensees to prepare, keep, maintain, and preserve) complete, full, and accurate books of account, documents, and records, in accordance with generally accepted accounting practices, from which Gross Sales can be determined for each Lease Year or fraction thereof. The foregoing books, documents, and records so required to be prepared, kept, maintained, and preserved shall include, but not be limited to, the following books, documents, and records (collectively, the "Records"):
- i. Financial journals and sales summary records;
 - ii. General ledgers;
 - iii. Daily dated cash register tapes;
 - iv. Daily dated cash register summary tapes ("Z" tapes);
 - v. Prenumbered sales slips, including those for mail or telephone orders;
 - vi. Daily sales and/or point-of-sale (POS) reports;
 - vii. Financial statements;
 - viii. Bank statements;
 - ix. Records of daily bank deposits from transactions at or from the Premises;
 - x. Duplicate validated bank deposit slips;
 - xi. Purchase invoices;
 - xii. Inventory and receiving records;
 - xiii. Pricing schedules or other materials showing price markups;
 - xiv. Federal, state, and local income tax returns;
 - xv. State and local sales tax reports;
 - xvi. Settlement statements of transactions with subtenants, concessionaires, and licensees;
 - xvii. All materials necessary to document permitted exclusions or deductions from Gross Sales, as provided in Paragraph [*insert # of deductions/exclusion clause*] including, without limitation, [*insert specific list, e.g., records showing that returned merchandise was bought at space, bounced checks, proof of purchases by Tenant's employees*]; and
 - xviii. Any and all records that may be examined or required by an independent accountant in performing an audit of Tenant's Gross Sales or which may be requested by Landlord or its representatives.
- b. Retain Documents.** All of the Records shall be kept in the Premises or in Tenant's main office for a period of at least [*insert #, e.g., three (3)*] years after the expiration of each Lease Year or Partial Lease Year, and the Records shall be conveniently segregated from all of Tenant's other business material.

CLAUSE II: RIGHT TO AUDIT TENANT RECORDS

- a. **Right to Audit.** Landlord shall have the right from time to time to audit through its accountants or representatives all statements of Gross Sales of Tenant and/or its subtenant, licensee, or concessionaire, and in connection with such audits to examine the Records (as defined in Clause [insert # of tenant records clause] hereof), and Tenant shall make or cause to be made the Records readily available for such examination.
- b. **Right to Review Records of Tenant's Other Stores.** In connection with the audit, Landlord or its representative will have the right to inspect the Records from any other store operated by Tenant, but only if such inspection is reasonably necessary to verify Tenant's reportable Gross Sales.
- c. **Right to Copy Tenant's Records.** Landlord or its representatives shall have the right to copy any and all Records of Tenant supporting their examination of Gross Sales.
- d. **Tenant Must Reconstruct Insufficient Documentation.**
 - (i) If upon examination or audit Landlord's accountant or representative determines that sufficient documentation is not maintained, retained, recorded, or available to verify Tenant's actual Gross Sales, Tenant shall pay for the cost of such visit and, in addition, should Landlord deem it necessary, Tenant shall reconstruct, at its sole cost and expense, all Records for the determination of Gross Sales of Tenant for any period being audited.
 - (ii) If, in Landlord's determination, Tenant fails to reconstruct all Records in accordance with Paragraph d(i) above, then in addition to any remedies under this Lease or at law, Landlord shall be entitled to collect as Additional Rent an amount equal to [insert #] percent of the Annual Minimum Rent payable by Tenant during the period in question.
- e. **If Gross Sales Are Underreported.** If any such audit discloses that the actual Gross Sales exceed those reported:
 - (i) Tenant shall forthwith pay the cost of such audit and percentage rent due, if any, along with interest charges at [insert #] percent or the maximum rate allowed by law if such rate is lower than the set percentage; and
 - (ii) Landlord shall have, in addition to the foregoing rights to costs and any other rights and remedies available to Landlord under this Lease or at law, the right to terminate this Lease, if such audit discloses that said Gross Sales exceeded those reported by more than [insert #, e.g., 3] percent.
- f. **If Gross Sales Are Overreported.** If Tenant overreports its Gross Sales and is due a refund, Tenant will be granted a credit toward future rents after deducting the cost of the audit.
- g. **Subtenant's Records.** If Tenant subleases, licenses, or in any manner allows the Premises to be used by another party (the "Subtenant"), Tenant is responsible for ensuring that the Subtenant's Records conform to the requirements of this Lease. The failure of Subtenant to maintain its Records as required under this lease, or correctly report gross sales, will be deemed a failure on the part of Tenant to conform to the requirements of this Lease and shall subject Tenant to the remedies set forth in Paragraph (e) hereof.