

MODEL LEASE CLAUSE

Require Tenant to Get Pollution Legal Liability Insurance

The following clause requiring a tenant to get environmental insurance was drafted by Connecticut environmental attorneys Andrew N. Davis and Catherine K. Lin. It's intended for a building or center that's on a site that's believed to be free from preexisting contamination. Add it to the insurance section of a lease you sign with a tenant that uses hazardous materials.

Paragraph a requires the tenant to get an environmental

insurance policy. Paragraph b sets out the scope of the policy. Paragraph c says that the tenant isn't released from indemnifying you under the lease. (You'll have to define "Environmental Laws" and "Hazardous Materials" elsewhere in the lease.)

Show this clause to your attorney so the language can be tailored to your property condition, business objectives, and negotiation strategies before putting it in your leases.

ENVIRONMENTAL INSURANCE

a. PLL insurance policy. Tenant shall, at its sole cost and expense, but subject to Landlord's prior review and approval:

- (i) Obtain on or before the Effective Date of this Lease, a PLL insurance policy (the "Policy") with respect to the Premises covering both preexisting and new environmental conditions; and
- (ii) Maintain in effect (including, without limitation, paying all premiums, deductibles, environmental testing costs required by the insurer, and policy renewals costs in a timely manner, as well as complying with all insurer notification and information disclosure requirements) the Policy until the later of:
 - (A) [insert # of days, e.g., 90] days after the expiration or earlier termination of this Lease; or
 - (B) [insert # of days, e.g., 90] days after the completion of the investigation or remediation, to the satisfaction of government authority with jurisdiction over the Premises, of the environmental condition(s) arising from Tenant's business or operations at the Premises, in the event that such investigation or remediation was not completed prior to the termination of the Lease.

Tenant's failure to so obtain or maintain the Policy shall be deemed an Event of Default under Clause [insert #] of this Lease.

b. Scope of Policy. The scope of coverage of the Policy shall include, but not be limited to:

- (i) Pollution legal liability (including all defense costs) arising from or related to, with respect to both preexisting and new environmental conditions:
 - (A) Claims by any person for personal injury (including, without limitation, claims of emotional distress or fear of cancer) or property damage; and
 - (B) Liability to investigate or clean up any environmental conditions on or off the Premises pursuant to Environmental Laws (including any work performed pursuant to a voluntary remediation statute, regulation, or program);and in each case resulting, directly or indirectly, from Tenant's business or operations at the Premises;
- (ii) Costs and expenses associated with the investigation or cleanup of any new environmental conditions in, on, under, at, or about the Premises, to the extent related to Tenant's business or operations at the Premises;
- (iii) Costs and expenses associated with the investigation or cleanup of any release of Hazardous Materials at any non-owned, off-site treatment, storage, or disposal facilities used by Tenant in connection with Tenant's business or operations at the Premises;
- (iv) Any business interruption suffered by Tenant, Landlord, or other tenants located at the [Building/Center], and by owners, tenants, or occupants of other nearby properties, to the extent that the business interruption suffered is related to Tenant's business or operations at the Premises;
- (v) Any loss of value of the Property or Premises, to the extent related to Tenant's business or operations at the Premises;
- (vi) The inclusion of Landlord as a "Named Insured" to the Policy;
- (vii) Endorsements to cover claims relating to underground storage tanks, asbestos-containing materials, mold, and other contaminants, as Landlord may require;
- (viii) A deductible of no more than \$[insert #], with a [insert #, e.g., 3]-times aggregate;
- (ix) A per occurrence limit of liability of no less than \$[insert #]; and
- (x) An aggregate limit of liability of no less than \$[insert #].

c. No Release. Notwithstanding any Lease provisions to the contrary, Tenant's procurement and maintaining in effect of the Policy shall not in any way release, waive, limit, or otherwise abrogate Tenant's obligation to indemnify and hold Landlord harmless from all claims, damages, and liabilities as provided by Clause [insert # of indemnification clause] of this Lease.