

MODEL LEASE CLAUSE

Get Right to Take Back Space from Small Tenant

The following clause was drafted by New Jersey attorney Marc L. Ripp. Use it if you're renting space in a building to a small tenant but you want to be able to take back the space and make it available to a prospective big tenant.

Paragraph a sets out the terms of the termination option. Paragraph b discusses when the tenant is deemed to have surrendered the space. Paragraph c deals with the compensation that you'll give the tenant in return for letting you have the ter-

mination option. We've set up the compensation as a multiple of the monthly minimum rent charged when you notify the tenant that you're exercising your termination option. You may need to revise this paragraph to reflect whatever compensation you and the tenant negotiate.

Show this clause to your attorney before putting it into your lease. **CLLI0009**

LANDLORD'S TERMINATION OPTION

- a. Termination Option.** Landlord and Tenant acknowledge and agree that:
- (i) Landlord shall have the option to terminate this Lease effective as of the Termination Date (as defined below);
 - (ii) For purposes of this Clause, the "Termination Date" shall mean the last day of any calendar month within the Term (or any extension thereof) as selected by Landlord, in its sole and absolute discretion;
 - (iii) To exercise its termination option, Landlord shall give Tenant written notice of the Termination Date (the "Notice") at least [*insert #, e.g., 30*] days prior to the Termination Date;
 - (iv) Effective as of the Termination Date, Tenant's interest in and to the Premises shall be wholly extinguished and this Lease shall expire in the same manner and with the same effect as if the Termination Date were the Expiration Date; and
 - (v) Landlord's exercise of its termination option shall not constitute a release or discharge of Tenant with respect to any outstanding, and unsatisfied, or continuing obligations or liabilities, whether unbilled or calculated, accrued or incurred, applicable to the Premises, such as, but not limited to, Rent and other charges payable by Tenant up to and including the Termination Date, and Tenant's obligation to indemnify Landlord under Clause [*insert #*] hereof.
- b. Surrender of Premises.**
- (i) If the Actual Surrender Date (as defined below) fails to occur on or before the Termination Date, Tenant, rather than paying the Holdover Rent required under Clause [*insert # of standard holdover rent clause*] hereof, shall pay [*insert multiple, e.g., double*] the Minimum Rent applicable to the Premises for each day between the Termination Date and the Actual Surrender Date.
 - (ii) For purposes of this Clause, the "Actual Surrender Date" shall mean the first day on which all of the following three conditions are fully satisfied, as determined by Landlord in its sole and absolute discretion:
 - (A) Tenant has cured all outstanding defaults, if any, under this Lease;
 - (B) Tenant has quit, surrendered, and delivered to Landlord actual and exclusive possession of the Premises; and
 - (C) The Premises are empty, vacant, broom clean, in good order and condition, and free of all occupants, liens, and property required to be removed under this Lease by the end of the Term (or any extension thereof).
 - (iii) Tenant understands that on the Termination Date, all or a part of the Premises may be subject to certain rights of occupancy held by other parties and that any retention of possession by Tenant after the Termination Date may cause significant hardship on Landlord and on such other occupants. In connection with the foregoing, Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, claims, and expenses sustained by reason of any such retention of possession.
 - (iv) Nothing contained in this Clause shall be construed as a consent by Landlord to the occupancy or possession by Tenant of the Premises beyond the Termination Date. Landlord, upon the Termination Date, shall be entitled to consequential damages and to the benefit of all legal remedies that now may be in force or may be hereafter enacted that enable Landlord to regain possession of the Premises.
- c. Compensation from Landlord.** Provided the Actual Surrender Date occurs on or before the Termination Date, then, Landlord shall give Tenant, within [*insert #, e.g., 30*] days after the Actual Surrender Date, a check equal to the product of:
- (i) [*Insert #, e.g., 12*]; and
 - (ii) The monthly installment of Minimum Rent due on the first day of the month in which Landlord gives Tenant the Notice.