

MODEL LEASE CLAUSE

Get Protections When Giving Termination Option

The following lease clause was drafted with the help of New York City attorney A. Barry Levine, Toronto attorney Stephen J. Messinger, New Jersey attorney Marc L. Ripp, Denver attorney Mark A. Senn, and Sacramento, Calif., attorney Thomas F. Stewart. It contains 18 key protections to put into a tenant termination option.

Paragraph a sets out the deadlines and methods of delivery for the tenant's termination notice. Paragraph b sets the termination date. Paragraph c requires a termination fee to accompany the tenant's termination notice. Paragraph d makes some of the tenant's lease obligations survive the termination of the lease. Paragraph e lets you cancel the termi-

nation if the tenant is in default of the lease. Paragraph f requires the tenant to give back the space in a certain condition. Paragraph g makes the tenant a holdover tenant if it stays in the space past the lease's termination date. Paragraph h says that the lease will cease to exist after the termination date. Paragraph i requires the tenant to release you from claims and liabilities as of the lease's termination date. Paragraph j makes the termination option personal to the original tenant.

Show this clause to your attorney before putting it into your lease. **CLLI0111**

TENANT'S TERMINATION OPTION

Notwithstanding anything to the contrary contained herein, Tenant shall have a one-time option to terminate this Lease ("Termination Option") in accordance with and subject to each of the following terms and conditions:

- a. Tenant Gives Notice.** If Tenant desires to exercise the Termination Option, Tenant shall give Landlord irrevocable written notice ("Termination Notice") of Tenant's exercise of this Termination Option, which shall be delivered by *[insert method, e.g., certified mail]*. The Termination Notice must be received by Landlord no later than the date that is *[insert #, e.g., twelve (12)]* full months prior to the Termination Date (as defined below) and no earlier than the date that is *[insert #, e.g., fourteen (14)]* full months prior to the Termination Date. Time is of the essence with respect to Landlord's receipt of the Termination Notice and all other deadlines in this Clause.
- b. Termination Date.** If Landlord timely receives the Termination Notice and Tenant complies with all the provisions in this Clause, this Lease shall terminate at 11:59 PM on *[insert date, e.g., June 30, 2007]* (the "Termination Date").
- c. Termination Fee Must Accompany Notice.** In order for such Termination Notice to be effective, it must be accompanied by the entire termination fee in the amount of \$*[insert #]*, which shall be payable only in cash or certified funds.
- d. Tenant's Obligation Survives Termination.** Tenant's obligations to pay Base Rent, Additional Rent, and any other costs or charges under this Lease, and to perform all other Lease obligations for the period up to and including the Termination Date, shall survive the termination of this Lease.
- e. Owner May Cancel and Void Termination if Tenant in Default.** Notwithstanding the foregoing, if at any time during the period on or after the date on which Tenant shall exercise its Termination Option (in accordance with Paragraph a hereof), up to and including the Termination Date, Tenant shall be in default of this Lease, then Landlord may elect, but is not obligated, by written notice given to Tenant to cancel and declare null and void Tenant's exercise of the Termination Option, and this Lease shall continue in full force and effect for the full Lease Term hereof unaffected by Tenant's exercise of the Termination Option. If Landlord does not cancel Tenant's exercise of the Termination Option after Tenant's default, Tenant shall cure any default within the period of time specified in this Lease and this obligation shall survive the Termination Date.
- f. Tenant Shall Surrender Space by Termination Date.** If Tenant exercises the Termination Option, Tenant covenants to surrender full and complete possession of the Premises to Landlord on or before the Termination Date vacant, broom-clean, devoid of Tenant's or any third party's personal property, and in good order and condition, in accordance with the provisions of this Lease, and thereafter the Premises shall be free and clear of all leases, tenancies, and rights of occupancy of any entity claiming by or through Tenant.
- g. Failure to Surrender Makes Tenant a Holdover.** If Tenant shall fail to deliver possession of the Premises on or before the Termination Date in accordance with the terms hereof, Tenant shall be deemed to be a holdover tenant from and after the Termination Date, and in addition to Landlord's right to evict Tenant from the Premises by any lawful means, Tenant shall be liable for the following:
 - (i) Holdover rent as set forth in Clause *[insert # of holdover clause]* hereof;
 - (ii) All costs and expenses incurred by Landlord in securing possession of the Premises;
 - (iii) All damages, including, but not limited to, consequential damages, incurred by Landlord as a result of such holdover, including, but not limited to, the costs and expenses of a holdover proceeding against Tenant and of losing a new tenant for the Premises; and

(continued on p. 4)

TENANT'S TERMINATION OPTION (CONTINUED)

(iv) All damages, including, but not limited to, consequential damages, incurred by any tenant that was entitled to take possession of the Premises after the expiration of this Lease pursuant to a fully executed, valid lease or other binding agreement with Landlord, but was unable to do so due to Tenant's holding over in the Premises.

h. Lease Ceases After Termination. If Tenant properly and timely exercises the Termination Option and Landlord has not negated the effectiveness of Tenant's exercise of this Termination Option as allowed under this Clause, this Lease shall cease and expire on the Termination Date with the same force and effect as if said Termination Date were the date originally provided in this Lease as the expiration date of the Term hereof.

i. Release of Landlord. As of the Termination Date, Tenant agrees that Landlord shall be released from any and all claims, damages, obligations, liabilities, actions, and causes of action of every kind and nature whatsoever arising in connection with this Lease.

j. No Option After Sublet or Assignment. This Termination Option is personal to the named Tenant. If this Lease has been assigned or all or a portion of the Premises have been sublet, this Termination Option shall be deemed null and void and neither Tenant nor any assignee or subtenant shall have the right to exercise such option during the term of such assignment or sublease. This condition may be waived by Landlord at its sole discretion and may not be used by Tenant as a means to negate the effectiveness of Tenant's exercise of this Termination Option.