

## MODEL LEASE CLAUSE

### Restoring Tenant's Damaged Space

The following Model Lease Clause was drafted by New Jersey attorney Marc L. Ripp. It sets out your rights and obligations if your building or the tenant's space is damaged or destroyed by a casualty, such as a fire or flood. Use it with a strong tenant.

Paragraph a says that the tenant must notify you and your manager about a casualty at the building. Paragraph b says that the tenant is still responsible for paying rent, despite the casualty. Paragraph c says that you must make reasonable efforts to repair and restore damage caused by a casualty if the

tenant's space becomes unusable or inaccessible, unless you decide to terminate the lease. Paragraph d requires the tenant to cooperate with your restoration efforts. Paragraph e gives you and the tenant the right to terminate the lease under certain circumstances. Paragraph f says that if the tenant caused the casualty, it can't abate its rent or terminate the lease. Paragraph g requires the tenant to waive its rights under law to terminate the lease. Make sure you define "Laws" elsewhere in the lease.

## DAMAGE AND DESTRUCTION

- a. **Casualty.** If the Building or the Premises, or any part thereof, shall be damaged by fire, the elements, accident, or other casualty (collectively, "Casualty"), Tenant, to the extent it has actual knowledge of such damage, shall immediately inform Landlord or the Property Manager thereof, and this Lease shall continue in full force and effect, except as hereinafter set forth.
- b. **Rent.** Tenant agrees that it shall not be relieved of the obligations to pay Base Rent or Additional Rent in case of damage to or destruction of the Building or to any portion thereof, except as specifically provided in this Clause.
- c. **Repairs and Restoration.** If all or a substantial portion of the Premises is damaged, or rendered unusable or inaccessible by damage to any part of the Building (but the Building is not substantially damaged) because of a Casualty, and such damage can, in Landlord's reasonable judgment, be substantially repaired and restored within [*insert #, e.g., one hundred eighty (180)*] days of the Casualty, then Landlord, at its expense, shall use reasonable efforts to repair and restore the Premises and/or the Building, as the case may be, excepting any tenant improvements not provided by Landlord, to substantially their former condition to the extent permitted by the applicable Laws. Landlord shall notify Tenant, in writing, within [*insert #, e.g., thirty (30)*] days of the Casualty of such impending repairs to the Premises. The Rent, from the date of the Casualty through the date of Substantial Completion of the repairs to the Premises, shall abate in proportion to the area of the Premises which was damaged or rendered unusable or inaccessible by Tenant, it being the intent that such abatement shall not affect or reduce Landlord's rent insurance coverage. Tenant's liability for Base Rent and Additional Rent shall resume [*insert #, e.g., five (5)*] business days after written notice from Landlord of Substantial Completion of repairs to the Premises.
- d. **Cooperation.** If Landlord repairs and restores the Premises in accordance with Paragraph c hereof, such repairs and restorations shall be made with all reasonable expedition. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to repair or restore any personal property of Tenant or any fixtures or Tenant installation not installed by and paid for by Landlord. After any Casualty, Tenant shall cooperate with Landlord's restoration by removing from the Premises as promptly as reasonably possible and to the extent reasonably necessary, all of Tenant's and any of Subtenant's salvageable inventory and movable equipment, furniture, and other property.
- e. **Termination Right.** If all or substantially all of the Premises are damaged, or rendered unusable or inaccessible, by any Casualty, or if the Building shall be substantially damaged (whether or not the Premises are damaged in whole or in part), so that Landlord in its reasonable opinion, cannot substantially repair and restore the Premises or the Building, as the case may be, within [*insert #, e.g., one hundred eighty (180)*] days of the Casualty, then Landlord shall notify Tenant, in writing, of such circumstances (the "Notice") within [*insert #, e.g., thirty (30)*] days of the Casualty. Then, Landlord or Tenant may elect to terminate this Lease by written notice to the other, effective only if received within [*insert #, e.g., thirty (30)*] days of the date of the Notice, specifying a date for the termination of this Lease (the "Termination Date"), which date shall not be more than [*insert #, e.g., one hundred eighty (180)*] days after such Casualty nor less than 90 days after such Casualty. Upon the Termination Date, this Lease shall terminate as fully and completely as if the Termination Date were the Expiration Date, and Tenant shall forthwith quit, surrender, and vacate the Premises without prejudice to Landlord's rights and remedies against Tenant under the Lease provisions in effect prior to such termination; and any Rent owing shall be paid up to the Termination Date and any payments of Rent made by Tenant which were on account of any period subsequent to such date shall be credited against amounts owed by Tenant to Landlord or refunded to Tenant.
- f. **Negligence.** Notwithstanding anything to the contrary contained in this Clause or any Law, should the Premises or the Building, or any part thereof, be damaged by any Casualty as a result of the negligence of Tenant or any Subtenant or any Employee, Agent, or Visitor of either, Tenant shall have no right to terminate this Lease and there shall be no abatement of rent under this Clause, and Tenant shall be liable to Landlord for such damage, subject to the other provisions hereof.
- g. **Waiver.** Tenant hereby waives the provisions of [*insert applicable state or local law*] and any other applicable existing or future law permitting the termination of a lease agreement in the event of damage to, or destruction of the Premises and/or Building, or any part thereof.