

## MODEL LEASE CLAUSE

### Recognize Sublease if Lease Ends Early

The following clause was drafted by San Francisco attorney Richard C. Mallory, and Washington, D.C., attorney Peter W. Segal. Use it if the tenant demands a sublease recognition clause in the lease.

Paragraph a lists the conditions that must be met for sublease recognition. Paragraph b says that the recognition right is

personal to the original tenant. Paragraph c requires the tenant to indemnify you for certain fees connected to the sublease. Paragraph d says that the clause survives the termination or rejection of the lease.

Show this clause to your attorney.

## SUBLEASE RECOGNITION CLAUSE

- a. Sublease Recognition.** If Landlord elects to terminate this Lease due to the occurrence of an Event of Default, or if Tenant rejects this Lease in the course of a bankruptcy proceeding, Landlord agrees to recognize any sublease that Tenant entered into during the Term pursuant to the requirements set forth in Clause [insert # of assignment/subletting clause] of this Lease (the "Authorized Sublease") as a contract between Landlord and the subtenant. Such recognition shall be effective as of the date of the termination or rejection of this Lease, as applicable (the "Recognition Date"), and Landlord shall not disturb the subtenant's possession and occupancy of the sublet premises during the term of the Authorized Sublease; *provided that*:
- (i) The subtenant, on the Recognition Date, meets or exceeds the standards set forth in Clause [insert # of assignment/subletting clause] of this Lease;
  - (ii) On the Recognition Date, the subtenant is neither:
    - (A) In default under the Authorized Sublease; nor
    - (B) An affiliate of Tenant;
  - (iii) The Rent per square foot to be paid by the subtenant under the Authorized Sublease (the "Recognition Rent") equals or exceeds the higher of:
    - (A) The Rent per square foot then due under this Lease;
    - (B) The Rent per square foot then due under the Authorized Sublease; or
    - (C) The prevailing market rent for comparable space in the [Building/Center];
  - (iv) If the square footage of the sublet premises equals less than 100 percent of the square footage of the Premises, Landlord determines, in its sole discretion, that:
    - (A) The sublet premises are of a size and configuration that is leasable; and
    - (B) The remaining space within the Premises is of a size and configuration that is leasable;
  - (v) The subtenant agrees in the Authorized Sublease that as of the Recognition Date it shall:
    - (A) Attorn to and accept Landlord as its direct sublandlord under the Authorized Sublease for the remainder of the term under the Authorized Sublease;
    - (B) Comply with the applicable terms and conditions of this Lease and perform all obligations of Tenant under this Lease with respect to the sublet premises; and comply with all the terms and conditions of the Authorized Sublease, and perform all of its obligations thereunder;
    - (C) Pay directly to Landlord the Recognition Rent and all other amounts payable under the Authorized Sublease, when due thereunder;
    - (D) Pay directly to Landlord Tenant's proportionate share of Additional Rent, escalations, and all other amounts required to be paid by Tenant under this Lease with respect to the sublet, when due hereunder;
    - (E) Deliver to Landlord a security deposit equal to [insert #, e.g., 2] months' Recognition Rent; and
    - (F) Neither exercise, nor cause Tenant to exercise on the subtenant's behalf, the rights of Tenant that are set forth in Clauses [insert #s of clauses that grant special rights or options to tenant] of this Lease;
  - (vi) The subtenant agrees in the Authorized Sublease that Landlord, its successors, and assigns shall not be:
    - (A) Subject to any credits, offsets, defenses, or claims that the subtenant might have against Tenant;

(continued on p. 4)

## SUBLEASE RECOGNITION CLAUSE (continued)

- (B) Liable for any act or omission of Tenant;
  - (C) Bound by any covenant to undertake, complete, or pay for any improvement to the sublet premises; or
  - (D) Required to account for any security deposit other than the security deposit actually received by Landlord or its successors and assigns;
- (vii) As of the Recognition Date, the subtenant agrees in the Authorized Sublease that Landlord may communicate directly with and proceed directly against the subtenant, with or without notice to or the involvement of Tenant, to enforce all of the obligations of Tenant under this Lease or the obligations of subtenant under the Authorized Sublease with respect to the sublet premises;
- (viii) The subtenant agrees in the Authorized Sublease that Landlord shall not be bound by any provision in the Authorized Sublease that:
- (A) Creates any rights or remedies in the subtenant that are greater than the rights of Tenant under this Lease; or
  - (B) Increases Landlord's obligations under this Lease;
- (ix) If this Lease terminates due to the occurrence of an Event of Default, Tenant remains primarily liable for the performance of all of its agreements, covenants, obligations under this Lease (including, without limitation, the obligation to pay the full amount of all Minimum Rent, Additional Rent, and other sums, charges, and reimbursements set forth in this Lease), and any payment obligations that arise in connection with any act or omission of any subtenant;
- (x) If Landlord, in its sole discretion, agrees to amend, transfer, renew, extend, or modify the Authorized Sublease, or to sign a lease with the subtenant directly, Tenant remains primarily liable for all payment and performance obligations of Tenant under this Lease; and
- (xi) Landlord's lender, if any, has approved the Authorized Sublease, if such approval is necessary.
- b. Personal Right.** This right of recognition of an Authorized Sublease is personal to the initial Tenant under this Lease and is not transferable to any assignee or subtenant of the initial Tenant.
- c. Indemnification.** Tenant hereby indemnifies Landlord from and against any brokerage commissions, finders' fees, or any other charges that may arise in connection with the Authorized Sublease.
- d. Survival.** This Clause shall survive the expiration or earlier termination or rejection of this Lease.