

Give Tenant Limited Right to Buy Space Before You Sell to Third Party

The following clause was drafted with the help of Syracuse attorney Stuart J. Frank. It sets out the tenant's right of first refusal and includes limits designed to minimize your risks.

Paragraph a says that the tenant has a right of first refusal to buy its space if it meets certain conditions. Paragraph b describes how the tenant must exercise the right of first refusal. Paragraph c requires the tenant to give you proof of financing if it exercises the right of first refusal. Paragraph d sets the closing

date. Paragraph e says that if the tenant doesn't properly exercise the right of first refusal, the right will lapse. Paragraph f says that only the original tenant may exercise the right of first refusal. Paragraph g lists certain events that won't trigger the right of first refusal. Paragraph h subordinates the right of first refusal to your mortgage.

Show this clause to your attorney before using it. **CLLI0101**

RIGHT OF FIRST REFUSAL

a. Right of First Refusal. Provided that Tenant:

- (i) Is not in default under this Lease,
- (ii) Has not assigned this Lease or sublet all or part of the Premises, or
- (iii) Is not holding over in the Premises,

if Landlord enters into a contract to sell its entire fee interest in the Premises (and only the Premises) (a "Sale"), Tenant shall have a one-time right of first refusal to purchase of the entire Premises ("Refusal Right"). In the event of a Sale, Landlord shall notify Tenant in writing of the prospective Sale of the Premises ("Landlord's Notice"). Landlord's Notice shall include the elements of the business deal of such prospective Sale (the "Elements"), and a contract of sale executed by Landlord containing the material terms of the Sale (the "Contract of Sale") for Tenant's signature.

b. Tenant's Exercise of Right. In order to exercise the Refusal Right, Tenant shall:

- (i) Accept the terms of the Sale as set out in the Contract of Sale by notifying Landlord, in writing, sent by registered or certified mail, return receipt requested, of its intent to so accept, postmarked within [insert #, e.g., 5] business days after receipt of Landlord's Notice; and
- (ii) Execute and return to Landlord the Contract of Sale within [insert #, e.g., 15] days after receipt of same from Landlord.

c. Proof of Financing. If Tenant shall timely exercise the Refusal Right, Tenant shall, within [insert #, e.g., 5] days following its execution of the Contract of Sale, provide Landlord with evidence of a non-contingent financing commitment or other evidence acceptable to Landlord, in Landlord's sole and absolute discretion, of Tenant's ability to close on or before the closing date set forth in the Contract of Sale. If Tenant has not shown Landlord such evidence within the [insert #, e.g., 5]-day period, Landlord shall have no obligation to sell the Premises to Tenant and Tenant's rights under this Clause shall forever be null and void.

d. Closing. Following Landlord's receipt of satisfactory evidence from Tenant of Tenant's ability to close pursuant to the terms of the Contract of Sale, Landlord and Tenant shall proceed to close the sale of the Premises no later than the closing date set forth in the Contract of Sale.

e. Lapse of Refusal Right. If Tenant shall fail to timely perform any of its obligations as set forth herein, or if Tenant shall opt not to exercise the Refusal Right, the Refusal Right shall lapse and Landlord shall be free to sell the

Premises pursuant to the Elements or any subsequent agreement for the transfer of the Premises.

f. No Assignment of Right. The Refusal Right is personal to Tenant and may not be assigned by Tenant in connection with an assignment of this Lease or otherwise. The Refusal Right may not be exercised by anyone other than Tenant. Any attempted assignment of the Refusal Right shall be of no effect and the Refusal Right shall become forever null and void as of the date of the purported assignment.

g. Events Not Triggering Refusal Right. Anything contained herein to the contrary notwithstanding, in the event of any of the following, the Refusal Right shall be deemed not to have arisen and of no force and effect:

- (i) The sale of the Premises to an Affiliate (as defined in Clause [insert #] hereof) of Landlord or to a government entity;
- (ii) The sale of the Premises in connection with a sale of all or substantially all of Landlord's assets or shares (or interests);
- (iii) Landlord's shares becoming or continuing to be traded on the New York, American, or Over-the-Counter stock exchange or market or any similar exchange or market;
- (iv) The entering into of any management agreement or any similar agreement which transfers control of the Premises by Landlord;
- (v) The entering into by Landlord of any ground lease, mortgage, or trust deed upon all or any portion of the Premises, any advances made thereunder and all renewals, modifications, consolidations, replacements, extensions, and re-financings thereof; or
- (vi) The entering into a contract by Landlord for the sale of more than one property wherein the Premises is one of such properties.

h. Subordination. The Refusal Right shall be subject and subordinate to any mortgage now, or hereafter placed, upon the Premises or any portion of the [Building/Center], and to any renewals, modifications, consolidations, replacements, extensions, and re-financings thereof. Tenant agrees to execute and deliver whatever instruments may be requested by any Lender for such purposes. If Tenant fails to do so within [insert #, e.g., 10] days after demand in writing, Tenant does hereby make, constitute, and irrevocably appoint Landlord as its attorney-in-fact (which shall be deemed to be coupled with an interest) and in its name and place to execute and deliver such instruments.