A Model Commercial Sublease Agreement

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Regardless of the reasons for the sublease, the parties' goals won't be met in the absence of a clear, concise, and comprehensive sublease agreement.

THERE CAN BE any number of good business reasons for a commercial sublease. The sublessor might have had a change in its business circumstances or even the focus of its business. The sublessee might have had its eye on the space for some time, but couldn't come to terms with the landlord. Whatever the reason may be, the goals of the sublessor and sublessee won't be met unless the terms of the relationship are clear and the major questions are answered. What obligations does the sublessee assume from the sublessor? Does the sublessee indemnify the sublessor? Are there any warranties of habitability, fitness for use, or compliance with building codes? What happens if the sublessee defaults? What constitutes a default? What law governs? Who pays the utility bills? Who takes out the trash?

There is no reason to leave any of these questions unanswered in the context of a commercial sublease. So the aim of this Model Agreement is to provide a starting point for the careful attorney—whether for the sublessor or the sublessee.

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered effective as of the _____ day of _____, _____, by and between _____ ("Sublessor") and _____ ("Sublessee").

W I T N E S S E T H:

_____, as Landlord ("Landlord") and _____ ("Tenant") entered into that certain Standard Office Building Lease Agreement dated _____ ("Base Lease"), covering and describing the premises known as Suite _____ in the _____ _____ Building, _____, [city, state] ("Premises"), a true and correct copy of the Base Lease being attached hereto as [Exhibit] and made a part hereof for all purposes;

WHEREAS, Sublessor has succeeded to all the rights and interests of Tenant under the Base Lease; and

WHEREAS, Sublessee desires to sublease the Premises from Sublessor upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, Sublessor and Sublessee hereby agree as follows:

1. Subleased Premises. Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, all the Premises ("Subleased Premises").

2. Term. Subject to and upon the terms and conditions hereinafter set forth, this Sublease shall be in force for a term ("Sublease Term") commencing on _____, _____, and expiring on _____. If for any reason the Sublease Term shall not commence on said date, the last day of the Sublease Term shall not be advanced, but Base Sublease Rental (defined below) shall be prorated. Sublessee shall not be entitled to exercise any options to renew or extend the term of the Base Lease.

3. Base Sublease Rental. Sublessee agrees to pay to Sublessor as rent ("Base Sublease Rental") for the Subleased Premises the cash sum of $_____ per month. Base Sublease Rental shall be payable in advance to Sublessor on the first day of each calendar month throughout the Sublease Term, at the following address (or such other address as may be designated by Sublessor from time to time):

_____

_____

_____

Sublessee agrees to pay all Base Sublease Rental and additional sums due under this Sublease to Sublessor without demand, counterclaim, or set-off. All past due Base Sublease Rental and other sums of any kind past due hereunder shall bear interest at the maximum lawful non-usurious rate per annum until paid.

4. Base Lease. This Sublease is subject to all the provisions, terms, covenants, and conditions of the Base Lease as follows:

- *Payment of rentals.* Sublessor agrees to pay all rentals (base, additional, or otherwise), as provided in the Base Lease, but the foregoing shall not obligate Sublessor to Sublessee for the payment of, and Sublessee agrees to pay as and when due under or required by the Base Lease (or reimburse Sublessor, if applicable), all other sums due and payable pursuant to the terms of the Base Lease for the use and occupancy of the Subleased Premises during the Sublease Term for increases in operating expenses over those for [year], indemnity obligations, insurance, taxes, holdover rent, maintenance, repairs, alterations, additions, or other sums which may be deemed additional rent under the Base Lease and are required to be paid by the Tenant/Sublessor under the Base Lease. The sums payable by Sublessee under this paragraph constitute additional rentals under applicable law;
- *Duties and obligations.* Sublessee assumes and agrees to perform and observe all provisions, terms, covenants, and conditions of the Tenant/Sublessor under the Base Lease as the same relate to the Subleased Premises and to Sublessee's use and occupancy of the same during the Sublease Term, except as may be expressly provided to the contrary herein. Sublessee shall have no right to exercise any of the rights and options available to Sublessor under the Base Lease as all the same are retained by Sublessor and may be exercised or waived in Sublessor's sole and absolute discretion. Except to the extent assumed by Sublessee in this Sublease, Sublessor agrees to fully and timely perform all of the Tenant's/Sublessor's duties and obligations under the Base Lease;
- *Entire Agreement.* Sublessor warrants and represents that the Base Lease represents Sublessor's entire agreement with Landlord relating to the Premises;
- *No knowledge of default.* Sublessor warrants and represents that Sublessor has received no notice, and has no actual knowledge, of any default by Sublessor or any breach by Sublessor of any of its obligations under the Base Lease; and

- *Modification.* Sublessor agrees to refrain from entering into any amendment to or modification of the Base Lease that would conflict with or materially limit the rights granted to Sublessee by this Sublease. A copy of any amendment to or modification of the Base Lease between Sublessor and Landlord shall be promptly furnished to Sublessee.

5. Condition of Subleased Premises. Upon commencement of the Sublease Term, Sublessee accepts the Subleased Premises and any leasehold improvements thereto in their then existing condition, on an "AS IS" basis. After the commencement of the Sublease Term, Sublessor shall not be required to make for the benefit of Sublessee any improvements to or repairs of any kind or character in or to the Subleased Premises or the Landlord's building, but this sentence shall not relieve Sublessor of any of its obligations to Landlord under the Base Lease. To the extent Landlord has obligations to Sublessor pursuant to the Base Lease regarding repair, maintenance, or condition of the subleased premises or Landlord's building, Sublessor agrees to use reasonable diligence to cause Landlord to perform the same for the benefit of Sublessee, when applicable.

6. Use. Sublessee agrees to use the Subleased Premises only for the purposes permitted by the Base Lease and for no other purposes, all in accordance with applicable law.

7. Indemnity. To the extent not prohibited by applicable law, Sublessee shall indemnify, defend, and hold harmless Sublessor and Landlord from and against any and all claims, demands, liabilities, losses, costs, expenses, and damages for anything whatsoever, arising from or out of the Sublessee's use or occupancy of the Subleased Premises or the use and occupancy thereof by Sublessee's agents, employees, servants, customers, or invitees. Sublessor shall not be liable to Sublessee or to its agents, servants, employees, customers, or invitees for any damage to person or property caused by any act, omission, or neglect of any thereof. The foregoing shall not be construed as an agreement by Sublessee to indemnify Sublessor against or from the negligence of Sublessor or Sublessor's agents, servants, employees, customers, or invitees.

8. No Warranty. WHEN SUBLESSEE BEGINS CONDUCTING ITS BUSINESS IN OR FROM THE SUBLEASED PREMISES, IT SHALL BE DEEMED TO HAVE ACCEPTED THE SUBLEASED PREMISES WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING ITS CONDITION, SUITABILITY, HABITABILITY, FITNESS FOR PURPOSE OR ITS COMPLIANCE WITH ANY LAWS, REGULATIONS OR ORDINANCES, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT OF 1991, AS AMENDED.

9. Assignment or Sublease. Sublessee shall not assign, mortgage, pledge, hypothecate, or otherwise encumber this Sublease, or any interest herein or any right or privilege appurtenant thereto, without the express prior written consent of Sublessor. Sublessee may not sublet all or any portion of the Subleased Premises without the prior written consent of Sublessor. Sublessee shall not be relieved of any of its obligations hereunder by reason of any sublease of all or part of the Subleased Premises. Any assignment or sublease made in violation of this paragraph shall be void.

10. Sublessor's Acts. It is specifically agreed that Sublessee shall not be responsible for the discharge and performance of the duties and obligations required to be performed and/or discharged by Sublessor in connection with the Base Lease prior to the commencement of the Sublease Term. In that regard, Sublessor agrees to indemnify, defend, and hold Sublessee harmless from and against any and all loss, cost, expense, or liability (including, without limitation, attorneys' fees, accountants' fees, and court costs) resulting from any claims or causes of action existing in favor of or asserted by any party arising out of or relating to Sublessor's failure to perform any duties or obligations imposed on Sublessor under the Base Lease with respect to periods beginning before the commencement of the Sublease Term. However, in no event does Sublessor intend or agree to indemnify Sublessee