

other transaction costs. Recovering these costs will take 10 months— $10 \times \$1,500$. So, if you let the tenant deduct those transaction costs from sublet profits, you won't see a dime in profit payments for the first 10 months of the sublease.

That changes, however, if you require the tenant to amortize its \$15,000 in transaction costs on a straight-line basis over the entire 10 years of the sublease. Under

such a method, the tenant's transaction cost deduction would be limited to \$125 per month ($\$15,000 \div 120$ months), leaving you a sublet profit share of \$1,375 ($\$1,500 - \125) per month starting with the first month of the sublet. While it doesn't affect the total share you receive over the life of the sublease, requiring straight-line amortization ensures that you start collecting your share right away without having to wait.

MODEL LEASE CLAUSE

Keep Tenants from Deflating, Delaying Their Sublet Profits

Tenants may be able to make significant profits by subletting the space they lease to third parties at rents higher than they pay the landlord. Savvy landlords insist on getting their fair share of these sublet profits. However, tenants may find clever ways to structure their sublet arrangements to artificially deflate (or delay) their profits and what they owe to the landlord. Here's a Model Lease Clause you can use to protect yourself. Speak to your attorney about adapting the provision to your particular circumstances and needs.

LANDLORD RIGHT TO TENANT'S SUBLEASE PROFITS

- a. Landlord Right to Share Sublet Profit.** In the event that Landlord consents to any sublease of the Premises, or any part of the Premises, Tenant shall in consideration therefor pay to Landlord, as Additional Rent [*insert your agreed-upon share of sublet profits, e.g., 50%*] of the Excess Sublease Rent (as defined in Section b below) minus the reasonable and customary out-of-pocket transaction costs incurred by Tenant in connection with such subletting, including attorney's fees, brokerage commissions, and alteration costs, which transaction costs shall be amortized on a straight-line basis over the term of the sublease.
- b. Definition of Excess Sublease Rent.** For purposes of this provision, Excess Sublease Rent means rent, additional charges, and other consideration payable to Tenant by the subtenant for or by reason of such sublease which are, in the aggregate, in excess of the rent payable under this Lease for the subleased space during the term of the sublease, including but not limited to:
 - 1.** Sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings, or other personal property, minus the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns; and
 - 2.** Sums paid for services provided by Tenant to such subtenant (including, without limitation, secretarial, word processing, information technology, receptionists, conference rooms, and library) in excess of the fair market value of such services.
- c. Payment of Sublet Profit.** Any amounts payable by Tenant pursuant to the foregoing provisions shall be paid by Tenant to Landlord as and when amounts on account thereof are due or paid, whichever occurs first, by any subtenant to Tenant, and Tenant agrees to promptly advise Landlord thereof and furnish such information with regard thereto as Landlord may request from time to time.
- d. Landlord Right to Audit.** Landlord shall have the right at any time and from time to time upon prior notice to Tenant to audit and inspect Tenant's books, records, accounts, and federal income tax returns to verify the determination of Additional Rent payable under this Section.