MODEL LEASE CLAUSE

Provide for More Lenient Rent Acceleration Rights When Negotiating with a Strong Tenant

The austere rent acceleration clause that you normally command may not work with tenants with significant negotiating leverage. Rather than forgo the remedy completely, attorneys say that you can modify your rent acceleration clause to make it more palatable to strong tenants. Here's a Model Lease Clause drafted by a New York City attorney that incorporates key concessions like present value discounts and fair rental cost deductions. Speak to your attorney about adapting the language to your own particular bargaining situation.

RENT ACCELERATION

a. **Landlord Right to Accelerate.** Landlord may, at its option, at any time after the Lease is terminated pursuant to Section [*insert #*] hereof, require Tenant to pay Landlord, in lieu of any further deficiency in Base Rent and Additional Rent due pursuant to Section [*insert #*] hereof, the "Accelerated Rent" discounted to present value as hereinafter provided.

b. **Amount Due.** The "Accelerated Rent" shall be an amount equal to:

(i) Annual Base Rent [*optional: and Annual Additional Rent payable under Section [insert #] hereof*] that would have been payable over the balance of the Term from the date of Tenant's default to the stated Expiration Date of the Lease (as if the Lease had not been terminated), minus

(ii) The fair and reasonable rental value of the Premises for the corresponding period.

The fair and reasonable rental value of the Premises shall be determined in good faith by Landlord on the basis of the rents payable under leases entered into by Landlord for comparable space in the Building/Center/Facility during the 12-month period immediately preceding Landlord's election to require Tenant to pay the Accelerated Rent; or, if Landlord determines that no such leases for comparable space have been entered into, then the fair and reasonable rental value shall be otherwise determined by Landlord in good faith. If the Premises or any part thereof are relet by Landlord before any adjudication of Landlord's claims for damages, the amount of rent payable to Landlord for such reletting shall be deemed to be the fair and reasonable rental value of the Premises (or the applicable part thereof) during the term of the reletting.

c. **Discount.** The Accelerated Rent shall be discounted to the date payable at an annual interest rate equal to [*insert either a fixed percentage or the following language: "the then current yield of actively traded U.S. Treasury bonds with 10-year maturities, as published in the Federal Reserve Statistical Release for the week prior to the mailing of the notice of acceleration"*]

d. **Release.** Upon payment of the Accelerated Rent discounted to present value, Tenant shall be released from all further liability under the Lease for payment of any deficiency in Base Rent [*optional: and Additional Rent payable under Section [insert #] hereof*], except for all accrued and outstanding obligations and any costs incurred by Landlord due to Tenant's default, including, but not limited to, as provided under Section e hereof.

e. **Tenant Liability for Reletting Costs.** Tenant shall reimburse Landlord for any expenses incurred by Landlord in connection with reletting the Premises, including, but not limited to, attorney's fees and disbursements, brokerage commissions, advertising costs, costs incurred to secure the Premises, and the costs of preparing the Premises for reletting, including, but not limited to, the costs of making such repairs, alterations, replacements, and decorations to the Premises as Landlord may consider desirable or necessary.

f. **[*Optional*] Computation of Additional Rent.** The annual Additional Rent payable over the balance of the Term from the date of Tenant's default to the stated Expiration Date of the Lease shall equal the Additional Rent payable pursuant to Section [*insert #*] hereof during the 12-month period immediately preceding the date of termination of the Lease. If fewer than 12 months have elapsed between the Commencement Date and such termination date, the annual Additional Rent shall equal the average monthly Additional Rent payable under Section [*insert #*] hereof for the calendar months immediately preceding such termination multiplied by 12.