

# REAL ESTATE JUKEBOX

CURRENT HITS TO KEEP TIME WITH MARKET CONDITIONS

May 5, 2009

## Take A Chance On Me

### Suggestions for Reducing Subtenant's Exposure

Subtenants always take chances when entering into Subleases. Unless the Landlord has entered into a recognition agreement with the Subtenant, the Sublease may terminate in the event of a termination of the Master Lease upon the occurrence of a default thereunder by the Tenant/Sublandlord.

If the Subtenant decides to proceed with the transaction, then the Subtenant may wish to **consider taking some precautions** in the event that the Sublease will contain significant monetary obligations on the part of the Tenant.

**SECURITY DEPOSIT:** If the Subtenant is required to post security with the Tenant, the Subtenant should consider how the security deposit will be held and by whom.

#### **SUGGESTIONS:**

- Consider posting a **letter of credit** in lieu of a cash security deposit.
- If the Landlord is entering into a recognition agreement with the Subtenant, consider having the **Landlord hold the security deposit** (rather than the Tenant).

**ALTERATIONS:** If the Subtenant's concessions include the construction of alterations in the sublet premises for the Subtenant's benefit or the contribution of an allowance toward the performance of alterations by the Subtenant, the Subtenant should be concerned about obtaining the Landlord's prior written approval and assuring that sufficient funds will be available to pay for the alterations as the same are performed.

#### **SUGGESTIONS:**

- Consider the **timing of payment** of funds by both the Tenant and the Subtenant.
- Consider depositing funds (both the Tenant's and the Subtenant's contributions) into a **third party escrow**.
- Consider traditional forms of **credit enhancement** (such as letters of credit or personal guaranties) to secure the Tenant's obligations with respect to any contributions to alterations.
- Consider obtaining the right to **offset** any unpaid allowance against other obligations under the Sublease (subject to appropriate hurdles).
- Consider a **rent restructure** to eliminate any allowance.



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- » [You Keep Me Hangin' On: Sublease Recognition Agreements: Planning Ahead for the Direct Lease](#)

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