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Assignments and Subletting in Commercial Lease Transactions

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I. INTRODUCTION

In difficult economic times, a tenant may find itself with an excess of space that it does not need and cannot afford. Assuming that the landlord will not allow the tenant to simply terminate all or part of the lease, the tenant may seek to assign its lease to a new party or sublet all or part of its premises. Such transactions often present competing interests among the three parties involved – the landlord, the tenant, and the subtenant/assignee. This outline will explore some of those competing interests.

As a general rule, if a lease contains no express restriction on assignment or subleasing, the tenant is free to transfer its rights in the lease without landlord's consent. This is in line with general principles in the law that disfavor restraints on the alienation of real property. Therefore, restrictions on a tenant's right to transfer its interest in the lease will be strictly construed, and ambiguities in such lease provisions will generally be interpreted in favor of transferability. However, the law recognizes a landlord's ability to restrain the tenant's right to transfer through express provisions in a lease. See, e.g., *B.C. & H. Corp. v. Acme Markets, Inc.* 19 Pa. D.&C.3d 419 (1980); *Morrisville Shopping Center v. Sun Ray Drug Co.*, 381 Pa. 576 (1955).

II. DISTINCTION BETWEEN SUBLEASE AND ASSIGNMENT.

A. Assignment.

An assignment of a lease is the transfer by the tenant of its entire interest in the lease without material alteration or addition to the terms of the lease and without the tenant retaining any reversionary interest in the lease. See, e.g., *B.C. & H. Corp. v. Acme Markets, Inc.* 19 Pa. D.&C.3d 419 (1980). The failure of the tenant to retain a reversionary interest in the lease is one of the key distinctions between an assignment and a sublease. In an assignment, the landlord and the assignee have privity of contract and privity of estate – meaning the landlord may enforce the terms of the lease directly against the assignee.

B. Sublease.

A sublease, by contrast, is a transaction in which the tenant transfers all or part of the leased premises for a portion of the unexpired term of the lease, or for the same term, but for a materially different rent or upon materially different terms and conditions, thereby retaining some reversionary interest in the premises. See, e.g., *Morrisville Shopping Center v. Sun Ray Drug Co.*, 381 Pa. 576 (1955). In a sublease, the landlord retains privity of contract with the original tenant, and will only have privity of contract with the subtenant if there is a written instrument between the landlord and subtenant that creates it. In the absence of such an instruction, the landlord may enforce the terms of the lease against the tenant, but not the subtenant.

C. “Transfer”.

As used throughout the remainder of this outline, assignments and subleases are sometimes referred to interchangeably as a “transfer.” A “transferee” refers to an assignee or sublessee, as context requires.

III. TO ASSIGN OR SUBLEASE, THAT IS THE QUESTION.

The decision whether to assign the lease or sublet the premises requires an intensely fact specific analysis and will also depend on the relative leverage of the parties involved. If the tenant is a large national retailer with good credit, it may be imperative to the landlord that the original tenant stay liable under the lease. Thus, a sublease may be preferred by the landlord, or an assignment where the original tenant remains liable.¹ Conversely, a single store “mom & pop” operation teetering on the edge of failure may be a liability for the landlord. The bankruptcy of such a tenant can tie up the premises for an extended period of time and result in a termination of the lease. In such a case, the landlord may be more than happy to replace the failing tenant with a new, healthy tenant.

Each of the parties in a transfer transaction may have different, and often competing, interests. Some of these competing interests include:

A. The Tenant.

- Wants to reduce its exposure or get out altogether.
- Can use default and/or bankruptcy as leverage against the landlord.
- Needs to be aware of future leasing needs and the impact on its future creditworthiness.

B. The Landlord.

- Wants the deal it bargained for.
- Needs control of who its tenant is.
- Wants a creditworthy tenant.
- Does not need the headache/transaction costs.

C. The Assignee/Sublessee.

- May need flexible space/rent options.
- Possibly short term.
- Potentially more risk and higher transaction costs than a direct lease.

¹ Absent a novation by the landlord, the assignment of a lease by the tenant does not terminate privity of contract between the landlord and original tenant, and thus the tenant remains liable for breach of contract while it is in possession of the premises or while the premises are in possession of the transferee.

IV. ISSUES TO CONSIDER IN ANY TRANSFER. AS WITH ANY LEASE TRANSACTION, THERE ARE MYRIAD CONSIDERATIONS THAT NEED TO BE TAKEN INTO ACCOUNT BY THE PARTIES INVOLVED.

A. Residual Liability of the Tenant.

Whether, and to what extent, the original tenant remains liable under the lease is likely to be a primary concern of all parties involved. This is not an issue in a sublease, where the tenant remains primarily liable to the landlord under the master lease. In an assignment, however, the tenant may remain liable for the obligations of the assignee, or may be released from liability by the landlord.

B. Suitability of the Space to be Demised.

If the transfer is for less than all of the existing premises, can the portion being transferred be subdivided or demised for the intended use? Placing demising walls, submeters, separate entrances, etc. may represent a significant cost. The determinate of which party should bear that cost will likely be a topic of negotiation.

C. Creditworthiness of the Transferee.

In some situations, the credit of the transferee may be the single most important factor to a landlord in deciding whether to allow a transfer. Many terms of the lease may have been negotiated with the creditworthiness of the tenant in mind. For example, a landlord may require a larger security deposit from a weak tenant than from a strong one. To have a lease assigned from a failing operation to one that is strong and able to perform its obligations may not just be acceptable to a landlord, but may be an excellent result (particularly if the lease is at above-market rent). On the other hand, an assignment from a strong national tenant to a startup “mom & pop” operation may be a poor result.

D. Use of the Premises.

The use that the transferee intends for the premises may be of critical importance. Additionally, different kinds of leases have different sensitivities to the transferee’s use.

1. Office Lease. If the lease is for ordinary office use, and the transferee intends to use the space for ordinary office uses, the landlord may not care what specific business the transferee is in. Of course, transferring the lease from a high-profile, national tenant to an unknown operation could impact the “status” of the property. But absent that, one office use is much like another.

2. Industrial Lease. If the lease is for industrial or warehouse space, then even similar sounding uses may vary greatly. A tenant manufacturing wood furniture will have vastly different needs from a tenant manufacturing auto parts. As with a new lease, some issues to consider in a transfer of industrial or warehouse space include:

- Load bearing needs of the transferee and of the premises.
- Security, sprinkler, and fire safety requirements.
- Access to roads.
- Loading docks.
- Noise and odor.
- Environmental concerns.
- Traffic and parking.
- Interference with other tenants.
- Insurance requirements and restrictions.

3. Retail Lease. Retail leases are perhaps the most difficult to transfer. In addition to all of the ordinary issues that the parties need to address, the landlord may be keenly concerned with tenant mix and use restriction issues. Some issues to consider in the transfer of a retail lease include:

- Use restrictions and exclusives of other tenants.
- Appropriateness of the transferee to the mix of tenants.
- Parking.
- Ability of the transferee to generate percentage rent.
- Signage requirements and availability.

E. Ability of Transferee to Exercise Options.

If the lease contains options in favor of the tenant to extend the term, expand into additional space, or even to purchase the building, those options may be an important part of what the transferee believes it is getting with its transaction. However, many leases limit such options to the original tenant named in the lease. Even if the tenant has the right to transfer its interest in the lease, the various options may not “travel” with the transfer. In a sublease, a subtenant will not have the right to exercise options in favor of the primary tenant unless the landlord expressly grants the transferee that right.

F. Non-Disturbance.

A sublease only exists so long as the master lease is in existence. If the master lease terminates, the sublease will also terminate. To protect against this, a subtenant may seek a non-disturbance agreement from the landlord whereby the landlord agrees not to disturb the subtenant, or agrees to enter into a new direct lease with the subtenant, in the event that the master lease is terminated. The terms of such a non-disturbance agreement may be highly negotiated. For example, if the rent under the sublease is less than the rent

under the master lease, a landlord may be reluctant to accept the reduction in rent. Similarly, if the sublease is for less than all of the premises, the landlord may find it preferable to take back the entire space rather than just a portion of it while keeping the subtenant in place.

G. Waiver of Subrogation.

Most leases contain a waiver of subrogation whereby the landlord and tenant release each other from liability resulting from casualty to the premises or the tenant's property. A sublease, without some direct agreement between landlord and subtenant, does not extend that waiver from the landlord to the subtenant.

H. Lender Considerations.

The landlord's mortgage lender may have restrictions or approval rights over certain transfers of the tenant lease. While the landlord, tenant, and transferee may all be in favor of the transfer, it may be the landlord's lender that has the final say.

V. DRAFTING CONSIDERATIONS.

A. Lease Transfer Provisions.

The push and pull between landlords and tenants with respect to the right to transfer the lease are obvious: the landlord wants the greatest control while the tenant wants the greatest flexibility. The best clause from a landlord's perspective is one that simply prohibits the tenant from assigning or subletting without the landlord's prior consent. The best clause from a tenant's perspective is one that grants the tenant the right to assign or sublet freely without landlord's further consent. Between these two extremes are endless permutations and compromises that are often highly negotiated and highly fact specific. Some issues to consider when negotiating a lease transfer provision include the following.

1. Landlord's Reasonableness. Many leases will allow some level of transfer, subject to landlord's "reasonable" approval. Consider setting out with specificity elements which, if unsatisfactory to landlord, would be considered a "reasonable" basis for disallowing the transfer. The more specific the lease is on this count, the less likely there will be an argument later. Such elements may include:

- *The creditworthiness/net worth of the transferee.* If the transferee has inadequate net worth or a spotty financial history (e.g., bankruptcy), the landlord should not be required to accept the transferee. Determining the financial strength of the transferee requires some due diligence on the part of the landlord. Sophisticated lease transfer provisions should include language requiring the tenant to provide the landlord with

evidence of the transferee's financial strength as a condition to the transfer.

- *The experience of the transferee in conducting its operations.* Is this a national chain or a first-time business? Is the transferee likely to be successful in its business?
- *The suitability of the premises for the proposed use.* As with any lease, premises may not be physically suitable for the transferee's proposed use. The determination of such suitability should fall to the landlord.
- *Tenant mix/exclusives.* If the proposed use will violate existing use restrictions or exclusive use provisions in other tenant leases, or will simply result in an undesirable tenant mix, the landlord should be able to decline the approval.
- *Availability of other landlord space for the prospective transferee.* If the landlord has vacant space available that would be suitable for the transferee's needs, it should not be required to accept the transfer, on the theory that the landlord should be able to market available space first before accepting a transferee into space which is already leased.

2. Recapture Rights of Landlord. The landlord may desire the right to recapture, or take back, the premises if the tenant requests a transfer. The landlord will typically have a time period within which to exercise this recapture right.

3. Sharing of Excess Rent. If the sublease rent is in excess of the rent under the master lease, the landlord may want the right to share in the profits (after tenant deducts the reasonable costs of subleasing the space). The theory here is that the landlord is in the business of leasing space, not the tenant. Therefore, the landlord should share in any windfall the tenant may receive.

4. Permitted Transfer for Sale, Merger, Affiliates. Many leases have provisions that characterize a sale of ownership interests in the tenant, or the merger of the tenant into another entity, as a "transfer" for purposes of the lease. Tenants often seek to negotiate these provisions on the theory that the lease should not prohibit such business dealings of the tenant. The larger and more complex the entity, the more likely the tenant will need such flexibility (e.g., a large drugstore chain can not be hindered in a sale or merger transaction because one of its leases prohibits such a transfer). However, the landlord wants to be sure that tenant entity resulting from such a transaction is one that is capable of fulfilling its obligations under the lease. Therefore, it is not uncommon for landlords to allow such sale or merger transactions, provided that the resulting entity abides by the lease and has sufficient assets to backstop its obligations. Similarly, the lease may permit the tenant to transfer to a affiliate of the tenant (often defined as an entity "controlled, controlling

or under common control” with the tenant), so long as the affiliate has adequate net worth.

5. Permitted Transfer for Estate Planning. Tenants may also want the right to transfer interests in the tenant entity for purposes of estate planning. For example, if the tenant is a limited partnership or limited liability company, partners/members of the tenant may want the right to transfer their ownership interests to a trust or other estate planning vehicle for the benefit of family members. Landlords will frequently allow such transfers, provided that the tenant continues to be controlled by the individual or individuals that originally entered into the lease.

6. Default. The violation of the lease transfer provision is often an automatic event of default under the lease, without any need for further notice from the landlord or an opportunity for the tenant to cure.

B. Sublease Provisions.

The sublease controls the relationship between the tenant/sublessor and the subtenant. Unless the primary landlord joins in the document in some way, it does not alter the relationship between the landlord and tenant.

There are two basic approaches to sublease drafting. In one approach, a very short form is used which incorporates all of the operative provisions of the master lease by reference and places the tenant/sublessor in substantially the same position vis-à-vis the subtenant as the primary landlord has to the tenant. An example of a simple form of sublease is attached hereto as Appendix 1. On the other end of the spectrum, a sublease may look very much like a full-blown lease and may create rights and obligations between the tenant/sublessor and the subtenant which differ significantly from those under the master lease.² The determination of which approach is best will depend on the particular facts of the transaction, and the usual result is a hybrid of the two in which portions of the master lease are incorporated by reference but other provisions relating to the relationship between tenant/sublessor and subtenant are spelled out separately.

As in any lease transaction, there are many considerations that a tenant and subtenant will need to take into account when negotiating a sublease. Some of these considerations include the following.

1. Landlord Consent. Does the master lease require landlord’s consent for a sublease? If so, the subtenant will want assurance that the landlord has consented to the sublease. A simple landlord joinder can be added to the sublease to evidence the landlord’s consent, or a separate consent agreement can be entered into among the parties.

² As with all forms of property conveyance, the tenant cannot give more than it has – so any attempt to expand the rights of the subtenant beyond those that the tenant has under the master lease will be ineffective as to the primary landlord unless the primary landlord agrees to be bound thereby.

2. Incorporation of Master lease Provisions. To the extent practicable, the sublease should incorporate the provisions of the master lease so that there are no gaps between the obligations of the tenant under the master lease and obligations of the subtenant under the sublease. The subtenant will want to be sure that the sublease contains a covenant by the tenant/sublessor to perform all of its obligations under the master lease, including a covenant by the tenant/sublessor to timely pay its rent under the master lease.

3. Term. A sublease cannot extend beyond the term of the master lease. If the primary tenant has extension options under the master lease, the subtenant may want the right to compel the primary tenant to exercise the extension option so that the term of the sublease is likewise extended.

4. Rent. If the rent under the master lease is below market, the tenant may be able to sublease a portion of its premises at a profit. However, a carefully drafted master lease may provide that the landlord receives all or some portion of the profit derived from the sublease (less the tenant's reasonable transaction costs). Another consideration is to whom the rent is paid. Does the subtenant pay its rent to the tenant/sublessor (which is the usual formulation) or directly to the landlord?

5. Alterations. A subtenant may require that the sublease premises be separately demised or require other alterations and improvements. The tenant/sublessor must determine whether it has the right to undertake or allow such alterations. In some cases, the tenant/sublessor may provide a tenant improvement allowance to the subtenant just as a landlord might.

6. Insurance. The subtenant should be responsible for fulfilling the insurance requirements under the master lease to the extent they relate to the subleased premises and the subtenant's property and fixtures. The insurance should name both the primary landlord and the tenant/sublandlord as additional insureds, and should contain a mutual waiver of subrogation.

7. Enforcement of Landlord's Obligations. The subtenant may want the ability to cause the primary landlord to fulfill its lease obligations under the master lease (to provide services, utilities, etc.). In the absence of a direct agreement between subtenant and the primary landlord, this will need to be accomplished by the subtenant having the right to compel the tenant/sublessor to enforce its rights against the primary landlord.

8. Remedies. The sublease may incorporate the remedies under the master lease by reference, such that the tenant/sublessor has all of the same rights and remedies vis-à-vis the subtenant as the landlord has vis-à-vis the tenant/sublessor.

C. Landlord's Consent to Sublease.

As the starting point to any sublease transaction, a tenant should be clear on whether, and to what extent, the landlord's consent is required for the transaction. If the landlord's consent is required, a landlord may use the opportunity of a written consent to clarify the various rights and obligations among the parties involved, including the subtenant. While the consent document need not, necessarily, involve the subtenant, it may be in everyone's best interest to set out with specificity the relationship among the landlord, tenant and subtenant and create a clear and direct contractual relationship between the landlord and subtenant. An example of a three-party landlord's consent to sublease is attached hereto as Appendix 2. The following are a number of issues that should be considered when drafting a consent to a sublease that the subtenant is a party:

1. Subordination of Sublease to Master Lease. While a tenant cannot give more rights under a sublease than it has under its master lease, the landlord can use the three-party consent to make clear that in the event of a dispute between the master lease and the sublease, the master lease will control.
2. Clearly Identify the Rights/Obligations of the Subtenant to Landlord. If the landlord is prepared to accept performance of certain lease obligation directly from the subtenant (i.e., payment of all or part of the rent, maintenance requirements, etc.), this should be clarified in the consent. Similarly, the consent can be used to clarify which rights the subtenant does not possess (i.e., the right to exercise extension options, ROFO, etc.).
3. Assignment of Sublease Rent. If the tenant is collecting sublease rent from the subtenant, the landlord should obtain an assignment of that rent (similar to the rights of a lender under a loan) to protect itself should the primary tenant default under the master lease. The landlord then grants the tenant a revocable license to collect the sublease rent, which license is automatically revoked if the tenant defaults under the master lease. The subtenant should also agree to attorn to the landlord in such event.
4. Insurance. The landlord will want to make sure that the subtenant carries the necessary liability and other insurance and names the landlord as an additional insured.
5. Waiver of Subrogation. The waiver of subrogation in a lease is effective as between the landlord and tenant. Similarly, the waiver of subrogation in a sublease is effective as between the tenant/sublessor and the subtenant. The consent document can then be used to close the loop and clearly set out the waiver of subrogation as between landlord and subtenant.
6. Indemnity. The landlord can obtain a direct indemnity from the subtenant for damage caused by the subtenant's occupancy of the premises.

7. Non-Disturbance. The landlord may (or may not) agree not to disturb the occupancy of the subtenant in the event that the master lease is terminated. If the landlord is willing to provide this right to the subtenant, the consent document is a logical place for the provision. The landlord will need to determine whether to accept the sublease as a direct lease between landlord and subtenant, or to enter into a new lease with the subtenant (usually on substantially the same terms as the master lease).

8. Limitations on Sub-Subleases. The landlord's right to approve a sublease may not necessarily prevent the subtenant from sub-subleasing its premises. For all the same reasons discussed above, the landlord should have some level of control over this process.

9. Notice Provisions. The landlord needs to know how to contact the subtenant and how to forward formal notices if needed.

10. Subtenant's Right to Cure Defaults. The subtenant may want the right to cure defaults by the tenant under the master lease in order to preserve its subleasehold interest. Because this right needs to be granted directly from the primary landlord to the subtenant, the consent is a logical place for the provision to be.

APPENDIX 1

Form of Sublease

This sample agreement is based on the Ali-Aba Model Sublease Originally Drafted by John S. Hollyfield, Esq. and has been modified from its original form

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

WITNESSETH:

_____, as Landlord ("Landlord") and _____ ("Tenant") entered into that certain 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 is the 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] [the portion of the Premises identified on Exhibit ____] ("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:

(a) 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 Sublessor 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;

(b) 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;

(c) Entire Agreement. Sublessor warrants and represents that the Base Lease represents Sublessor's entire agreement with Landlord relating to the Premises;

(d) 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

(e) 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 WAS 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 from the consequences of the acts or omissions of Sublessee, its agents, employees, or contractors.

11. Default by Sublessee. If Sublessee fails to pay any Base Sublease Rental within five (5) days after the same is due or fails to pay any other sum payable under this Sublease or the Base Lease when due, or fails to perform or observe any other covenant, term, provision, or condition of this Sublease or the Base Lease, which failure continues for ten (10) calendar days after written notice from Sublessor to Sublessee describing such failure, Sublessee shall be in default under this Sublease. Upon the occurrence, and during the continuance, of a default by Sublessee under this Sublease, Sublessor shall be entitled to all the rights and remedies available to Landlord under the Base Lease following an event of default by Sublessor thereunder and to any other rights and remedies available to a landlord under applicable law. Upon any default by Sublessee under this Sublease and the expiration of any and all applicable notice and cure periods, Sublessor, without being under any obligation to do so and without thereby waiving such default, may make such payment or remedy such other default for the account of Sublessee, and thereupon Sublessee agrees to and shall pay to Sublessor, immediately upon demand, all reasonable costs, expenses, and disbursements incurred by Sublessor in taking such remedial action, together with interest on such amount at the rate specified in paragraph 3 above.

12. Default by Sublessor.

(a) Default Under Sublease. Any provision in this Sublease or the Base Lease to the contrary notwithstanding, if Sublessor fails to perform its obligations under this Sublease and such failure (a) interferes substantially with the normal use of the Subleased Premises as allowed in this Sublease, and (b) continues for more than three (3) consecutive business days, then the Base Sublease Rental shall be proportionately abated until such interference is eliminated or the Subleased Premises are otherwise rendered tenantable again. If Sublessor fails to perform its obligations under this Sublease and the interference resulting therefrom continues for a period of thirty (30) or more consecutive days, then Sublessee shall have the right and option to cancel the Sublease by giving written notice to Sublessor within fifteen (15) days after the end of such thirty (30) day period.

(b) Default Under Base Lease. In the event Sublessor shall fail to pay any sum provided to be paid by the Tenant under the Base Lease and not provided to be paid or reimbursed by Sublessee pursuant to this Sublease, or if Sublessor shall be in default of any of the other provisions

of the Base Lease, which default is not the result of any default by Sublessee under this Sublease or the Base Lease and Sublessor fails to remedy any such default within the time provided in the Base Lease, Sublessee, in addition to any other rights or remedies that Sublessee may have at law or in equity, may recover any actual damages sustained by Sublessee as a result of Sublessor's default plus Sublessee's reasonable attorneys' fees. Sublessee, at Sublessee's option, may cure at Sublessor's sole expense, any such default of which Sublessor shall first have been given notice, and all sums expended by Sublessee in curing such default shall be due and payable by Sublessor upon receipt of Sublessee's demand therefor. Upon receipt, Sublessor shall promptly furnish Sublessee with a copy of each notice, demand, or correspondence delivered to Sublessor from the Landlord under the Base Lease. Likewise, Sublessee shall promptly furnish Sublessor copies of each such notice, demand, or correspondence received from Landlord. Sublessor understands and agrees that Sublessee shall have the option to assume the position of Sublessor in any proceeding to enforce any term or condition of the Base Lease which Sublessor has the right to enforce. Sublessor agrees to join with Sublessee in any such proceedings in the event such action becomes necessary in the reasonable opinion of Sublessee.

13. Quiet Enjoyment. Sublessee shall peacefully have, hold, and enjoy the Subleased Premises, subject to the terms and conditions of this Sublease and the Base Lease, provided that Sublessee timely and fully performs all of its covenants, duties, and obligations under this Sublease.

14. Insurance. During the Sublease Term, Sublessee shall be responsible for providing, at its sole cost and expense, all insurance coverage necessary for the protection against loss or damage from fire or other casualty of Sublessee's goods, furniture, or property. Additionally during the Sublease Term, Sublessee, at its sole cost and expense, shall obtain and maintain (with insurance companies approved by Sublessor) commercial general liability insurance, including property damage, insuring against liability for injury to persons or property occurring in or about the Subleased Premises or arising out of the use or occupancy thereof. The Landlord and Sublessor shall be named additional insureds under such insurance policy. The amount of such insurance shall not be less than \$1 million (\$1,000,000) per occurrence for death or bodily injury and for property damage. A certificate of such insurance shall be furnished to Landlord and Sublessor at the commencement of the Sublease Term, and such insurance shall provide that it may not be altered or canceled without thirty (30) calendar days' prior written notice to Sublessor.

15. Waiver of Subrogation Rights. Anything contained in this Sublease to the contrary notwithstanding, and to the extent not prohibited by applicable law, Sublessor and Sublessee each waive for themselves and their respective insurers any and all rights of recovery, claims; actions, or causes of action against the other, its agents, officers, and employees, for any loss or damage that may occur to the Subleased Premises, or any improvements thereto, or any personal

property, by reason of fire, the elements, or any other cause which could be insured against under the terms of a fire and extended coverage insurance policy, regardless of cause or origin, including, without limitation, negligence of either Sublessor or Sublessee or their respective agents, officers, employees, or contractors, and covenant that no insurer shall hold any right of subrogation against either Sublessor or Sublessee.

16. Governing Law. This Sublease shall be governed by and construed in accordance with the internal laws of [state], without regard to the conflicts of laws principles thereof. To the extent they may lawfully do so, Sublessor and Sublessee agree that venue for any litigation between them related to this Sublease shall be in courts (federal or state) sitting in [jurisdiction].

17. Notices. Any notice or other communication to any party required or permitted to be given under this Sublease must be in writing and shall be effectively given if hand delivered or if sent by United States Mail, postage prepaid, certified or registered, return receipt requested, to the following addresses:

If to Sublessor:

If to Sublessee

Any notice mailed shall be deemed to have been given on the second (2nd) business day following the date of deposit of such item in a depository of the United States Postal Service. Notice effected by hand delivery or facsimile shall be deemed to have been given at the time of actual delivery. Any party shall have the right to change its address to which notices shall thereafter be sent by giving the other parties notice thereof.

18. Successors and Assigns. This Sublease shall be binding upon and shall inure to the benefit of Sublessor, Sublessee and their respective successors and assigns, subject to the limitations set forth in paragraph 9 above.

19. Taxes. Sublessee shall pay when due all taxes, license, and other fees or charges imposed on the trade fixtures, equipment, and other property of Sublessee on or in the Subleased Premises and the business conducted by Sublessee on or from the Subleased Premises.

20. Sublessor's Access. Sublessor shall have the right, at all reasonable times during the Sublease Term, after reasonable notice to Sublessee, not to be less

than 48 hours unless Sublessee is in default under this Sublease (in which event no notice is required), to enter the Subleased Premises to inspect the condition thereof, to determine if Sublessee is performing its obligations under this Sublease, and to cure any defaults of Sublessee hereunder that Sublessor elects to cure. No such entry by Sublessor will constitute an assumption of any of Sublessee's obligations hereunder.

21. Security Deposit. Sublessee shall pay Sublessor a security deposit (the "Security Deposit") of on the date this Sublease is executed by Sublessee. Upon the occurrence of any default hereunder or under the Base Lease, Sublessor may, from time to time, without prejudice to any other remedy, use the Security Deposit (after the expiration of any and all applicable notice and grace periods) to the extent necessary to pay sums past due by Sublessee to Sublessor under this Sublease and to repair, restore, or discharge any damage, injury, expense, or liability caused by any default hereunder or the Base Lease, and the portion of the Security Deposit expended shall be restored by Sublessee upon demand. The Security Deposit shall not be considered a measure of Sublessor's damages for any default by Sublessee hereunder or under the Base Lease. Unless otherwise required by applicable law, no interest shall be paid on the Security Deposit. The amount of the Security Deposit then held by Sublessor shall be returned to Sublessee at the end of the Sublease Term provided no uncured default by Sublessee exists hereunder.

22. Utilities. Sublessee shall be responsible for all utilities consumed at the Subleased Premises, including, but not limited to, electricity, gas, telephone, water, sewer and trash pickup and disposal. Sublessor shall not be responsible for bringing utilities to Subleased Premises, and Sublessee agrees to pay necessary utility connection charges. Sublessor shall not be responsible for any interruption in utility services.

23. Parking. During the Sublease Term, Sublessee shall be entitled to use and enjoy any parking rights available to the Sublessor under the Base Lease.

EXECUTED on the day and date first written above.

APPENDIX 2

Form of Three-Party Consent to Sublease

THIS AGREEMENT (this "Agreement") is made as of the _____, by and between

_____, a _____ ("Landlord"),

_____, a _____ ("Tenant"), _____

("Subtenant"), with reference to the following facts:

A. Landlord and Tenant entered into that certain Lease Agreement dated _____, as subsequently amended on _____ (collectively the "Master Lease"), relating to certain premises more particularly described in the Master Lease ("Premises").

B. Tenant and Subtenant have entered into a Sublease Agreement dated as of _____ ("Sublease"). By the terms of the Sublease, Tenant will sublease to Subtenant and Subtenant will sublease from Tenant a portion of the Premises consisting of approximately _____ square feet of space located at _____, as more particularly described in the Sublease ("Sublease Premises").

C. Tenant has requested that Landlord consent to Tenant subletting the Sublease Premises to Subtenant pursuant to the Sublease. Landlord has agreed to consent to the subletting on the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Landlord, Tenant and Subtenant agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, all defined terms used in this Agreement shall have the same meaning and definition given them in the Master Lease.

2. Master Lease.

2.1 The Sublease is and shall be at all times subject and subordinate to all of the terms and conditions of the Master Lease and, notwithstanding anything to the contrary contained in the Sublease,

Subtenant agrees to perform all of the covenants of Tenant contained in the Master Lease insofar as the same relate to the Sublease Premises, provided that Subtenant shall not be obligated to pay rent, operating expenses or other charges in excess of the amounts specified in the Sublease. In case of any conflict between the provisions of the Master Lease and the provisions of the Sublease, as between Tenant and Landlord, the provisions of the Master Lease shall prevail unaffected by the Sublease. Subtenant shall not violate any of the terms and conditions of the Master Lease to the extent applicable to the use and occupancy of the Sublease Premises. Any breach of the Master Lease by Tenant or any breach of the Sublease or Master Lease by Subtenant which results in a breach of the Master Lease shall entitle Landlord to all the rights and remedies provided in the Master Lease.

2.2 Subtenant acknowledges and agrees that, except as provided below, the term of the Sublease shall automatically terminate upon the termination of the Master Lease for any reason whatsoever, including, without limitation, the termination of the Master Lease prior to the expiration of the term thereof pursuant to a written agreement by and between Landlord and Tenant; provided, Subtenant agrees, at the option and upon written demand of Landlord, to attorn to Landlord for the remainder of the term of the Sublease, such attornment to be upon all of the terms and conditions of the Master Lease. The foregoing provisions shall be self-operative upon such written demand of Landlord, and no further instrument shall be required to give effect to said provisions. Upon demand of Landlord, however, Subtenant agrees to execute, from time to time, such documents as Landlord deems desirable to effect and acknowledge such attornment. *[Alternative Provision: In the event the Master Lease terminates prior to the termination of the Sublease, Sublessee agrees to attorn to Landlord and to recognize Landlord as Sublessee's landlord under the Sublease, upon the terms and conditions and at the rental rate specified in the Sublease and for the then remaining term of the Sublease, except that Landlord shall not be bound by any provision of the Sublease which in any way increases Landlord's duties, obligations or liabilities to Sublessee beyond those owed to Tenant under the Master Lease. Sublessee agrees to execute and at any time and from time to time, upon request of Landlord, any instruments which may be necessary or appropriate to evidence such attornment.]* Notwithstanding any provision to the contrary in the Sublease or in any other agreement, Subtenant acknowledges that it shall have no right and there shall not be vested in Subtenant any right to exercise rights of first refusal, options, or other similar preferential rights, if any, given to Tenant under the Master Lease.

2.3 Tenant represents and warrants to Landlord that (a) attached to this Agreement as Exhibit A is a true and correct copy of the Master Lease, and there exist no amendments, modifications, or extensions of or to the Master Lease except as specified herein, and the Master Lease is now in full force and effect; and (b) to Tenant's actual knowledge, there exist no defenses or offsets to enforcement of the Master Lease by Landlord or Tenant. To Tenant's actual knowledge, (i) Landlord is not in default in the performance of the Master Lease, (ii) Landlord has not committed any breach thereof, and (iii) no event has occurred which, with the passage of time, or the giving of notice, or both, would constitute a default or breach by Landlord.

2.4 Tenant and Subtenant represent and warrant to Landlord that (a) there are no additional payments of rent or consideration of any type payable by Subtenant to Tenant with regard to the Sublease Premises other than as disclosed in the Sublease, (b) a true, correct and complete copy of the Sublease is attached hereto as Exhibit B, and (c) no amendment to the Sublease shall be effective or enforceable between Tenant and Subtenant unless and until Landlord shall have consented to such amendment in writing.

3. Consent of Landlord. Landlord hereby consents to the subletting of the Sublease Premises to Subtenant pursuant to the terms of the Sublease. Landlord's consent shall not release or discharge Tenant of any of its obligations under the Master Lease or release, discharge or alter the primary liability of Tenant to pay rent and all other sums due under the Master Lease and to perform and comply with all other obligations of Tenant under the Master Lease. As between Landlord and Tenant, the Sublease shall not alter, amend or otherwise modify any provisions of the Master Lease. Landlord shall have no obligations to any party in connection with the Sublease Premises other than those obligations set forth in the Master Lease. Landlord shall not be bound or estopped in any way by the provisions of the Sublease. This Agreement shall not be construed as a consent by Landlord to, or as permitting, any other or further subletting or assignment by Tenant or Subtenant. Landlord shall not (i) be liable to Subtenant for any act, omission or breach of the Sublease by Tenant, (ii) be subject to any offsets or defenses which Subtenant might have against Tenant, (iii) be bound by any Base Rent or Additional Rent which Subtenant might have paid in advance to Tenant, or (iv) be bound to honor any rights of Subtenant in any security deposit made with Tenant, except to the extent Tenant has delivered such security deposit to Landlord. Tenant hereby agrees that in the event of termination of the Master Lease, Tenant shall, upon the written demand of Landlord, immediately pay or transfer to Master Landlord any security deposit, rent or other sums then held by Tenant from Subtenant.

4. Assignment of Rent

4.1 Subject to the terms of Section 4.2, Tenant hereby absolutely and irrevocably assigns and transfers to Landlord Tenant's rights under the Sublease to all rentals and other sums due Tenant under the Sublease.

4.2 Landlord agrees that until a default shall occur in the performance of Tenant's obligations under the Master Lease, Tenant shall have a license to receive, collect and enjoy the rentals and other sums due Tenant under the Sublease except as otherwise provided under the Master Lease. However, said license shall automatically terminate without notice to Tenant upon the occurrence of a default by Tenant in the performance of its obligations under the Master Lease and Landlord may thereafter, at its option, receive and collect, directly from Subtenant, all rentals and other sums due or to be due Tenant under the Sublease. Landlord shall not, by reason of the assignment of all rentals and other sums due Tenant under the Sublease nor by reason of the collection of said rentals or other sums from the Subtenant, (a) be bound by or become a party to the Sublease, (b) be deemed to have accepted the attornment of Subtenant, or (c) be deemed liable to Subtenant for any failure of Tenant to perform and comply with Tenant's obligations under the Sublease. Tenant hereby irrevocably authorizes and directs Subtenant, upon receipt by Subtenant of any written notice from Landlord stating that a default exists in the performance of Tenant's obligations under the Master Lease, to pay directly to Landlord the rents and other income due and to become due under the Sublease. Tenant agrees that Subtenant shall have the right to rely solely upon such notice from Landlord notwithstanding any conflicting demand by Tenant or any other party. Tenant hereby agrees to indemnify, defend and hold Subtenant harmless from any and all claims, losses, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, attorneys' fees and consultants' fees) (collectively, "claims") which Subtenant may incur in relying on any written notice from Landlord and/or paying rent and other sums due under the Sublease directly to Landlord in accordance with this Section 4.2. Without limiting the generality of the foregoing, the acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant or Subtenant of the Master Lease or Sublease other than the failure of Tenant or Subtenant, as the case may be, to pay the particular rental so accepted.

5. Indemnification. Tenant and Subtenant each shall indemnify and hold harmless Landlord and Landlord's members, agents, employees, partners, shareholders, directors, invitees, and independent contractors (collectively "Agents") of Landlord, against and from any and all Claims arising from or related to the following: (a) Subtenant's use of the Sublease Premises or any activity done, permitted or suffered by

Subtenant in, on or about the Sublease Premises, the Building, or the Property; (b) the Sublease and any act or omission by Subtenant or its Agents in connection with or related to the Sublease, the Sublease Premises, the Building, or the Property; (c) any Hazardous Material used, stored, released, disposed, generated, or transported by Subtenant or its Agents in, on, or about the Sublease Premises, including without limitation, any Claims arising from or related to any Hazardous Material investigations, monitoring, cleanup or other remedial action; and (d) any action or proceeding brought on account of any matter referred to in items (a), (b), and/or (c). If any action or proceeding is brought against Landlord by reason of any such Claims, upon notice from Landlord, Tenant and Subtenant shall defend the same at their expense with counsel reasonably satisfactory to Landlord. The obligations of Tenant and Subtenant under this Section 5.1 shall survive any termination of the Sublease or the Master Lease.

6. Assignment and Sub-Subletting. Subtenant shall not voluntarily or by operation of law, (1) mortgage, pledge, hypothecate or encumber the Sublease or any interest therein, (2) assign or transfer the Sublease or any interest therein, sub-sublet the Sublease Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents and invitees or Subtenant excepted) to occupy or use the Sublease Premises, or any portion thereof, without first obtaining the written consent of Landlord.

7. Miscellaneous Provisions.

7.1 Tenant shall pay to Landlord, upon Landlord's demand, the fee specified in the Master Lease, or if no fee is so specified, Landlord's reasonable fees incurred in connection with Landlord's review and processing of documents relating to the subletting of the Sublease Premises to Subtenant.

7.2 Landlord shall use reasonable efforts to notify Subtenant of any default by Tenant under the Master Lease of which Landlord has actual knowledge and which is not cured within any applicable notice and cure period provided in the Master Lease; provided, however, that the failure of Landlord to provide such notice shall not give rise to liability on the part of Landlord or otherwise alter or modify the rights and obligations of the parties hereunder. The giving of any such notice to Subtenant shall not vest in Subtenant any rights or remedies except as otherwise expressly set forth herein.

7.3 Tenant and Subtenant agree not to amend, modify, supplement, or otherwise change in any respect the Sublease except with the prior written consent of Landlord, which consent shall not be unreasonably withheld. This Agreement shall not create in

Subtenant, as a third party beneficiary or otherwise, any rights except as set forth in this Agreement.

7.4 All notices which Landlord or Subtenant desire to give or provide to the other shall be personally delivered or sent by registered or certified U.S. mail, postage prepaid, return receipt requested, and, if to Landlord, shall be sent to the address set forth immediately below Landlord's signature hereto, and, if to Subtenant shall be sent to the Sublease Premises. Each party shall have the right to change its address for notices by giving written notice thereof to the other party in accordance with this Section 7.4. Any notice given in accordance with this Section 7.4 shall be deemed delivered upon actual receipt (or attempted delivery if delivery is refused). Copies of any notices of default sent by (i) Tenant under the Master Lease or Sublease, as applicable, shall be delivered to Landlord and Subtenant at the addresses for each set forth in the Master Lease and Sublease, as applicable, at the same time such notices are sent to Landlord or Subtenant, as applicable, and (ii) Subtenant to Tenant under the Sublease shall be delivered by Subtenant to Landlord at the address set forth in the Master Lease at the same time such notices are sent to Tenant as set forth in the Sublease.

7.5 This Agreement, together with the provisions of the Master Lease relating to subletting or assigning, contains the entire agreement between the parties hereto regarding the matters which are the subject of this Agreement. In the event of a permitted assignment under the Master Lease by Landlord or Tenant of its interest in the Master Lease, then the assignee of either Landlord or Tenant, as appropriate, shall automatically be deemed to be the assignee of Landlord or Tenant under this Agreement, and such assignee shall automatically assume the obligations of Landlord or Tenant under this Agreement. No other assignments of this Agreement shall be permitted, except with the written consent of all parties hereto. Any attempted assignment in violation of this section shall be void. The terms, covenants and conditions of this Agreement shall apply to and bind the heirs, successors, the executors and administrators and permitted assigns of all the parties hereto. The parties acknowledge and agree that no rule or construction, to the effect that any ambiguities are to be resolved against the drafting party, shall be employed in the interpretation of this Agreement. If any provision of this Agreement is determined to be illegal or unenforceable, such determination shall not affect any other provisions of this Agreement, and all such other provisions shall remain in full force and effect.

7.6 If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of

this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

7.7 This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

7.8 Tenant and Subtenant covenant and agree that under no circumstances shall Landlord be liable for any brokerage commission or other charge or expense in connection with the Sublease or this Agreement and Tenant and Subtenant agree to protect, defend, indemnify and hold Landlord harmless from the same and from any cost or expense (including but not limited to attorneys' fees) incurred by Landlord in resisting any claim for any such brokerage commission.

7.9 This Agreement shall in no manner be construed as limiting Landlord's ability to exercise its rights to recapture any portion of the Premises, as set forth in the Master Lease, in the event of a proposed future sublease or assignment of such portion of the Premises.

7.10 The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State in which the Premises are located.

7.11 Tenant and Subtenant agree that the liability of Landlord hereunder and any recourse by Tenant or Subtenant against Landlord shall be subject to the limitations on liability set forth in the Master Lease. In addition, neither Landlord, nor any of its constituent members, partners, subpartners, or agents, shall have any personal liability, and Tenant and Subtenant each hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant and/or Subtenant.

7.12 Tenant and Subtenant shall be jointly and severally liable for all bills rendered by Landlord for charges incurred by or imposed upon Subtenant which arise during the term of the Sublease for services rendered and materials supplied to the Sublease Premises pursuant to the Master Lease, Sublease and/or this Agreement.

7.13 The voluntary or other surrender of the Master Lease by Tenant, or a mutual cancellation, termination or expiration thereof, shall not work as a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases or subtenancies.

7.14 As a condition precedent to the effectiveness of this Agreement, Subtenant shall have delivered to Landlord a fully complete and executed Hazardous Materials Disclosure Statement in the form attached hereto as Exhibit C and incorporated herein by reference.

7.15 Waiver of Subrogation. Landlord, by giving Landlord's consent to the Sublease, and Subtenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property to the extent that such loss or damage is insured by an insurance policy required to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required by its insurer whereby the insurer waives its rights of subrogation against the other party. This provision is intended to waive fully, and for the benefit of the parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Subtenant pursuant to the Insurance Section of the Master Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance. The provisions of this Section 7.15 shall not apply in those instances in which such waiver of subrogation would invalidate such insurance coverage or would cause either party's insurance coverage to be voided or otherwise uncollectible.

IN WITNESS WHEREOF, Landlord, Tenant and Subtenant have executed this Agreement as of the day and year first hereinabove written.