

Negotiated Form of Landlord's Consent to Sublease

Presented by:

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CONSENT TO SUBLEASE

This Consent to Sublease (the "Consent") dated as of _____, 20____, is made by and among _____, a _____ ("Master Lessor"), _____, a _____ ("Sublessor"), and _____, a _____ ("Sublessee"), with respect to the following:

RECITALS

A. Master Lessor is the landlord and Sublessor is the tenant pursuant to that certain written lease dated _____, 20____ (the "Master Lease"), between _____ as landlord and _____ as tenant. The Master Lease covers certain premises more particularly depicted on Exhibit A hereto, commonly known as Suite ___ (the "Leased Premises") located in a building commonly known as _____, _____, _____ (the "Building") in a project commonly known as _____ (the "Project").

B. Sublessor desires to sublease all or a portion of the Leased Premises to Sublessee, which portion of the Leased Premises (including all, if applicable) is more particularly depicted on Exhibit B hereto (the "Subleased Premises"), and Master Lessor is willing to consent thereto, but only on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF the foregoing recitals and the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Consent to the Sublease. In reliance on the representations, warranties and covenants of Sublessor and Sublessee set forth in, respectively, paragraphs 2 and 3 below, and subject to satisfaction of the conditions set forth in paragraph 45 below, Master Lessor hereby consents to the sublease of the Subleased Premises to Sublessee on the terms and conditions set forth herein and on the exact terms and conditions set forth in the sublease attached hereto as Exhibit C (the "Sublease").

2. Representations, Warranties and Covenants of Sublessor. As an inducement to obtain the consent of Master Lessor to the Sublease, Sublessor hereby represents, warrants and covenants to and with Master Lessor as follows, which representations, warranties and covenants Sublessor acknowledges have been relied upon by Master Lessor in granting its consent to the Sublease:

(a) The rental reserved in the Sublease is the only rent (however denominated and paid) payable by Sublessee to Sublessor. For the purposes of this subparagraph (a), the term "rent" shall mean all consideration paid or given, directly or indirectly, for the use of the Subleased Premises or any portion thereof. The term "consideration" shall mean and include

money, services, property and any other thing of value such as payment of costs, cancellation of indebtedness, discounts, rebates and the like. Master Lessor shall have the rights to audit and review Sublessor's records relating to the Sublease and the rent paid and payable pursuant thereto, at any time and from time to time, during normal business hours. In the event that any such audit and review reflects that Master Lessor has been paid less than the amount required to be paid to Master Lessor pursuant to ~~subparagraph 2(b) below~~ the Master Lease, Sublessor shall be responsible for the cost of Master Lessor's audit.¹

(b)² ~~Master Lessor shall be entitled to one hundred percent (100%) of the rent payable by Sublessee to Sublessor pursuant to the Sublease in excess of the rent payable by Sublessor to Master Lessor on account of the Subleased Premises, which sums shall be paid to Master Lessor within five (5) days of the date the same are payable by Sublessee. In the event that the Master Lease provides for the payment to Master Lessor of a percentage of the sales made at or from the Leased Premises (whether gross sales or determined pursuant to some other formula), the sales by Sublessee in the Subleased Premises shall be included in the sales of Sublessor for such purpose, and Sublessor shall specifically require that Sublessee comply with all of the terms and provisions of the Master Lease with respect to such sales, including without limitation the maintenance of records with respect to the same. Sublessor's failure to pay any sums to Master Lessor as and when set forth in this subparagraph shall be an event of default pursuant to the Master Lease, entitling Master Lessor to all remedies available to a landlord against a defaulting tenant, including without limitation those set forth in Article ___ of the Master Lease. Any rent or other consideration which is to be passed through to Master Lessor by Sublessor pursuant to this subparagraph shall be paid to Master Lessor in cash, irrespective of the form in which received by Sublessor from Sublessee. In the event that any rent or other consideration received by Sublessor from Sublessee is in a form other than cash, Sublessor shall pay to Master Lessor in cash the fair market value of such consideration, as determined by Master Lessor, whose determination shall be conclusive. Master Lessor and Sublessor agree that the payment required by this subparagraph represents payment for Master Lessor's property rights in and to the leasehold estate created by the Master Lease and constitutes additional rent due and payable by Sublessor pursuant to the Master Lease. (e) Sublessor hereby ratifies and confirms its obligations under the Master Lease and acknowledges that, to Sublessor's knowledge,³ Master Lessor is not in default under the Master Lease and, to Sublessor's knowledge, that Sublessor has no existing claim against Master Lessor or right of offset or defense against enforcement by Master Lessor of the obligations of Sublessor under the Master Lease.~~

3. Representations, Warranties and Covenants of Sublessee. As an inducement to obtain the consent of Master Lessor to the Sublease, Sublessee hereby represents, warrants and covenants to and with Master Lessor as follows, which representations, warranties and covenants

¹ This representation and these audit rights are acceptable to tenant/subtenant if and only if Master Lessor reserved the right to excess rental under the Master Lease. Negotiating a higher market rent as a condition to consent is not reasonable. If the Master Lease includes the right to excess rental, this provision could be allowed to remain to confirm what that spilt is.

² The Master Lease should speak for itself in this regard.

³ Master Lessor may counter with a "best knowledge" standard.

Sublessee acknowledges have been relied upon by Master Lessor in granting its consent to the Sublease:

(a) The rental reserved in the Sublease is the only rent (however denominated and paid) payable by Sublessee to Sublessor. For the purposes of this subparagraph (a), the terms "rent" and "consideration" shall have the meanings set forth in paragraph 2(a) above. In the event that the Master Lease provides for the payment to Master Lessor of a percentage of the sales made at or from the Leased Premises (whether gross sales or determined pursuant to some other formula), Sublessee shall comply with all of the terms and provisions of the Master Lease with respect to such sales, including without limitation the maintenance of records with respect to the same, notwithstanding anything to the contrary in the Sublease. Master Lessor shall have the rights to audit and review Sublessee's records relating to the Sublease and the rent paid and payable pursuant thereto, at any time and from time to time, during normal business hours. In the event that any such audit and review reflects that Sublessee has not paid to Sublessor the amount of rent reserved to Sublessor under the Sublease, Sublessee shall be responsible for the cost of Master Lessor's audit.⁴

(b) Subtenant shall perform faithfully and be bound by all of the terms, covenants, conditions, provisions and agreements of the Master Lease applicable to the Subleased Premises for the period of the Sublease; provided, however, in no event shall Sublessee be responsible for payment of rent for the Subleased Premises in excess of the rent reserved under the Sublease.

(c) The Sublease is not given as security for a loan nor shall it be given as security or otherwise encumbered by Sublessee during the term of the Sublease or any subsequent agreement without Master Lessor's prior written consent, which may be withheld in Master Lessor's sole and absolute discretion.

(d) Sublessee's execution of this Consent shall constitute an acknowledgement by Sublessee that it has received a copy of the Master Lease from Sublessor.

~~(e) Master Lessor has reviewed the financial statements, if any, requested of Sublessee and has relied upon the truth and accuracy thereof with Sublessee's knowledge and representations of the truth and accuracy of such statements and that said statements accurately and fairly depict the financial condition of Sublessee. Said financial statements are an inducing factor and consideration for the entering into of this Consent by Master Lessor. Sublessee shall, at any time and from time to time upon not less than ten (10) days' prior written notice from Master Lessor, furnish Master Lessor with (i) Sublessee's most recent audited financial statements, including a balance sheet and income statement, or a document in which Sublessee states that its books are not independently audited and (ii) unaudited financial statements, including a balance sheet and income statement, dated within ninety (90) days of the request from Master Lessor.~~

⁴ See footnote 1 above. If there is no excess rental payable to Master Lessor this paragraph should be eliminated.

4. Representations, Warranties and Covenants of Master Lessor. As an inducement to Sublessee to execute the Sublease, Master Lessor hereby represents, warrants and covenants as follows, which representations, warranties and covenants Master Lessor acknowledges have been relied upon by Sublessee in entering into the Sublease:

(a) No default of the obligations to be performed under the Master Lessor by Sublessor presently exists thereunder.

(b) The Master Lease is in full force and effect.

(c) Master Lessor shall obtain for the benefit of Sublessee a subordination, attornment and non-disturbance agreement from Master Lessor's lender, in form and substance reasonably acceptable to Sublessee.⁵

4.5. Conditions to Master Lessor's Consent. Without in any way limiting the provisions of this Consent, Master Lessor's consent to the Sublease is conditioned upon satisfaction of the following conditions:

(a) Master Lessor's receipt, within ten (10) days of the date hereof, of a fully executed copy of the Sublease, identical in form and substance to Exhibit C hereto.

(b) Master Lessor's receipt, within ten (10) days of the date hereof, of a fully executed copy of this Consent.

~~(c) Notwithstanding anything to the contrary in the Sublease, Master Lessor's consent to the Sublease is conditioned upon Sublessor's receipt of the profit from all sub-subtenancies, irrespective of the number of levels thereof, Master Lessor's share of which shall be passed through to Master Lessor in accordance with subparagraph 2(b) above.~~

~~(d) In no event shall either Sublessor or Sublessee have the right to exercise any options or rights of first refusal or first offer granted to Sublessor under the Master Lease, it being acknowledged and agreed that the waiver of any rights to exercise the same is material consideration for Master Lessor's consent granted hereby.~~ (e)(c) Sublessor hereby authorizes Master Lessor to furnish to the Subleased Premises services requested by Sublessee which are consistent, in terms of type of services and quantity requested, with the services Sublessor is entitled to receive from Master Lessor under the Master Lease and to bill Sublessee directly for such services for the convenience of and without notice to Sublessor. Sublessee hereby agrees to pay Master Lessor all amounts due for such services on the due dates thereof. If Sublessee shall fail to so pay, Sublessor shall pay such amounts to Master Lessor upon demand and such amounts shall become additional rent under the Master Lease.

⁵ Sublessee may require non-disturbance from a lender if, e.g., there are above-market tenant improvements in the Subleased Premises or if Sublessee is spending tenant improvement dollars in the space. It is not a customary request from a subtenant, and probably wouldn't be unreasonable for a landlord to resist as landlords tend to prefer to limit requests of their lenders to matters that benefit the landlord.

5.6. Effect of the Sublease and of Master Lessor's Consent or Further Actions.
Notwithstanding anything to the contrary in the Master Lease, the Sublease or this Consent:

(a) Master Lessor's consent to the Sublease does not release Sublessor of its obligations under the Master Lease (or any guarantor of its obligations under its guaranty of the Master Lease) or alter the primary liability of Sublessor (and of any guarantor under any guaranty of the Master Lease) to pay the rent and perform and comply with all of the obligations of Sublessor to be performed under the Master Lease.

(b) Notwithstanding the express provisions of the Sublease, the Sublease is and shall at all times be subject and subordinate to the Master Lease, ~~which Sublessor and Sublessee agree is incorporated into the Sublease by this reference. In furtherance of the foregoing it is understood and agreed that, notwithstanding anything to the contrary set forth in the Sublease, the terms, conditions and respective obligations of Sublessor and Sublessee to each other under the Sublease shall be the same as the terms and conditions of the Master Lease, with the exception of those terms of the Sublease which relate to the amount of rent to be paid or which relate to rights of Sublessee and which grant to Sublessee fewer rights than are set forth in the Master Lease for the benefit of Sublessor. Therefore, with respect to all provisions of the Sublease other than the provisions relating to the amount or rent to be paid and provisions which grant to the Sublessee fewer or lesser rights than are granted to the Sublessor under the Master Lease, for the purpose of determining the rights and obligations of Sublessor and Sublessee under the Sublease, as between Sublessor and Sublessee, the word "Landlord" in the Master Lease shall be deemed to mean the Sublessor under the Sublease, and the word "Tenant" in the Master Lease shall be deemed to mean Sublessee under the Sublease.~~⁶

(c) Neither the Sublease nor this Consent shall (i) release or discharge Sublessor from any liability, whether past, present or future, under the Master Lease, (ii) operate as Master Lessor's consent to or approval of any of the terms, covenants, conditions, provisions or agreements of the Sublease, and Master Lessor shall not be bound thereby, or (iii) be construed to modify, waive, release or otherwise affect any of the terms, covenants, conditions, provisions or agreements of the Master Lease, waive any breach of the Master Lease, waive any of Master Lessor's rights as landlord under the Master Lease, enlarge or increase Master Lessor's obligations as landlord under the Master Lease or enlarge or increase Sublessor's and/or Sublessee's rights and benefits in excess of the rights and benefits applicable to Sublessor under the Master Lease.

(ed) Master Lessor's consent to the Sublease shall not constitute a consent to any subsequent subletting or assignment, it being understood by Sublessor and Sublessee that any and all subsequent subletting or assignment of all or any portion of the Subleased Premises

⁶ Sublessor and Sublessee will want the terms of the Sublease to control. Depending on how carefully the Sublease is drafted, they may encounter resistance from the Master Lessor in this regard. Subleases that go through the exercise of incorporating by reference Articles and/or sections of the Master Lease and including language similar to that deleted here are more likely not to encounter resistance from the Master Lessor.

and/or the Leased Premises to any party whatsoever (including without limitation any affiliate of Sublessor or Sublessee), shall be subject to the prior written consent of Master Lessor upon the terms and conditions set forth in the Master Lease. No changes or modifications shall be made to the Sublease without the prior written consent of Master Lessor. Any changes or modifications to the Sublease without Master Lessor's consent shall be voidable at the option of Master Lessor in the exercise of its sole and absolute discretion. Master Lessor may consent to any amendments or modifications to the Master Lease without notifying Sublessor, Sublessee or anyone else liable under the Master Lease and/or Sublease (including without limitation any guarantor under any guaranty of the Master Lease or Sublease) and without obtaining their consent and such action shall not relieve such persons from liability.

(de) Sublessor and Sublessee understand and acknowledge that this Consent is not a consent to any improvement or alteration to or in the Subleased Premises, and prior to the undertaking by Sublessor or Sublessee of any improvement or alteration to or in the Subleased Premises, Sublessor shall obtain Master Lessor's prior written consent ~~as provided for under the Master Lease, and if such consent is given, the same will be subject to Sublessor and Sublessee signing Master Lessor's standard form of agreement with respect to improvement or alteration work being performed by persons other than Master Lessor and the payment to Master Lessor of a fifteen percent (15%) construction management fee based on the costs (both hard and soft) of any such tenant improvement work~~ if and to the extent that the same is required to be obtained by Sublessor under the Master Lease.⁷

~~(e) All options to extend, renew or expand, if any, contained in the Master Lease are personal to Sublessor and this Consent shall not include consent to the assignment or transfer of any such rights with respect to the Subleased Premises or any special privileges or extra services granted to Sublessor by the Master Lease, or any addendum or amendment thereto. Similarly, any allowance, abatement or monetary concession provided to Sublessor as an inducement to execute the Master Lease is personal to Sublessor and, upon mutual execution and delivery of this Consent, the currently unamortized (on a straight line basis over the term of the Master Lease) portion thereof shall be paid by Sublessor to Master Lessor in cash as a condition to the effectiveness of this Consent.~~⁸

6. Assignment of Rents; Rights of Master Lessor.⁹

(a) Sublessor hereby absolutely assigns and transfers to Master Lessor the Sublessor's interest in the Sublease and all rentals and income arising therefrom.

⁷ Again, unless the construction management fee is reserved in the Master Lease, it is not likely to be viewed as a reasonable condition to consent, unless, for example, the Master Lease provides no right to perform alterations and the subtenant intends to perform extensive alterations under the Sublease.

⁸ The Master Lease should speak for itself in this regard.

⁹ Sublessor could argue that Master Lessor should have included these provisions in the Master Lease and request their deletion from this Consent. In the event of a default under the Master Lease by Sublessor, however, Sublessee may want to attorn to the Master Lessor and may want to require non-disturbance from the Master Lessor.

(b) Notwithstanding the absolute assignment set forth in subparagraph (a) above, until a Default (as defined below) shall occur under the Master Lease, Sublessor may receive, collect and enjoy the rents accruing under the Sublease. Effective upon the earlier of the occurrence of a default by Sublessor under the Sublease or the occurrence of an event which, with the passage of time would constitute a default by Sublessor under the Master Lease (collectively, a "Default"), Sublessor's license to enjoy or use any of the Sublease rent theretofore or thereafter accrued or collected shall automatically terminate, without requirement of notice to Sublessor or Sublessee, and Master Lessor may, at its option, upon notice to Sublessee, receive and collect, directly from Sublessee, all rent owing and to be owed under the Sublease. Notwithstanding the foregoing, any other payment of rent from Sublessee directly to Master Lessor, regardless of the circumstances or reasons therefor, shall in no manner whatsoever be deemed an attornment by Sublessee to Master Lessor or serve to release Sublessor from any liability under the terms, covenants, conditions, provisions or agreements under the Master Lease, in the absence of a specific written agreement signed by Master Lessor to such an effect. Master Lessor shall not, by reason of this assignment of the Sublease nor by reason of the collection of the rents from the Sublessee, be deemed liable to Sublessee for any failure of the Sublessor to perform and comply with Sublessor's obligations under the Sublease.

(c) Sublessor hereby irrevocably authorizes and directs Sublessee and Sublessee agrees, upon receipt of any written notice from the Master Lessor stating that a Default has occurred in the performance of Sublessor's obligations under the Master Lease, to pay to Master Lessor all rents due and to become due under the Sublease. Sublessor agrees that (i) Sublessee shall have the right to rely upon any such statement and request from Master Lessor, (ii) Sublessee is hereby instructed to pay such rents to Master Lessor without any obligation or right to inquire as to whether such Default exists and notwithstanding any notice from or claim from Sublessor to the contrary, and (iii) Sublessor shall have no right or claim against Sublessee for any such rents so paid to Master Lessor by Sublessee. The acceptance of rent by Master Lessor from Sublessee or anyone else liable under the Master Lease shall not be deemed a waiver by Master Lessor of any provisions of the Master Lease.

(d) In the event of any Default of Sublessor under the Master Lease, Master Lessor may proceed directly against Sublessor, any guarantors or any one else liable under the Master Lease or the Sublease without first exhausting Master Lessor's remedies against any other person or entity liable thereon to Master Lessor. ~~In the event of a default by Sublessee under the Sublease which constitutes a Default by Sublessor under the Master Lease, Master Lessor shall be permitted (by assignment of cause of action or otherwise) to institute an action or proceeding against Sublessee in the name of Sublessor and as Sublessor's attorney-in-fact in order to enforce Sublessor's rights under the Sublease, and shall also be permitted to take all ancillary actions (e.g., serve default notices and demands) in the name of Sublessor and as Sublessor's attorney-in-fact (and Sublessor hereby irrevocably appoints Master Lessor its attorney-in-fact for the purposes set forth herein) as Master Lessor reasonably shall determine to be necessary. Sublessor agrees to cooperate with Master Lessor, and to execute such documents~~

¹⁰ Sublessee is likely to object to Master Lessor having direct enforcement rights against Sublessee with no obligations to Sublessee.

~~as shall be reasonably necessary in connection with the implementation of the foregoing rights of Master Lessor.~~ Sublessor expressly acknowledges and agrees that the exercise by Master Lessor of any of the foregoing rights and remedies shall not constitute an election of remedies, and shall not in any way impair Master Lessor's entitlement to pursue other rights and remedies available under the Master Lease or at law directly against Sublessor.

(e) In the event that Sublessor shall Default under the Master Lease, then Master Lessor, at its option:

(i) without being obligated to do so, may unilaterally require Sublessee to attorn to Master Lessor, in which event Master Lessor shall undertake the obligations of Sublessor under the Sublease from the time of the exercise of said option until termination of the Sublease, but Master Lessor shall not be liable to Sublessee for any prepaid rents nor any security deposit paid by Sublessee, nor shall Master Lessor be liable for any other defaults of Sublessor under the Sublease, or

(ii) may terminate the Master Lease due to a Default by Sublessor on its obligations thereunder and in accordance with the terms thereof¹¹, and, in the event of any such termination ~~or in the event of the expiration of the Master Lease prior to the expiration of the Sublease, Master Lessor shall have the right, in its sole discretion, to withdraw the consent to the Sublease hereby given and terminate the Sublease. Within thirty (30) days after the Sublessee's receipt of notice from Master Lessor of its election to withdraw the consent to and terminate the Sublease pursuant to the foregoing provisions of this clause (ii), Sublessee shall vacate the Subleased Premises. Upon such vacation by Sublessee, Sublessor and Sublessee shall cause the Subleased Premises to be in good condition and repair subject to damage by casualty. Unless Master Lessor exercises its rights pursuant to clause (i) above, the term of the Sublease shall expire and come to an end on its expiration date or any premature termination date thereof or concurrently with any premature termination of the Master Lease (whether by consent or other right, now or hereafter agreed to by Master Lessor or Sublessor, or by operation of law or at Master Lessor's option in accordance with this clause (ii)).~~¹² Master Lessor agrees that Sublessee's right to possession of the Subleased Premises shall not be disturbed so long as Sublessee is not in default under the Sublease.

Sublessee, immediately upon receipt of unilateral written notice from Master Lessor requiring Sublessee to attorn to Master Lessor pursuant to clause (i) above, hereby agrees to be bound to Master Lessor under the terms, covenants and conditions of the Sublease for the balance of the term thereof remaining with the same force and effect as if Master Lessor were the landlord under the Sublease, and Sublessee shall attorn to Master Lessor as its landlord upon the

¹¹ Since "Default" under the Consent picks up breaches where cure periods have not expired, Sublessor will want this additional clarification to make sure this Consent does not eliminate Sublessor's cure rights under the Master Lease.

¹² Both Sublessor and Sublessee are likely to object to the foregoing language; Sublessee because it would permit a voluntary termination of the Master Lease by Master Lessor and Sublessor and Sublessor because keeping the Sublease in place mitigates (unless the Sublease rent is then below market) Sublessor's damages under the Master Lease.

succession of Master Lessor to the interest of Sublessor under the Sublease, and Master Lessor, if it has sent such notice, shall accept such attornment subject to the limitations contained in this Consent. Such attornment shall be effective upon receipt of written notice from Master Lessor and shall be self-operative without the execution of any further instrument by either party hereto, except Sublessee hereby agrees that it will promptly execute and deliver any instruments which Master Lessor may reasonably request to evidence such attornment. The provisions of this subparagraph (e) shall not limit Master Lessor's remedies available against Sublessor pursuant to the Master Lease or at law or in equity.

7. Miscellaneous.

(a) Notwithstanding Master Lessor's consent to the Sublease, Master Lessor shall not be required to prorate taxes, common operating costs or other charges on account of the Sublease, it being understood and agreed by Sublessor that any prorations of such amounts as between Sublessor and Sublessee shall be the sole responsibility of Sublessor and Sublessee, and Master Lessor need not be concerned therewith.

(b) Time is of the essence of every provision hereof and of the Master Lease of which time is an element, notwithstanding the time periods for performance or payment by Sublessee set forth in the Sublease. Nothing in the Sublease shall supersede or have any effect on the interpretation or enforcement of the Master Lease.

(c) In the event that any provisions of this Consent shall be determined by a court of competent jurisdiction to be invalid, void or illegal, or invalid, void or illegal as applied to any person or circumstance, the remaining provisions hereof and/or the application of such provision(s) to any person(s) and/or the application of such provision(s) to any person(s) and/or circumstance(s) other than those as to which it is held to be invalid, void or illegal, shall nevertheless remain in full force and effect to the maximum extent permitted by law and not be affected thereby.

(d) No provision of this Consent may be amended or added to except by an instrument in writing signed and acknowledged by both of the parties hereto. Master Lessor's prior written consent is required for (i) any further subleasing of the Leased Premises, including the Subleased Premises, (ii) any assignment of the ~~Sublease or the~~ Master Lease, and (iii) any amendment to or modification of the Sublease.

(e) Any notice required or permitted to be made or given to Master Lessor or to Sublessor under this Consent shall be in writing and shall be given in the manner and to the addresses set forth in the Master Lease. Any notice to Sublessee permitted or required hereunder shall be given to Sublessee in the manner and at its address set forth in the Sublease attached hereto, or to such other address as Sublessee may direct by written notice to Master Lessor. ~~Sublessor and Sublessee shall each deliver to Master Lessor copies of all notices delivered or required to be delivered to the other party under the Sublease, including without limitation notices of default and exercise of options. In addition, Sublessor shall deliver to Master Lessor, within ten (10) days after the expiration of the term of the Sublease, notice that Sublessee is holding over (it being understood, however, that Master Lessor shall have the right to terminate~~

~~any such holdover tenancy in accordance with the provisions of the Master Lease, at any time either prior to or after receipt of notice thereof). Except to the extent specifically provided otherwise with respect to holdover, all such notices shall be delivered to Master Lessor upon the earlier of (i) the date the same are required to be delivered under the Master Lease, or (ii) the date the same are delivered by one Sublease party to the other. All such notices shall be delivered by the methods prescribed for delivery of notices under the Master Lease.~~

(f) Sublessor shall not be released from any liability under the Master Lease, nor shall any liability of Sublessor be decreased, because of Master Lessor's failure to give notice of default under or in respect of any of the terms, covenants, conditions, provisions or agreements of the Master Lease or because of Master Lessor's direct conversations, communications or other dealings with Sublessor and/or Sublessee.

~~¹³(g) Each of Sublessor and Sublessee hereby agrees that Master Lessor shall not be liable for damage to the goods, wares, merchandise or other property of such party or its employees, invitees, customers, or any other person in or about the Leased Premises, the Building or the Project, or any portion thereof, nor shall Master Lessor be liable for injury to the person of such party or its employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Leased Premises or any portion thereof or upon other portions of the Building or Project, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to such party. Master Lessor shall not be liable for any damages arising from any act or neglect of any other tenant, occupant or user of the Project, nor from the failure of Master Lessor to enforce the provisions of any other lease for premises in the Project. Notwithstanding Master Lessor's negligence, willful misconduct or breach of the Master Lease, Master Lessor shall under no circumstances be liable for consequential damages or for injury to Sublessor's or Sublessee's business or for any loss of income or profit therefrom. Each of Sublessor and Sublessee agrees that, in the event such party shall have any claim against Master Lessor under the Master Lease, the Sublease or this Consent, such party's sole recourse shall be against the Master Lessor's interest in the Building for the satisfaction of any claim, judgment or decree requiring the payment of money by Master Lessor as a result of a breach thereof or otherwise in connection with the Project, and no other property or assets of Master Lessor, its successors or assigns, shall be subject to the levy, execution or other enforcement procedure for the satisfaction of any such claim, judgment, injunction or decree. In the event Master Lessor shall sell or otherwise convey its title to the Building, then, after the effective date of such sale or conveyance, Master Lessor shall have no further liability under the Master Lease except, subject to the foregoing, as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance.~~ (h) No waiver of any provision of this Consent shall be deemed to be a waiver of any other provision hereof or of

¹³ Deleted, because these types of provisions should have been included in the Master Lease. Limiting the Master Lessor's liability under the Master Lease to its interest in the Project is, however, a fairly typical request in an REO context, as the lender is not, as its borrower likely was, a single purpose entity and is probably not unreasonable for the same reason.

the subsequent application of the provision as to which such waiver is given or suffered. Consent to or approval of any act by Master Lessor shall not be deemed to render unnecessary the obtaining of Master Lessor's consent to or approval of any subsequent act.

(h) The representations, warranties and covenants of Master Lessor, Sublessor and Sublessee herein shall survive the execution and delivery of this Consent and of the Sublease.

(i) In any action arising out of, relating to or resulting from the provisions of this Consent, or to interpret the provisions hereof, the prevailing party(ies) in such action shall be entitled to recover from the other party(ies) its costs incurred therein, including reasonable attorneys' fees, in an amount determined by the Court.

(k) The captions of the paragraphs and subparagraphs of this Consent are for convenience only, are not a part of this Consent and do not in any way limit or amplify the terms and provisions hereof.

(k) This Consent shall be construed, interpreted and applied in accordance with the laws of the State of _____.

(m) Sublessor and Sublessee covenant and agree that under no circumstances shall Master Lessor be liable for any brokerage commission or other charge or expense in connection with the Sublease, and Sublessor and Sublessee agree to indemnify Master Lessor against same and against any cost or expense (including, but not limited to, attorneys' fees) incurred by Master Lessor in resisting any claim for any such brokerage commission.

IN WITNESS WHEREOF, Master Lessor, Sublessor and Sublessee have executed this Consent as of the date first set forth above.

_____, a

_____, a

By: _____

By: _____

Its: _____

Its: _____

"Sublessor"

"Master Lessor"

_____, a

By: _____

Its: _____

"Sublessee"

CONSENT OF GUARANTOR

The undersigned, as the Guarantor of the obligations of Sublessor under the Master Lease pursuant to that certain written guaranty dated _____, 20__ (the "Sublessor Guaranty"), whereby the undersigned guaranteed the obligations of the Sublessor as tenant pursuant to Master Lease, hereby (a) consent(s) to the foregoing Consent and to the Sublease attached hereto as Exhibit C and (b) agree(s) that the obligations of the undersigned pursuant to the Sublessor Guaranty shall not be affected notwithstanding the execution and delivery of the Sublease.

Dated: _____, 20__

_____, a

By: _____

Title: _____

CONSENT OF GUARANTOR

The undersigned, as the Guarantor of the obligations of Sublessee under the Sublease attached hereto as Exhibit C pursuant to that certain written guaranty dated _____, 20__ (the "Sublessee Guaranty"), whereby the undersigned guaranteed the obligations of the Sublessee as tenant pursuant to the Sublease, hereby (a) consent(s) to the foregoing Consent and the Master Lease and (b) agree(s) that the obligations of the undersigned pursuant to the Sublessee Guaranty shall not be affected notwithstanding the execution and delivery of the foregoing Consent.

Dated: _____, 20__

_____, a

By: _____

Title: _____

Exhibit A

Depiction of the Leased Premises

Exhibit A

Exhibit B

Depiction of the Subleased Premises

Exhibit B

Exhibit C

Form of the Sublease

Exhibit C

Document comparison done by DeltaView on Thursday, March 26, 2009 12:28:57 PM

Input:	
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Document 2	file://M:/Users/VPC/MCLE/2009ABAPanel/SubleaseConsent (Tenant_2).doc
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	0
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