



OUTLINE OF ISSUES CONCERNING ASSIGNMENT AND SUBLETTING

Jack Fersko*

1. Silence

(a) Absent an express prohibition in a lease, a tenant has a right to assign, sublet, mortgage the leasehold interest and otherwise transfer the lease and leasehold interest.

(i) *See Berkeley Development Co. v. Great Atlantic & Pacific Tea Company*, 214 N.J. Super. 227 (Law Div. 1986).

2. Privity

(a) A landlord and tenant have both privity of estate and privity of contract.

(b) Privity of contract allows a party to enforce the other party's promises.

(c) Privity of estate only allows a party to enforce those promises that run with the land.

(i) In order for a covenant to be deemed to run with the land, the substance of the promise must touch and concern the land.

(ii) "Briefly, a promise may be said to touch and concern the land if it relates directly to the nature, quality, value, use, enjoyment, and operation of the premises." Mark A. Senn, *Commercial Real Estate Leases: Preparation, Negotiation, and Forms* (5th ed., Wolters Kluwer Law & Business), pg. 13-13 to 13-14.

(iii) Covenants or promises that have been found to run with the land and are able to be enforced by the successor in interest to a landlord include:

(A) Payment of rent;

(B) Restrictions on a tenant's right to transfer an interest;

*© Copyright 2013 by Jack Fersko. Mr. Fersko is a partner in the Real Estate Department of Greenbaum, Rowe, Smith & Davis, LLP where he is the Co-Chair of the Alternative Energy & Sustainable Development Practice Group. This outline of issues is not exhaustive of all potential issues, but rather is intended to provide the reader with a starting point in the analysis of issues to address in an assignment/subletting situation. The outline and clauses are presented primarily from a landlord perspective.

- (C) The obligation to pay taxes and insurance;
- (D) The obligation to make repairs;
- (E) Exculpatory provisions in favor of a landlord; and
- (F) The right of a landlord to terminate a lease upon a sale of the property.

(iv) Covenants or promises that have been found to run with the land and are able to be enforced against a landlord's successor in interest include:

- (A) A covenant of quiet enjoyment;
- (B) A tenant's right to extend the lease term;
- (C) A tenant's option to purchase the property; and
- (D) A right of the tenant to prohibit a landlord from competing with the

tenant.

(d) Assignment.

(i) Upon an assignment of a lease by a tenant, the landlord has privity of estate with the assignee.

(ii) Upon an assignment of a lease by a tenant, the landlord and the assignee have privity of contract only if the assignee has agreed to assume the lease agreement.

(A) Without privity of contract, (1) the landlord cannot compel the assignee to comply with the lease provisions and (2) the assignee cannot compel the landlord to comply with the lease provisions.

(e) Sublease.

(i) A prime landlord and a sublessee have neither privity of estate nor privity of contract.

(ii) Neither a landlord nor a sublessee can enforce the lease or sublease provisions against the other.

(iii) A sublessee must rely on the sublessor to enforce the lease against the prime landlord.

3. **Assignment vs. Sublease - Generally**

(a) Assignment - a transfer of the entire leasehold space for remainder of the term.

(i) Note: *Assignment pro tanto* - an assignment of all rights under a lease for less than the full space.

(b) Sublease - a transfer of less than the entire leasehold space or a transfer of less than the full term.

(i) Retention of a reversionary interest, regardless of how short, creates a sublease.

(ii) Retention of a right of re-entry upon a default is not deemed a retention of a reversionary interest.

(c) Courts will look to the substance of the transaction over the form of the transaction in the determination of whether there is a sublease or assignment.

(i) See *Berkeley Development Co. v. Great Atlantic & Pacific Tea Company*, 214 N.J. Super. 227 (Law Div. 1986).

(d) Unless otherwise provided in a lease, a transfer of ownership of an entity is neither an assignment nor a sublease. See *Posner v. Air Brakes & Equipment Corp.*, 2 N.J. Super. 187 (Ch. Div. 1948).

(e) Unless otherwise provided in a lease, a transfer by operation of law, such as a merger, is not a violation of a no assignment clause. See *Segal v. Greater Valley Terminal Corp.*, 83 N.J. Super. 120 (App. Div. 1964).

4. **Competing Interests of Landlord and Tenant**

(a) Will vary depending on a number of factors:

(i) Single tenant vs. multi-tenant occupancy; and

(ii) Type of Lease:

(A) Industrial;

(B) Office; and

(C) Retail.

(b) Landlord.

- (i) Wants all of the benefits of the real estate.
- (ii) Concern for creditworthiness of tenant/assignee/sublessee.
- (iii) Concern for continuation of guaranty, if any.
- (iv) Shopping Center:
 - (A) Tenant mix;
 - (B) Percentage rent;
 - (C) radius restrictions;
 - (D) Anchor tenant vs. support tenant; and
 - (E) Theme center - e.g., clothing outlet will not necessarily want supermarket; upscale retail not want “neighborhood store.”
- (v) Use.
 - (A) Impact on parking (e.g., dermatologist vs. law office).
 - (B) Impact on traffic (vehicular and pedestrian).
 - (C) Impact on HVAC (overtime use, data center).
 - (D) Trigger applicability of Industrial Site Recovery Act or otherwise handle hazardous flammable substances that increase the level of risk.
 - (E) Impact on exclusive use provisions/going dark provisions.
- (vi) Changes to physical space (which ties in with the use, alterations and restoration clauses of the lease).
- (vii) Subtenancy - some additional concerns since may involve two tenants for space (multiple signage, required alterations to accommodate two tenants, increased HVAC demand).
- (viii) Ability to accommodate growth of other tenants.

(c) Tenant.

(i) Flexibility to grow or contract as business demands.

(ii) Ability to obtain revenue (via sublease) during bad economic times.

(iii) Flexibility to sell business or merge/consolidate with parent/subsidiaries/affiliates.

(iv) Liability protection.

5. Complete Restriction on Transfer

(a) Typical starting point in a lease - complete restriction on occupancy by anyone other than the tenant and on transfers, including assignment, sublease, mortgage, encumbrance, license, concession, sale or transfer of stock, partnership interest or membership interest, and other transfers by operation of law.

(i) See form attached as **Exhibit A**.

(b) Tenant will want an agreement that Landlord, at least, will not unreasonably withhold consent to an assignment and sublease.

(c) Tenant may also want a right, without consent, (i) to transfer (assign/sublet) to a parent, subsidiary, affiliate or purchaser of all or substantially all of its assets, (ii) to transfer by operation of law in connection with a merger or consolidation, (iii) to transfer (with respect to a service company - law firm, accounting firm, marketing firm) in connection with the admission or withdrawal of a partner, (iv) to transfer in connection with tenant "going public" and (iv) to transfer (if a family business) for purposes of succession planning or estate planning.

(d) To the extent a landlord agrees to a right of assignment or sublease without consent, the landlord should condition the validity of any transfer on landlord's receipt of an original signed assignment and assumption agreement in form and substance satisfactory to landlord.

6. Consent

(a) Majority rule, which is followed in New Jersey, provides that a landlord need not be reasonable in granting or withholding its consent.

(i) See *Jonas v. Prutaub Joint Venture*, 237 N.J. Super. 137 (App. Div. 1989), cert. den. 121 N.J. 628 (1990).

(b) Tenant will want a landlord covenant not to unreasonably withhold, condition or delay consent.

(i) Standard of proof - what will the reasonable man do in the landlord's position.

(ii) Burden of proof rests with tenant.

(c) Some case law where a landlord agreed to not unreasonably withhold consent

(i) Landlord cannot withhold consent because a prospective subtenant is a tenant of the landlord in another building. Economic self-interest of landlord not a reasonable basis for withholding consent. See *Krieger v. Helmsley-Spear Inc.*, 62 N.J. 423 (1973).

(ii) Landlord must reasonably consider a proposed change in use, even if it violates the use clause of the lease. See *Ringwood Assoc. v. Jack's of Rt. 23, Inc.*, 153 N.J. Super. 294 (Law Div. 1977), aff'd 166 N.J. Super. 36 (App. Div. 1979).

(iii) A landlord's withholding consent must be tied to "the protection of the landlord in its ownership and operation of the particular property - not for its general economic protection." *Buck Consultants, Inc., v. Glenpointe Associates v. Mellon Financial Corporation*, 217 Fed. Appx. 142, 148, 2007 U.S. App. LEXIS 3016 (3d. Cir. 2007), citing *Krieger v. Helmsley-Spear Inc.*, 62 N.J. 423 (1973).

(d) *Ringwood* factors in determining whether a landlord can reasonably withhold consent.

(i) Whether the tenant-assignor will guaranty payment of rent and performance of lease covenants by the assignee.

(ii) Financial solvency of proposed assignee.

(iii) Nature of business of proposed assignee.

(iv) Suitability of proposed assignee's business for demised premises.

(v) Necessity for altering demised premises to accommodate proposed assignee's business.

(e) Landlord should list factors it may consider **in its judgment** in evaluating a request for consent, which should include, by way of example, and which, if found present, are deemed to make a landlord's determination to withhold consent, per se reasonable:

(i) Whether the proposed assignee has adequate financial strength and experience.

(A) Tenant will want to know that the financial strength of the proposed assignee is compared with its own financial position - that landlord not seek to better its position (and then the issue will turn on the date for measurement - i.e., lease commencement or assignment). Tenant may also want to take issue with this requirement generally if tenant is required to remain liable for payment/performance under the lease.

(ii) Whether the proposed assignee's business operations are of comparable quality to the business operations of tenant and are consistent with the character of the property/building.

(A) Tenant will want to have some flexibility so long as the character of the business is consistent with the character of the property and other tenants.

(iii) Whether the proposed assignee's use is consistent with the use clause of the lease or would otherwise place landlord in default of another lease (e.g., an exclusive use provision of another tenant's lease).

(iv) Whether the proposed assignee's use will trigger the applicability of the Industrial Site Recovery Act or otherwise involves the use, handling, storage or disposal of hazardous substances or flammable substances.

(v) Whether the proposed assignee's business/operations will increase the cost of building operations (e.g., HVAC demand/security demand), trigger compliance with law requirements/costs (e.g., ADA compliance), increase the cost of building restoration, or increase traffic flow (pedestrian/vehicular).

(A) Tenant will want to be able to address by having a right to pay the additional costs or secure restoration.

(vi) Whether the proposed assignee or any affiliated entity is a tenant of landlord at the property or other property of landlord or its affiliated entities.

(A) Tenant will want to limit this to a prospect that landlord actually had negotiations with within a stated period of time and pertaining to the property or other property in a stated radius of the property.

(vii) Whether the proposed assignee is a governmental authority or agency.

(viii) Whether the transaction would violate or otherwise require the prior consent of a ground lessor or mortgagee.

(ix) In the event that the lease is guaranteed, whether the guarantor's consent is required/granted for the proposed transaction and continuation of the guaranty.

(f) Landlord should place pre-conditions on its obligation to consider a request for consent.

(i) Tenant not in default under the lease.

(ii) Proposed assignee (and related affiliates) not a current tenant of landlord or a landlord affiliate.

(iii) Any request must be in writing.

(iv) Tenant to remain primarily liable, jointly and severally, with the proposed assignee.

(A) Landlord should make it clear that tenant - assignor is not entitled to profits from reletting of demised premises in the case of an assignee default. *See N.J. Industrial Properties, Inc. v. Y.C.&V.L., Inc.*, 100 N.J. 432 (1985).

(B) Landlord also should make it clear that the proposed assignee assumes the entirety of the lease responsibility.

(1) Most assignees only want to assume responsibility from the date of assignment.

(2) A tenant, particularly if it is being called upon to remain primarily liable, jointly and severally, with the proposed assignee, will want an agreement from the landlord (in order to facilitate its assignment transaction) that the proposed assignee's liability begins on the date of assignment.

(v) Fees.

(A) Landlord will want to be reimbursed legal fees in connection with the transaction.

(B) Landlord may want to be paid an administrative fee for reviewing a request for consent. Some leases provide that the tenant must pay an administrative fee of \$1,000 - \$1,500 that must be sent along with the request for consent.

(vi) Landlord shall not have liability to a broker for a commission.

(A) A landlord needs to review carefully any exclusive brokerage agreement it may have entered into to ensure that the broker does not have a claim to a commission for any lease transaction involving the property, thus extending to the assignment/sublease transaction.

(g) A request for consent should include:

(i) The name, address, ownership and contact individual for the proposed assignee/sublessee;

(ii) Information concerning other locations of operation;

(iii) A detailed statement of business operations, including hours of operation and nature of products/substances handled or stored;

(iv) Whether any products/substances handled or stored are hazardous or flammable;

(v) Whether the proposed assignee/sublessee is a governmental authority or agency.

(vi) Financial statements;

(vii) Banking references;

(viii) A detailed disclosure of the proposed assignee's business experience in general and in particular in the area of intended operations; and

(ix) A detailed disclosure of the financial terms of the assignment or sublease, as the case may be, and a copy of the sublease, in the event of a sublease.

(A) A tenant will not want to be forced to negotiate an agreement before it has secured the landlord's consent since neither the tenant nor the proposed sublessee will want to incur the time or cost of negotiating a transaction document if the landlord will want to recapture the space or will not consent.

(h) Landlord should provide that a grant of consent is not deemed a grant for any future transaction.

(i) A tenant will (A) want to require the landlord to delineate the basis for withholding consent if it determines to do so and (B) want the landlord's consent to be deemed given if within an agreed upon timeframe the landlord does not issue a detailed denial.

(j) See form attached as **Exhibit B**.

7. **Consequences of Wrongfully Withholding Consent**

(a) A landlord agreement not to unreasonably withhold consent is an affirmative covenant subjecting a landlord to a damage claim in the event of a breach.

(b) Tenant remedies for landlord unreasonably withholding consent may include:

(i) Damages;

(ii) Specific performance; and

(iii) Lease termination.

(c) Some case law.

(i) Tenant entitled to damages based on lost profits on sublease and actual expenses incurred with respect to leased premises, including utilities. *See Passaic Distributors Inc. v. Sherman Company*, 386 F. Supp. 647 (1974).

(ii) Tenant entitled to terminate lease. *See Ringwood Assoc. v. Jack's of Rt. 23, Inc.*, 153 N.J. Super. 294 (Law Div. 1977), *aff'd* 166 N.J. Super. 36 (App. Div. 1979).

(d) Landlord will want to impose a limitation on remedies.

(i) Limit tenant to specific performance and, maybe, recovery of legal fees if tenant is the prevailing party.

(ii) If landlord imposes a limited set of remedies, a tenant will want a right to terminate the lease or pursue damages in the case of landlord acting in bad faith.

8. **Right of Landlord to Recapture or Participate in Profits**

(a) Right of recapture.

(i) A landlord will want a right to recapture space in the event of a sublease or assignment in order to take advantage of an up market.

(A) Which is why a landlord will require a detailed copy of the financial terms of the proposed assignment or sublease when asked to consent. A landlord may want to enter into a direct lease with the proposed assignee or sublessee.

(ii) A tenant will want to exclude from recapture:

(A) An assignment in connection with a sale of the business;

(B) A transfer (where a family owned business) that is done in connection with succession planning or estate planning; and

(C) A transfer done in connection with a merger/consolidation with a parent/subsidiary/affiliate.

(iii) A tenant will want reimbursement for unamortized leasehold improvements in the event of a recapture.

(b) Right to profits.

(i) A landlord will want to share in the profits of the tenant with respect to an assignment or sublease.

(ii) The question centers on what constitutes profits, as a tenant will want to exclude costs of a transaction.

(A) Costs of a transaction need to be carefully delineated so that both parties understand its components.

(B) A tenant will want costs to include:

(1) Brokerage fees;

(2) Legal fees;

(3) Improvements to be made for the assignee/sublessee; and

(4) Remaining unamortized leasehold improvements.

(iii) Resolve when profits are to be paid and whether based on collections or payments due.

(iv) A landlord will want to provide that there cannot be any amendment that will affect profits.

9. Sublease

(a) Interest of subtenant

(i) A subtenant will want to address the following.

(A) An estoppel certificate from the prime landlord. See form attached as **Exhibit C**.

(B) A recognition agreement from the prime landlord and an SNDA from the prime landlord's lender. See form of recognition agreement attached as **Exhibit D**. A subtenant wants to know that if the tenant/sublessor defaults, the subtenant's possession will not be disturbed. Issues include under what agreement (prime lease or sublease) will landlord agree to recognize subtenant and subtenant must attorn to prime landlord. It is very important to check mortgage documents to ensure this transaction does not run afoul of any mortgage provisions, such as non-recourse carve-out provisions. In a ground lease setting, a ground landlord may want to provide that its SNDA "explodes" in the event that the ground tenant defaults and the aggregate rents from subleases do not equal at a minimum the ground rent.

(C) A right to deal directly with the landlord with respect to signage, HVAC overtime use, landlord waiver for subtenant loan transaction.

(D) A waiver of subrogation from landlord.

(E) A right to enforce terms of prime lease in name of tenant/sublessor, including audit rights.

(F) Financial viability of tenant/sublessor. Continued viability of tenant/sublessor significant if the sublease rental does not cover the full rent due under the prime lease.

(G) Restoration obligations under the prime lease, if any.

(b) Interest of prime landlord.

(i) Collateral Assignment of Sublease for security. See form attached as **Exhibit E**.

(ii) Insurance/Waiver of Subrogation.

(iii) Whether the exercise of a right of sublease should affect certain tenant rights and benefits, including concessions granted to a tenant, renewal rights, purchase options, exclusives and going dark provisions.

(iv) Termination of sublease upon rejection of the prime lease in bankruptcy. *See 380 Yorktown Food Corp. v. 380 Downing Drive*, 2012 WL 2360897 (N.Y. Sup. 2012).

(c) Landlord has a right to pursue possession from a subtenant in a tenancy action naming both the tenant and subtenant. *See Fogel 152-158 Realty, LLC v. Sport-A-Rama Corp.*, 2013 N.J. Super. Unpub. LEXIS 2550 (Law Div. 2013).

10. Assignment

(a) Interest of assignee.

(i) A proposed assignee will want to know that the lease is in good standing and that the tenant is not in default.

(b) Interest of tenant-assignor.

(i) A tenant-assignor will try to secure a release from future liability under the lease. This will raise issues concerning net worth of the proposed assignee.

(ii) Note substantial modification of the lease with the assignee may be considered a termination of the existing lease and formation of a new lease, thus releasing the tenant-assignor from further liability. *See Morse and Hamilton Limited Partnership v. The Gourmet Bagel Company d/b/a East Coast Bagel & Deli*, 2000 Ohio App. LEXIS 4492 (2000).

(c) Interest of landlord.

(i) A landlord will want the tenant and the proposed assignee to both have primary, joint and several liability.

(ii) Whether the exercise of a right of assignment should affect certain tenant rights, including renewal rights, purchase options and exclusives.

(iii) A landlord will not want to release the tenant/assignor from environmental liability.

(iv) When net worth becomes an issue -

(A) Do you look to net worth or tangible net worth - include good will or only tangible assets?

(B) Do you require a CPA certification?

(v) Continuation of existing lease guaranty.

(d) See form attached as **Exhibit F**.

11. **Mitigation of damages issue**

(a) If dispossess tenant – does a subtenant wanting to remain have an effect on a landlord's obligation to mitigate damages if landlord does not allow the subtenant to remain?

Sources

Mark A. Senn, COMMERCIAL REAL ESTATE LEASES: PREPARATION, NEGOTIATION, AND FORMS (5th ed. 2013).

1 COMMERCIAL REAL ESTATE TRANSACTIONS IN NEW JERSEY (Jack Fersko ed., 3rd ed. 2010).

Milton R. Friedman and Patrick A. Randolph, Jr., FRIEDMAN ON LEASES (5th ed. 2005).

Exhibit A

No Right to Transfer

(a) Tenant shall not, in whole or in part, “Transfer” (as defined below) this Lease, any interest in this Lease, or any interest in the leasehold estate granted by this Lease.

(b) For purposes of this Lease, “Transfer” shall mean: (i) an assignment of this Lease, including, without limitation, an assignment by operation of law; (ii) a sublease; (iii) a pledge of this Lease; (iv) a mortgage of the leasehold estate; (v) an imposition of a lien or other encumbrance on Tenant’s interest in this Lease (regardless of whether voluntary or not); (vi) an arrangement (including, without limitation, a management agreement, a license agreement, a franchise agreement or a concession agreement) that provides for use or occupancy of any part or all of the Demised Premises by anyone other than Tenant; (vii) a transfer of voting control of Tenant, creation of a voting trust for any of the shares of Tenant, recapitalization of Tenant or sale or other transfer of any interest in Tenant (including, without limitation, by merger, consolidation or, if Tenant is a corporation, by stock redemption); (viii) a conversion of Tenant from its present form of entity to any other form of entity; and (ix) allowing any one other than Tenant to use or occupy the Demised Premises. In the event of a Transfer in violation of this clause, Tenant shall be deemed in Default under this Lease, without the need for any further notice or opportunity to cure, and such Transfer shall be deemed void *ab initio*.

Exhibit B

Right to Transfer with Consent

(a) Tenant shall not, in whole or in part, “Transfer” (as defined below) this Lease, any interest in this Lease, or any interest in the leasehold estate granted by this Lease.

(b) For purposes of this Lease, “Transfer” shall mean: (i) an assignment of this Lease, including, without limitation, an assignment by operation of law; (ii) a sublease; (iii) a pledge of this Lease; (iv) a mortgage of the leasehold estate; (v) an imposition of a lien or other encumbrance on Tenant’s interest in this Lease (regardless of whether voluntary or not); (vi) an arrangement (including, without limitation, a management agreement, a license agreement, a franchise agreement or a concession agreement) that provides for use or occupancy of any part or all of the Demised Premises by anyone other than Tenant; (vii) a transfer of voting control of Tenant, creation of a voting trust for any of the shares of Tenant, recapitalization of Tenant or sale or other transfer of any interest in Tenant (including, without limitation, by merger, consolidation or, if Tenant is a corporation, by stock redemption); (viii) a conversion of Tenant from its present form of entity to any other form of entity; and (ix) allowing any one other than Tenant to use or occupy the Demised Premises. In the event of a Transfer in violation of this clause, Tenant shall be deemed in Default under this Lease, without the need for any further notice or opportunity to cure, and such Transfer shall be deemed void *ab initio*.

(c) Notwithstanding the provisions of subparagraph (a) above the contrary, provided (W) there shall not have been a Default under this Lease, (X) this Lease shall then be in full force and effect, without any outstanding notice of a failure to pay or perform, (Y) neither the proposed assignee (nor any affiliate of the proposed assignee) is then a tenant of Landlord (or any affiliate of Landlord) either at the Property or any property owned or managed by Landlord or any affiliate of Landlord and (Z) Tenant pays to Landlord contemporaneously with the written request of Tenant for consent, a non-refundable administrative fee of \$1,500 to defray the administrative costs that Landlord may incur in considering Tenant’s request for consent and within five (5) days of demand reimburses Landlord for all legal fees that Landlord incurs in connection with the request for consent and related transaction regardless of whether consent is given or the related transaction comes to fruition, Lessee shall have the right, upon prior written notice to and prior written consent of Landlord, not to be unreasonably withheld, to assign this Lease, or sublet all or a portion of the Demised Premises.

(d) Any request for consent shall be in writing and shall include, at a minimum the following information, together with such other information as Landlord shall reasonably request: (i) the name, address, ownership and contact individual for the proposed assignee/sublessee; (ii) information concerning other locations of operation of the business of the proposed assignee/sublessee; (iii) a detailed statement of business operations, including hours of operation and nature of products/substances handled or stored; (iv) whether any products/substances handled or stored are hazardous or flammable; (v) whether the proposed assignee/sublessee is a governmental authority or agency; (vi) a copy of the past three (3) years financial statements of the proposed assignee/sublessee; (vii) banking references of the proposed assignee/sublessee;

(viii) a detailed disclosure of the proposed assignee's/sublessee's business experience in general and in particular in the area of intended operations; and (ix) a detailed disclosure of the financial terms of the assignment or sublease, as the case may be, and a copy of the assignment and assumption agreement or a copy of the sublease, as the case may be.

(e) In determining whether to grant or withhold its consent, Landlord may consider in its judgment a number of factors, including, without limitation, the following: (i) whether the proposed assignee/sublessee has adequate financial strength and experience; (ii) whether the proposed assignee's/sublessee's business operations are of comparable quality to the business operations of Tenant and are consistent with the character of the Property; (iii) whether the proposed assignee's/sublessee's use is consistent with the use clause of this Lease or would otherwise place Landlord in default of any other lease for the Property; (iv) whether the proposed assignee's/sublessee's use will trigger the applicability of the Industrial Site Recovery Act, 13:1K-6 et seq., and the regulations promulgated thereunder or will otherwise involve the use, handling, storage or disposal of hazardous substances or flammable substances; (v) whether the proposed assignee's/sublessee's business/operations will increase the cost of Building operations (e.g., HVAC demand/security demand), trigger compliance with Law requirements and costs (e.g., ADA compliance), increase the cost of restoration of the Demised Premises, or increase traffic flow (pedestrian/vehicular); (vi) whether the proposed assignee/sublessee is a governmental authority or agency; (vii) whether the transaction will place Landlord in violation of any ground lease or mortgage provision (including, without limitation, triggering any non-recourse carve-out provision of any applicable mortgage); and (viii) in the event that this Lease is guaranteed, whether the guarantor's consent is granted for the proposed transaction and will continue for the remainder of the Lease term and any renewal thereof pursuant to the terms of this Lease.

(f) In the event that Landlord grants its written consent, such consent shall not be deemed a consent to any future assignment or sublease but shall only be deemed a consent to the particular transaction for which written consent was requested.

(g) In the event that Landlord does not grant its written consent to the proposed assignment or sublease, and Tenant believes that Landlord has unreasonably withheld its consent, then Tenant shall have as its exclusive remedy a right to bring an action for specific performance to compel Landlord to consent to the transaction. Landlord shall not oppose such action on the grounds that Tenant has an adequate remedy at law as Tenant hereby waives any right to damages, to terminate this Lease or to exercise any other remedy other than that of specific performance. The prevailing party in such action shall be entitled to reimbursement legal fees incurred in the prosecution or defense, as the case may be, of an action for specific performance.

(h) In the event that Landlord grants its written consent, in the event of an assignment, then prior to the effectiveness of the assignment, Tenant shall deliver to Landlord an original signed assignment and assumption agreement (in form and substance satisfactory to Landlord).

(i) In the event of an assignment, Tenant, together with the assignee, shall each be primarily liable, jointly and severally, for the full and timely payment of all sums due under this Lease and the full and timely performance of all terms, conditions and covenants to be performed by Tenant under this Lease.

(j) In the event of an assignment, and Landlord grants its consent thereto, then Tenant shall pay to Landlord fifty (50%) percent of any and all consideration due to Tenant from the proposed assignee over and above the remaining Base Rent due from Tenant under this Lease **[insert timing of payment]**, [and shall account to Landlord with respect thereto, from time to time, upon demand].

(k) In the event of a sublease, and Landlord grants its consent thereto, then Tenant shall pay to Landlord fifty (50%) percent of any and all consideration due to Tenant from the proposed sublessee over and above the remaining Base Rent due from Tenant under this Lease (which shall be determined on a proportionate basis if the sublease pertains to less than all of the Premises), **[insert timing of payment]**, [and shall account to Landlord with respect thereto, from time to time, upon demand].

(l) In lieu of granting its consent to a proposed assignment or sublease, at Landlord's option, Landlord may require Tenant to enter into a surrender and cancellation of this Lease which shall be in form and substance satisfactory to Landlord, and with respect to a sublease shall pertain only to the portion of the Demised Premises that is the subject of the sublease in the event that the sublease pertains to less than all of the Demised Premises.

(m) In the event of a sublease, and Landlord grants its consent thereto, then Tenant shall assign to Landlord the sublease (by way of an Assignment of Sublease Agreement, which shall be in form and substance satisfactory to Landlord) as further security for this Lease.

(n) In no event shall any assignment or sublease ever release any guarantor of this Lease from any obligations under such guaranty.

(o) In the event of a sublease, and Landlord grants its consent thereto, and thereafter Tenant defaults under this Lease, Tenant shall not raise as a defense in any action by Landlord for breach of this Lease, that Landlord failed to mitigate damages if Landlord does not continue to lease the Demised Premises to the subtenant either under the terms of the sublease or any other terms.

Exhibit C

Form of Estoppel

For purposes of this Estoppel Certificate, the following terms shall have the meanings assigned below:

PROPERTY:

DEMISED PREMISES:

LANDLORD:

TENANT:

LEASE:

GUARANTY:

Landlord hereby certifies and warrants as follows:

1. Tenant is the present occupant of the Demised Premises, which comprises _____ square feet of the Property.
2. The Lease is in full force and effect and has not been amended, modified or assigned except as set forth above. The Lease contains all of the understandings and agreements between Landlord and Tenant regarding the Demised Premises.
3. The commencement date of the term of the Lease is _____, and the expiration date is _____. The term of the Lease has commenced.
4. Option(s) to extend the term of the Lease, if any, are as follows: _____.
5. Option(s) to expand the Demised Premises, if any, are as follows:_____.
6. Right(s) of first refusal under the Lease, if any, are as follows:_____.
7. Option(s) to terminate the Lease, if any, are as follows:_____.
8. Option(s) to purchase the Property, if any, are as follows: _____.
9. The Lease provides for rent payable as follows: (a) Tenant pays a current fixed monthly rent of \$_____ (“Base Rent”); and (b) Tenant pays _____% of _____ (“Additional Rent”).
10. Base Rent has been paid through _____; Additional Rent has been paid through_____. No rent has been paid in advance under the Lease. There are no

disputes with Tenant regarding Base Rent or Additional Rent, and Tenant does not owe Landlord any sums or reimbursements.

11. A security deposit of \$_____ has been paid by Tenant pursuant to the Lease.
12. Tenant is not in default under the Lease and no condition exists, which with the giving of notice or the passage of time, or both, would constitute a default by Tenant under the Lease. Tenant is current in the payment of any taxes, utilities, common area maintenance payments, and all other charges, if any, required to be paid by Tenant under the Lease.
13. Any improvements required to be made by Tenant under the Lease have been completed to Landlord's satisfaction and the space required to be delivered to Tenant pursuant to the Lease has been duly delivered. Any tenant improvement allowance or build-out allowance or other similar payment to be provided by Landlord under the Lease has been paid in full to Tenant.
14. Landlord is not in default under the Lease and no condition exists, which with the giving of notice or the passage of time, or both, would constitute a default by Landlord under the Lease. Tenant is not entitled to any credit, offset or deduction in rent, nor has Tenant asserted any defense, claim, counterclaim or set-off against Landlord for any failure of performance of any of the terms of the Lease.
15. The person signing this Estoppel Certificate is duly authorized to sign this Estoppel Certificate on behalf of Landlord.
16. The current billing address and notice address for Landlord are as set forth below:

Landlord's Address for Payment:

Landlord's Address for Notice Purposes:

Landlord executes this Estoppel Certificate for the benefit and protection of Tenant and for _____ with the understanding that Tenant and _____ will rely upon this Estoppel Certificate in connection with the proposed **[assignment of Lease/sublease transaction]**.

Dated: _____, 20__

LANDLORD:

By:_____

Exhibit D

Recognition Agreement

This Recognition Agreement (“Agreement”) made as of this ____ day of _____
20__ by and between

_____, having an office at _____,
_____, referred to herein as the “Prime
Landlord”,

-and-

_____, having an office at _____,
_____, referred to herein as the
“Subtenant”.

Background

A. The Prime Landlord is the owner of the property (the “Property”) located in the _____ of _____, County of _____ and State of New Jersey, commonly known and designated as _____.

B. The Prime Landlord leased a portion of the Property (the “Demised Premises”) to _____ (the “Tenant”) under a certain Lease Agreement dated _____ (the “Lease”).

C. The Tenant has subleased _____ **[insert description of what has been subleased and term of sublease]** (the “Subleased Premises”) to the Subtenant pursuant to the terms of a Sublease Agreement dated _____ (the “Sublease”).

D. The Subtenant wishes to confirm that the Prime Landlord consents to the Sublease and the Subtenant's right to continue in possession of the Subleased Premises pursuant to the Sublease in the event that the Tenant defaults under the Lease.

Now, therefore, in consideration of the premises and the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

Agreement

1. **Background.** The Background section of this Agreement is incorporated herein by reference as if set forth at length.

2. **Consent to Sublease.** The Prime Landlord hereby confirms its consent to the Sublease in the form and containing the terms set forth in **Schedule A** annexed hereto and incorporated herein by reference as if set forth at length.

3. **Consent Cannot be Assigned.** This consent may not be assigned.

4. **Lease in Full Force.** Nothing in this Agreement shall be deemed to: modify, waive or affect any of the terms, conditions or covenants of the Lease; and all of the terms, conditions and covenants of the Lease are declared to be in full force and effect.

5. **Nondisturbance and Recognition of Subtenant.** In the event the Lease ends prior to the end of the term of the Sublease due to a default by the Tenant under the Lease, then the Sublease shall continue in full force and effect so long as the Subtenant is not in default thereunder, with the same force and effect as if the Sublease had been entered into by and between the Prime Landlord and the Subtenant. The provisions of this Agreement shall inure to the benefit of the Subtenant only and shall not pass to any successor or assignee.

6. **Attornment.**

(a) **Attornment.** From and after the termination of the Lease, the Subtenant shall attorn to the Prime Landlord and the Prime Landlord shall accept the attornment.

(b) **Rights of Prime Landlord.** From and after such attornment the Prime Landlord shall have all of the same rights and remedies against the Subtenant that the Tenant, as Sublandlord, had against the Subtenant under the Sublease just as if the Prime Landlord was a party to the Sublease. From and after such attornment, the Subtenant shall pay all rent and additional rent required to be paid by it under the Sublease directly to the Prime Landlord and shall comply with all of the terms and conditions of the Sublease in favor of and for the benefit of the Prime Landlord.

(c) **Rights of Subtenant.** From and after such attornment, the Prime Landlord shall adopt the Sublease as a direct lease between the Prime Landlord and the Subtenant such that the Subtenant shall have all rights to exercise all rights and remedies under the Sublease directly against the Prime Landlord.

7. **No Modification.** The Subtenant shall not amend, modify or terminate the Sublease without the prior written consent of the Prime Landlord, which the Prime Landlord may grant or withhold in its sole discretion. Any violation of this provision shall, at the option of the Prime Landlord be deemed void *ab initio* or shall permit the Prime Landlord to terminate this Agreement and deem this Agreement void *ab initio*.

8. **Governing Law.** This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered, and is intended to be performed in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

9. **Entire Agreement.** This Agreement and the Sublease constitute the entire agreement between the parties. No change, addition or modification to this Agreement shall be effective unless signed in writing by the parties.

10. **Miscellaneous.** In all references in this Agreement to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this Agreement may require.

11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, permitted successors and permitted assigns, as the case may be.

12. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

13. **Notice.** All notices required or permitted by this Agreement shall be in writing and shall be delivered (a) personally, (b) by certified mail, return receipt requested, or (c) by overnight delivery by a nationally recognized courier, addressed as follows:

As to Prime Landlord:

Attention: _____

with a copy at the same time to:

Attention: _____

As to Subtenant:

Attention: _____

with a copy at the same time to:

Attention: _____

Any party may, by notice given in the same manner set forth above, designate a different address to which subsequent notices shall be sent. Notice shall be deemed given (i) when received, if delivered personally, (ii) the earlier of receipt or three (3) business days after mailing, if sent by certified mail, return receipt requested, or (iii) the next business day after mailing if sent by overnight delivery. Notice may be given by counsel for any party, in which event such notice shall be as effective as if sent by the party itself.

SIGNATURES APPEAR NO NEXT PAGE

Signed and sealed by the parties.

Witness:

Prime Landlord:

By:

Name:

Title:

Date:

Witness:

Subtenant:

By:

Name:

Title:

Date:

Schedule A

Sublease

Exhibit E

Agreement of Consent to Sublease and Assignment

This agreement of Consent to Sublease (“Agreement”) made as of this ____ day of _____ 20__ by and between

_____, having an office at _____, referred to herein as the “Prime Landlord,”

-and-

_____, having an office at _____, referred to herein as the “Sublandlord,”

-and-

_____, having an office at _____, referred to herein as the “Subtenant.”

Background

A. The Prime Landlord, as landlord, entered into a Lease Agreement, dated _____, with the Sublandlord, as tenant for certain premises more particularly described in the Master Lease (the “Demised Premises”).

B. Under Section ____ of the Master Lease, the Sublandlord, as tenant, has the right to sublease all or a part of the Demised Premises upon the prior written consent of Prime Landlord.

C. The Sublandlord has requested that the Prime Landlord consent to the sublease (the “Sublease”) of a portion of the Demised Premises (the “Subleased Premises”), consisting of _____ of the building located on that certain real property situated in the County of _____, State of New Jersey, commonly known as _____ and more particularly described on **Schedule A** annexed hereto and incorporated herein by reference as if set forth at length, to the Subtenant.

D. The Prime Landlord has agreed to provide its consent, but only upon the terms, conditions and covenants set forth in this Agreement.

Now, therefore, in consideration of the premises and the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

CONSENT

1. **Background.** The Background section of this Agreement is incorporated herein by reference as if set forth at length.

2. **Consent to Sublease.** The Prime Landlord hereby consents to the Sublease by the Sublandlord to the Subtenant of all of the Sublessor’s right, title and interest in and to the Subleased Premises, but only upon the terms, conditions and covenants set forth in this Agreement.

3. **Representations of Sublandlord and Subtenant.** The Sublandlord and the Subtenant each represents and warrants to the Prime Landlord that:

(a) **Sublease Premises.** The Subleased Premises is the only portion of the Demised Premises that is being sublet by the Sublandlord to the Subtenant.

(b) **Use.** The Subtenant will use the Sublease Premises only as and for

_____.

(c) **No Relation.** The Sublandlord and the Subtenant are unrelated, unaffiliated parties with no common ownership interest.

(d) **Consideration.** Neither the Subtenant nor any person or entity related to Subtenant has agreed to pay any monies to the Sublandlord or any person or entity related to the Sublandlord for improvements, equipment, fixtures or otherwise, including, without limitation, as part of the consideration contained in any Asset Purchase Agreement between any of the foregoing parties or any other agreement between any of the foregoing parties.

4. **Effect on Prime Landlord.** Nothing in this Agreement shall be deemed (a) to operate as a representation or warranty by the Prime Landlord and the Prime Landlord shall not be bound or estopped in any way by the provisions of the Sublease, or (b) modify, waive or affect (i) any of the terms, covenants or conditions in the Master Lease, (ii) any of the Prime Landlord's rights against anyone liable for performance under the Master Lease, (iii) any of the Sublandlord's obligations, as tenant, under the Master Lease, (iv) any rights or remedies of the Prime Landlord under the Master Lease, (v) enlarge or increase the Prime Landlord's obligations or the Sublandlord's rights under the Master Lease, (vi) waive any present or future defaults on the part of the Sublandlord under the Master Lease, or (vii) construe the Prime Landlord as a party to the Sublease.

5. **Master Lease in Full Force and Effect.** All of the terms, conditions and covenants of the Master Lease are declared to be in full force and effect.

6. **Condition Precedent.** As a condition precedent to the Prime Landlord's execution and delivery of this Agreement: (a) the Sublandlord shall execute and deliver to the Prime Landlord the Assignment of Sublease annexed hereto as **Schedule B** and incorporated herein by reference (the "Assignment of Sublease"), as security for the Sublandlord's payment and performance of all terms, conditions and covenants to be performed by the Sublandlord, as tenant, under the Master Lease; and (b) the Sublandlord shall pay to Prime Landlord the attorney's fees required to be paid by the Sublandlord pursuant to Section ___ of the Master Lease in connection with the request of the Sublandlord for the Prime Landlord's consent to the Sublease.

7. **Acknowledgement of Assignment.** The Subtenant acknowledges that contemporaneously with the execution and delivery of the Sublease, there has been an assignment of the Sublease by the Sublandlord, as assignor, to the Prime Landlord, as assignee, and that in the event that the Prime Landlord exercises its rights as assignee under the Assignment of Sublease the following terms shall apply: (a) the Prime Landlord shall have the right, but not the obligation, to take over all of the right, title and interest of the Sublandlord under the Sublease, and (b) the Subtenant shall, at the Prime Landlord's option, attorn to the Prime Landlord pursuant to the then executory provisions of the Sublease, except that the Prime Landlord shall not be (i) liable for any previous act or omission of the Sublandlord under the Sublease, (ii) subject to any credit, offset, claim, counterclaim, demand or defense which the Subtenant may have against the Sublandlord, or responsible for any monies owing by the Sublandlord to the Subtenant, (iii) bound by any previous prepayment by the Subtenant of more than one (1) month's rent, (iv) bound

by any previous modification of the Sublease made without the Prime Landlord's written consent, (v) bound by any covenant to undertake or complete any construction in the Subleased Premises or any part thereof, (vi) required to account for any security deposit of the Subtenant other than a security deposit actually delivered to the Prime Landlord by the Sublandlord, or (vii) required to remove any person occupying the Subleased Premises or any part thereof.

ESTOPPEL

1. **Estoppel by the Prime Landlord.** The Prime Landlord, without the benefit of any inspection or investigation, and reserving any rights with respect to any default that would be revealed by such an inspection or investigation, hereby confirms that to the actual knowledge of the Prime Landlord (defined to mean the actual knowledge of _____), that as of the date executed by the Prime Landlord below:

(a) **Rent.** The Sublandlord, as tenant, is current with respect to any and all obligations and covenants, monetary or otherwise, under the Master Lease;

(b) **No Defaults.** There are no outstanding defaults under the Master Lease or any outstanding default notices to or from the Sublandlord; and

(c) **No Event of Default.** No event has occurred which with the passage of time or giving of notice, or both, would result in a default by either party to the Master Lease.

2. **Estoppel by Sublandlord:** The Sublandlord hereby confirms that:

(a) **Obligations.** All obligations and conditions under the Master Lease to be performed to date by the Prime Landlord have been satisfied and performed;

(b) **No Defaults.** There are no outstanding defaults of the Prime Landlord under the Master Lease or any outstanding default notices to the Prime Landlord;

(c) **No Event of Default.** No event has occurred which with the passage of time or giving of notice, or both, would result in a default by either party to the Master Lease; and

(d) **No Defenses.** The Sublandlord has no current defenses or claims against the Prime Landlord or rights of offset against any rents payable to the Prime Landlord under the Master Lease or otherwise.

GENERAL PROVISIONS

1. **General Agreements.** The parties agree as follows:

(a) **No Assignment.** Neither this Agreement nor the consent of the Prime Landlord pursuant to this Agreement is assignable.

(b) **Subordination of Sublease.** The Sublease shall at all times be subject and subordinate to the Master Lease and any and all terms, covenants and conditions of the Master Lease.

(c) **No Discharge from Liability.** Neither the Sublease nor this Agreement shall release or discharge the Sublandlord from any liability under the Master Lease.

(d) **Continuing Responsibility.** The Sublandlord shall remain liable and responsible for full performance and observance of the terms, covenants and conditions set forth in the Master Lease on the part of the Sublandlord to be performed and observed. Any breach or violation of any provisions of the Master Lease by the Subtenant shall be a default by the Sublandlord, as tenant, under the Master Lease.

(e) **No Consent for the Future.** This Agreement shall not be construed as a consent to any further subletting or assignment of any interest in the Master Lease or the Sublease, either by the Sublandlord or the Subtenant. The Sublease may not be assigned, renewed or extended, nor shall the Demised Premises or the Subleased Premises, or any part of it, be further sublet without the prior written consent of the Prime Landlord in each instance.

(f) **Notice.** All notices required or permitted by this Agreement shall be in writing and shall be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by overnight delivery by a nationally recognized courier, addressed as follows:

As to Prime Landlord:

Attention: _____

with a copy at the same time to:

Attention: _____

As to Sublandlord:

Attention: _____

with a copy at the same time to:

Attention: _____

As to Subtenant:

Attention: _____

with a copy at the same time to:

Attention: _____

Any party may, by notice given in the same manner set forth above, designate a different address to which subsequent notices shall be sent. Notice shall be deemed given (i) when received, if delivered personally, (ii) the earlier of receipt or three (3) business days after mailing, if sent by certified mail, return receipt requested, or (iii) the next business day

after mailing if sent by overnight delivery. Notice may be given by counsel for any party, in which event such notice shall be as effective as if sent by the party itself.

2. **Governing Law.** This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered, and is intended to be performed in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

3. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. No change, addition or modification to this Agreement shall be effective unless signed in writing by the parties.

4. **Miscellaneous.** In all references in this Agreement to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this Agreement may require.

5. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, successors and permitted assigns, as the case may be.

6. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

7. **No Recording.** Neither this Agreement nor a memorandum of this Agreement shall be recorded by the Sublandlord or Subtenant.

8. **Bankruptcy.** The Sublease shall automatically terminate upon the termination of the Prime Lease or the rejection of the Prime Lease in bankruptcy.

Signed and sealed by the parties.

Witness:

Prime Landlord:

By: _____

Name:
Title:
Date:

Witness:

Sublandlord:

By: _____

Name:
Title:
Date:

Witness:

Subtenant:

By: _____

Name:
Title:
Date:

Schedule A

Description of Subleased Premises

Schedule B

Assignment of Sublease

This Assignment of Sublease (“Assignment”) made as of this ____ day of _____ 20__ by and between

_____, having an office at _____, referred to herein as the “Assignor,”

-and-

_____, having an office at _____, referred to herein as the “Assignee.”

Background

A. Whereas the Assignor is the tenant under a certain Lease Agreement, dated _____, 20__, (the “Lease Agreement”), made with the Assignee, as landlord, for a certain portion of the property commonly known and designated as _____, _____ of _____, County of _____ and State of New Jersey and more particularly described in the Lease Agreement (the “Demised Premises”); and

B. Whereas, the Assignor, as sublandlord, has entered into a sublease agreement (the “Sublease Agreement”), subleasing a portion of the Demised Premises to _____; and

C. Whereas, as a condition to the Assignee consenting to the Sublease Agreement, Assignor is required to assign the Sublease Agreement to the Assignee as security for the Assignor’s

payment and performance of all terms, conditions and covenants under the Lease Agreement;

Now, therefore, in consideration of the premises and the mutual covenants set forth in this Assignment, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

Agreement

1. **Assignment**. As security for the Assignor's payment and performance of all terms, conditions and covenants under the Lease Agreement, the Assignor hereby presently, absolutely and unconditionally, assigns to Assignee, all of the Assignor's right, title and interest, as sublandlord, in and to the Sublease Agreement, including, without limitation:

(a) All rents and additional rents due or to become due thereunder;

(b) All guarantees, whether now or hereafter made, of the obligations of the subtenant under the Sublease Agreement, and all security deposits and other security given to secure payment or performance under the Sublease Agreement;

(c) Any and all proceeds of the foregoing; and

(d) The right to exercise all other rights, options and privileges extended to the Assignor, as sublandlord under the Sublease Agreement.

2. **Prior Written Consent**. The Assignor shall not, without the prior written consent of the Assignee:

(a) Cancel the Sublease Agreement;

(b) Reduce the rent under the Sublease Agreement;

(c) Modify the Sublease Agreement, orally or in writing;

(d) Grant any concession in connection with the Sublease Agreement; or

(e) Collect or accept any rent or additional rent under the Sublease Agreement

more than 30 days in advance of its due date.

3. **Assignor's Compliance With Sublease.** The Assignor shall comply with all the terms, conditions, and covenants imposed upon the Assignor, as sublandlord, under the Sublease Agreement.

4. **Assignor's Right to Rents.** Until the Assignor defaults in the performance of the covenants contained in this assignment, or defaults beyond any applicable notice, grace or cure period under the Lease Agreement, the Assignor shall have a license to receive, collect and enjoy the rents, issues and profits accruing to the Assignor under the Sublease Agreement. The license provided to the Assignor to receive, collect, and enjoy the rents, issues and profits may be revoked immediately by the Assignee upon any such default by the Assignor.

5. **Default.** In the event of any default beyond any applicable notice, grace or cure period by the Assignor under the Lease Agreement, then in addition to any other rights and remedies available to the Assignee under the Lease Agreement, at law or in equity, the Assignee shall have the right, without the obligation, to collect directly from the subtenant, all rents or additional rent due and owing from the subtenant to the Assignor, as the sublandlord, and to apply any such rent and/or additional rent against sums due to the Assignee by the Assignor as tenant under the Lease Agreement, in any order as the Assignee shall determine. Such collection of any such rent or additional rent from the subtenant shall not be deemed a waiver of any rights and remedies of the Assignee against the Assignor as tenant under the Lease Agreement or constitute a

novation or release of the Assignor, as tenant, from the further performance of its obligations under the Lease Agreement.

6. **Benefit**. All the terms, conditions and covenants of this Assignment shall be binding upon and inure to the benefit of the parties, their legal representatives, successors and assigns.

7. **Captions**. Paragraph headings contained in this Assignment are for reference purposes only and shall not in any way affect the meaning or interpretation of this Assignment.

8. **WAIVER OF TRIAL BY JURY**. THE ASSIGNOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON THIS ASSIGNMENT.

9. **Miscellaneous**. In all references to any parties, persons, entities or corporation, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this Assignment may require.

Signed and sealed by Assignor.

10. **Governing Law**. This Assignment shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Assignment has been executed and delivered, and is intended to be performed in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

11. **Counterparts**. This Assignment may be signed in one or more counterparts, each of which shall be deemed an original.

12. **Entire Agreement**. This Assignment constitutes the entire agreement between the parties with respect to the subject matter hereof. No change, addition or modification to this Assignment shall be effective unless signed in writing by the parties.

Witness:

Assignor:

By:

Name:

Title:

Date:

Exhibit F

Assignment and Assumption of Lease Agreement and Landlord's Consent

This Assignment and Assumption of Lease Agreement and Landlord's Consent (the "Agreement"), is made as of this _____ day of _____, 20____, between,

_____, maintaining an office at _____, referred to as the "Landlord,"

-and-

_____, maintaining an office at _____, referred to as the "Assignor,"

-and-

_____, maintaining an office at _____, referred to as the "Assignee."

Background

A. The Landlord and the Assignor, as tenant, entered into a written lease agreement dated _____, 20____ (the "Lease"), covering the premises located at _____, _____ of _____, County of _____, and State of New Jersey, as such premises are more particularly described in the Lease (the "Demised Premises").

B. A true and complete copy of the Lease is annexed to and made a part of this Agreement as **Schedule A**.

C. The Assignor wishes to assign the Lease to the Assignee and the Assignee desires to assume the Lease from the Assignor.

D. The Landlord is willing to consent to the assignment and assumption of the Lease, but only upon the terms and conditions set forth in this Agreement.

Now, therefore, in consideration of the premises and the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

2. **Background.** The Background section of this Agreement is incorporated herein by reference as if set forth at length.

3. **Defined Terms.** For purposes of this Agreement, the terms used in this Agreement as defined terms which are not herein defined shall have the meaning ascribed to such terms in the Lease.

4. **Assignment.** The Assignor assigns, transfers and sets over unto the Assignee all of the Assignor's right, title and interest in and to the Lease, including, without limitation, any and all of the Assignor's right, title and interest in and to the Security Deposit referenced in Section _____ of the Lease and the Assignor releases any and all claims to the Security Deposit. The Security Deposit shall be maintained pursuant to the provisions of the Lease.

5. **Assumption.** The Assignee assumes the obligation of the Assignor for the full and punctual payment and performance of all of the terms, conditions and covenants of the Lease on the Assignor's part as tenant thereunder to be paid and performed, including, but not limited to, the payment of Base Rent, Additional Rent and any other charges or sums required of the tenant to be paid under the Lease.

6. **Consent to Assignment.** Subject to the terms, covenants and conditions of this Agreement, the Landlord consents to the assignment by the Assignor to the Assignee of all of the Assignor's right, title and interest in and to the Lease. The Landlord's consent may not be assigned.

7. **Condition of Premises.** No representations or warranties have been made by the Landlord to the Assignee regarding the condition of the Demised Premises. The Assignee represents, warrants and acknowledges that the Assignee is not relying upon any representation or warranty by the Landlord in entering into this Agreement.

8. **Lease in Full Force.** Except as expressly provided in this Agreement, all of the terms, conditions and covenants of the Lease shall remain in full force and effect and nothing in this Agreement shall be deemed to: (a) modify, waive or affect any of the terms, conditions or covenants of the Lease; (b) waive any breach of the Lease; (c) waive any of the Landlord's rights against any one liable for performance under the Lease; or (d) enlarge Landlord's obligations under the Lease.

9. **No Defaults or Claims.** The Assignor and the Assignee hereby certify and agree that: (a) the Landlord is not in default under any of the terms of the Lease; (b) all obligations and conditions under the Lease to be performed to date by the Landlord have been satisfied; (c) no event has occurred which with the passage of time or the giving of notice, or both, would constitute an event of default by the Landlord under the Lease; and (d) the Assignor and the Assignee have no current defenses or claims against the Landlord or rights of offset against any Base Rent, Additional Rent, or other charges payable under the Lease, or otherwise. The Landlord hereby certifies, without the benefit of any inspection or investigation, and reserves any rights with respect to any default that would be revealed by such an inspection or investigation,

that to its actual knowledge (defined to mean the actual knowledge of _____)
that as of the date executed by Landlord below: (a) the Assignor, as tenant, is not in default under any of the terms of the Lease; (b) all obligations and conditions under the Lease to be performed to date by the Assignor, as tenant, have been satisfied; and (c) no event has occurred which with the passage of time or the giving of notice, or both, would constitute an event of default by the Assignor, as tenant, under the Lease.

10. **Assignor and Assignee Liable**. The Assignor and the Assignee shall each be primarily liable, jointly and severally, for the due and punctual payment, performance and observance of all of the terms, conditions and covenants of the Lease on the tenant's part to be performed, including, but not limited to, the payment of Base Rent, Additional Rent and any other charges or sums required under the Lease of the tenant.

11. **Limitation of Consent of Landlord**. The Landlord's consent to the assignment shall not be deemed to be a consent to any other assignment of the Lease or any subletting of all or part of the Premises. The Landlord shall not be deemed a party to the assignment and assumption between the Assignor and the Assignee.

12. **Indemnification**. The Assignor and the Assignee shall jointly and severally indemnify, defend and save the Landlord harmless from and against any claims, suits, or damages (including, without limitation, reasonable attorney's fees) which may be asserted against the Landlord for brokerage commissions and/or similar commissions or fees in connection with this Agreement or otherwise in connection with the assignment.

13. **Governing Law**. This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered, and

is intended to be performed in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

14. **Entire Agreement.** This Agreement and the Lease constitute the entire agreement between the parties. No change, addition or modification to this Agreement shall be effective unless signed in writing by the parties.

15. **Miscellaneous.** In all references in this Agreement to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of this Agreement may require.

16. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, personal or legal representatives, successors and permitted assigns, as the case may be.

17. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

18. **Legal Fees.** The Assignor and the Assignee acknowledged that pursuant to Section _____ of the Lease, the Assignor is obligated to pay the Landlord's attorney fees incurred by the Landlord in connection with this Agreement contemporaneously with the Assignor's execution and delivery of this Agreement, satisfaction of which is a condition precedent to the effectiveness of the Landlord's consent herein granted.

19. **Authority.** The parties signing this Agreement individually represent and warrant that they have the authority to sign this Agreement on behalf of the party for whom they are executing this Agreement and to bind such party to this Agreement.

Signed and sealed by the parties.

Witness:

Witness:

Witness:

Landlord:

By:

Name:

Title:

Date:

Assignor:

By:

Name:

Title:

Date:

Assignee:

By:

Name:

Title:

Date:

Schedule A