LEASE WORKOUTS:
SHOULD YOU, CAN YOU AND HOW DO YOU

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CHAPTER 9

Kent Newsome Bio

Kent Newsome is a partner at Greenberg Traurig in Houston, where he practices real estate and general business law.

Kent is a past Chair of the Houston Bar Association Real Estate Section and a past chair of the Houston Bar Association Entertainment and Sports Law Section. He is listed in "Best Lawyers in America," Chambers USA America's Leading Business Lawyers and Who's Who Legal: Texas. He is a member of the American College of Real Estate Lawyers and the Houston Real Estate Lawyers' Council. He was named one of Houston's "Super Lawyers" by *H Texas Magazine* and was named a "Texas Super Lawyer" by Texas Monthly Magazine.

He serves on the governing Council of the Real Estate Probate and Trust Law Section of the State Bar of Texas.

Kent is a member of the board of directors of Texas Lawyers and Accountants for the Arts and has served as an Adjunct Professor of Law at the University of Houston Law Center.

Kent is a recorded songwriter, with several album cuts to his credit, including the title track to the 1999-2000 Chicago Music Awards County Album of the Year. He writes about technology, music and life (and never the law) at his popular blog, Newsome.Org (www.newsome.org).

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I. A SAD TALE OF WOE

Occasionally, or more often in these troubled economic times, a lease that was entered into with high expectations of profits for all becomes a troublesome obligation to one of the parties. When this occurs, a landlord or tenant is faced with the difficult challenge of negotiating some form of workout with the other party. This paper will discuss lease workouts, by looking at three questions:

A. Should you attempt a lease workout?
B. Can you accomplish a lease workout?
C. How do you document the lease workout?

II. WHAT DO YOU MEAN BY THAT?

What, exactly, is a lease workout? Stated simply, it is the amendment or termination of a lease prior to its stated expiration date, agreed upon in an effort to avoid a potential occurrence (e.g., bankruptcy, default, litigation, etc.) that both parties view as less desirable than the amended deal. In many cases, a lease workout is done to provide certainty and to avoid uncertainty.

III. SHOULD YOU?

The first step in assessing a potential workout is to understand why a party is considering embarking on one. The landlord or tenant considering a lease workout process must understand its goals, its options, its likelihood of success, and, most importantly, its bargaining power. The initiating party should craft a proposal that efficiently accomplishes reasonable goals, while giving the other party incentive to conclude, on its own, that the proposed workout (or some negotiated variation thereof) is preferable to the likely outcome in the absence of a workout. This is an important point. Few, if any, opposing parties will agree to a lease workout simply because the initiating party would like a better deal. In order to be successful, the initiating party will have to demonstrate to the other party that a workout is in the other party's interest.

There are any number of reasons why a landlord or tenant would like to amend or terminate a lease. The following serve as examples only.

A. Landlord

1. The rent is too low.
2. The tenant does not represent highest and best use.
3. The tenant is deemed uncreditworthy, which affects the project's value.
4. The space is needed to accommodate more desirable tenant prospect.
5. The lease contains provisions (e.g., exclusive use rights, etc.) that the landlord doesn't like.
6. The landlord doesn't like the tenant.

B. Tenant

1. The rent is too high.
2. The tenant wants other space.
3. The tenant no longer needs space, or can no longer afford to pay rent.
4. The project is inconsistent with the tenant's use or needs.
5. The lease contains provisions (e.g., prohibited use restrictions, etc.) that the tenant does not like.
6. The tenant doesn't like the landlord.

After assessing the various reasons why the initiating party would like a lease workout, the initiating party and its lawyers, brokers and advisers should craft a game plan, consisting of an initial reasonable proposal, a presentation to the other party demonstrating why the workout is in the other party's best interest, and one or more fallback positions with respect to key points. Like any business deal, the party who is prepared and can negotiate on the fly has a better chance of successfully negotiating a lease workout.

Thought should be given to the manner in which the lease workout is proposed. The initiating party should not initiate the process by sending a proposal to the other party that is so unacceptable to the other party that the emotional reaction thereto taints the negotiating process before it is started. Rather, a reasonable and carefully drafted proposal should be submitted to the person in the other camp who is deemed the most likely to be supportive of a workout scenario.

IV. CAN YOU?

Once the initiating party understands why it would like a lease workout, has mapped out a game plan and crafted an initial proposal, it is time to assess the likelihood of success. Stated simply, as with any negotiation, the likelihood of success depends largely the parties' relative bargaining power.

Several factors determine the relative bargaining power in connection with a proposed lease workout. The most important factors are the terms and conditions of the lease, the legal claims and defenses available to the parties, the general state of the relevant real estate market and, probably most importantly, the presence or absence of lease guaranties (the elephant in the room in most lease workout negotiations) and other landlord security (e.g., security deposits, letters of credit, etc.).

A. Terms and Conditions of the Lease.

1. Sublease and Assignment Rights.

The place to start when reviewing a lease in contemplation of a proposed workout, regardless of whether the landlord or the tenant is the initiating party, are the sublease and assignment provisions.

While in many jurisdictions, leases that are silent with respect to sublease and assignment are freely assignable, leases in Texas are not assignable by the tenant and such space may not be sublet without the landlord's consent, unless the lease expressly provides such rights. Section 91.005 of the Texas Party Code provides:

> *During the term of a lease, the tenant may not rent the leasehold to any other persons without the prior consent of the landlord.*

This provision has been interpreted by the Texas courts to constitute a prohibition against both subleasing or assignment.

Thus, the assignment and sublease rights of the tenant will be either nonexistent or as set forth in the applicable lease. For this reason, tenants should always attempt to obtain as many sublease and assignment rights as possible. Even in the best of economic times, tenants will often desire to sublease space or assign leases. For example, a very successful tenant may quickly outgrow its space and desire to move into bigger space or perhaps its own facility, and the right to manage the vacated space expenses through sublease or assignment would be a great benefit to the tenant's business expansion plans. Conversely, the inability to sublet such space or assign the lease would provide a significant obstacle to growth and expansion.

There is one negotiation trap that should be avoided by tenants when possible. It has become common to resolve the sublease and assignment issue by merely providing that the landlord's consent to a sublease or assignment will not be unreasonably withheld. There are two significant problems to this approach, from the tenant's perspective. First, the reasonableness standard is not difficult to meet, and any semi-logical reason proffered by the landlord for not consenting to a proposed sublease or assignment will often be sufficient. More importantly, the resolution of any dispute as to whether the landlord has unreasonably withheld its consent will take months to resolve, which is longer than the lifespan of most proposed sublease or assignment transactions. Landlords know this, and the fact that the resolution process could extend beyond the lifespan of the proposed assignment of sublease transactions will result in a shift in relative bargaining power in the landlord's favor.

Another question that often arises is whether or not the sale or assignment of the ownership interest in the tenant constitutes a sublease or assignment. From a drafting perspective, it is always better to draft for certainty as opposed to relying on case law, so the lease should always expressly provide whether or not such a change in control constitutes an assignment for purposes of the lease. If you find yourself with a lease that is silent on this issue, you must research applicable case law, which is evolving on this issue, and determine whether the transaction at hand will constitute a transfer under the applicable lease.

2. Provisions Disliked by the Non-Initiating Party.

Another point to consider when reviewing a lease with respect to a proposed workout are provisions thereof that, for one reason or another, are likely considered problematic by the non-initiating party. For example, a retail tenant desiring a workout might be willing to waive or amend its exclusive use rights in exchange for concessions granted by the landlord. This would increase the universe of potential tenants for the landlord's other vacant space, while increasing the likelihood that the tenant can stay in possession of its space and pay rent. This starts to look like a win-win deal, which increases the likelihood of success.

3. Provisions Affecting the Enforceability of the Lease.

The lease should be reviewed to identify any provisions thereof that could affect the enforceability of the lease. If there is a potential enforceability issue, the resolution of such uncertainty would be a benefit to the landlord, particularly since any potential enforceability could create issues with the financing or marketing of the project.

For example, if a lease is in the name of the wrong party or contemplates, but does not contain, a legal description and/or floor plan, the enforceability of the lease may be called into question. While ethical considerations, the doctrine of port performance and other legal principles may mitigate against this unenforceability risk, the resolution of any lease defects, which would avoid scrutiny from lenders and

potential purchasers, would be a benefit to the landlord.

B. Possible Legal Claims

In addition to the terms and provisions of the lease, potential legal claims available to the initiating party, which can be can be used as trading currency during the workout negotiations, should be identified and analyzed.

1. Default.

Any default or potential default on the part of the non-initiating party can be used to entice, at least, and force, at best, the non-initiating party into lease workout negotiations. For example, a chronically leaky roof that has not been repaired by the landlord as required under the lease could support a possible constructive eviction claim that would free the tenant from liability under the lease. A landlord faced with the potential loss of its tenant, with no legal recourse, might be more willing to agree to a lease workout that ensures that the roof repairs are made, gives the tenant relief from above-market rent and ensures that the tenant's obligations under the lease remain in effect. Similarly, a landlord who is in breach of an exclusive use provision and subject to alternate rent or other economic penalties under the lease may be willing to make lease workout concessions in exchange for a waiver of the exclusive use violation. Conversely, however, a default or potential default on the part of the initiating party will often be used by the non-initiating party to resist or defeat attempts at a lease workout.

While the existence of defaults on both parties is a relevant and fair question in the context of lease workouts, lawyers representing parties involved in lease workout negotiations should consider the personal branding implications of making frivolous default claims to support a lease workout proposal. In other words, a lawyer who gets a reputation for making frivolous default claims will be taken less seriously and, as a result, may become a less effective advocate in the lease workout process.

2. Other Claims.

In addition to defaults or potential defaults under the lease, other claims the initiating party may have against the non-initiating party may be raised and used as trading currency in the lease workout process. For example, a tenant who genuinely believes it was misled in connection with the lease or the project could offer to waive any claims with a result thereto, in exchange for concessions by the landlord as a part of the lease workout. Again, the lawyer representing the tenant must keep personal branding in mind, and should avoid making frivolous claims that will adversely affect the lawyer's effectiveness in this and future workout negotiations. There are occasions, however, that legitimate claims arising outside of the terms and conditions of the lease can and should be used as trading currency in connection with the lease workout.

On a related note, the non-initiating party who elects to engage in the workout process should identify, assess, raise and resolve any claims or issues the non-initiating party has with the initiating party. Claims, defaults and potential defaults on the part of both parties are fair game as trading currency during the lease workouts. Neither party wants to agree on a lease workout only to have another claim raised by the other party shortly thereafter. Where possible, the lease workout process should be managed and documented in a way that resolves all of the outstanding issues between the parties with respect to the lease transaction.

C. General State of the Real Estate Market.

Another factor that materially affects the nature and likelihood of success of lease workout negotiations is the general state of the applicable real estate market. One of the biggest drivers of relative bargaining power and the parties' respective interpretations of the same is the presence or absence of acceptable alternatives. A landlord with a fully leased project in a rising market will be much less likely to engage in lease workout negotiations and will negotiate more aggressively than a landlord with a struggling project, lots of vacant space and the need to maintain all sources of revenue. Conversely, a tenant occupying space it likes at a rental rate it likes in a project it likes will be much less amenable to lease workout negotiations initiated by the landlord, than a tenant who needs or would like to relocate to other, cheaper space.

In most cases, the parties' relative bargaining power lies somewhere in the middle, and the ability to accurately assess and manage the relative bargaining power is one of the most important aspects of successful lease workouts. A landlord may be convinced that its project is the greatest project on earth, its lease is the most well drafted document in history and the tenant devoid of alternatives other than to bend to the landlord's will. Only if this is accurate, or mostly accurate, does the landlord's belief translate into an ability to better control the lease workout process.

D. Lease Guaranties and Other Security.

Nothing, neither the terms of the lease, possible legal claims nor the state of the market, will directly and immediately impact the parties' relative bargaining power and the direction of lease workout negotiations

as much as the presence or absence of lease guaranties or other security, such as security deposits, letters of credit, etc.

A landlord faced with a financially troubled tenant but holding a lease guaranty from a solvent entity or individual will be much less likely to negotiate a tenant-favorable lease workout, than a landlord whose only source of payment is the struggling tenant itself. Similarly, a landlord with a large security deposit or a valid letter of credit will be in a vastly superior bargaining position than a landlord who has no security for its lease.

In sum, the success or failure of many lease workout negotiations will be determined, in large part, by the security provided to the landlord under the lease. There is a very good reason why landlord's love - and tenant's hate - lease guaranties.

V. HOW DO YOU?

Once the initiating party knows why it wants a lease workout and understands its likelihood of success, it must consider the best way to effectuate and document the proposed workout.

A. Lease Termination (No Continuing Obligations).

In some cases, the parties determine the best course of action is to simply terminate the lease and go their separate ways, with no continuing obligations. Depending on the circumstances, there may or may not be a monetary payment contemporaneously with, and as consideration for, such termination.

Among the issues to be considered in connection with this sort of workout are the survivability of any ancillary lease obligations. As noted above, the parties should attempt to resolve all outstanding issues during the lease workout negotiations so that each party can exit the process with relative certainty of its future liabilities and obligations. For example, do the surrender requirements contained in the lease survive the agreed upon termination, which would permit the landlord to make further claims against the tenant if the premises is not in the required condition? Do previously accrued obligations under the lease, whether in the form of operating expense reconciliations, indemnity claims, etc., survive the termination of the lease? Without more, a simple termination agreement only provides for an accelerated termination, and would leave the landlord and the tenant exposed to other claims that, pursuant to the terms of the lease, apply at or survive termination.

The parties should generally avoid using the term "cancellation," as a cancellation could be interpreted to mean that no portions of the lease survive the agreed termination. In other words, the parties need to consider whether the lease is being terminated early (with or without a release of ancillary obligations) or the parties intend to proceed as if the lease had never been executed. Generally, the latter approach is inappropriate in situations where the tenant has occupied the premises.

Attached hereto as Exhibit A is a form of simple Lease Termination Agreement.

B. Lease Termination (Continuing Payments).

In many cases, the parties negotiate specific terms and conditions of an early lease termination. These conditions often include the payment of a termination fee, either in a lump sum payment or over time. In such cases, the termination agreement will set forth those additional conditions, which may include the payment of money, the payment of interest, and possibly an agreed judgment, which puts the landlord in a superior position if the tenant fails to make the agreed upon payments.

Attached hereto as Exhibit B is a form of Lease Termination Agreement which contemplates subsequent payments an agreed judgment and a conditional release. **[NOTE:** The Agreed Judgment provisions are samples only and the related provisions of any agreement should be prepared and approved by qualified litigation counsel.]

Attached as Exhibit C is a form of Lease Termination Agreement and Release, which contemplates a lump sum payment and an immediate release.

C. Lease Amendment.

Often, the results of the lease workout negotiations result in a modification of the lease terms, as opposed to an early termination. In these cases, the workout agreement takes the form of a carefully drafted lease amendment, which may include such provisions as a reduction in rent, expansion and contraction of the premises, waiver of existing defaults or breaches, extension of the term, etc. While these negotiations occur in the context of a distressed tenant, the lease amendment itself is substantially no different from lease amendments negotiated under other conditions. The important issue is to attempt to address all of the outstanding issues between the parties, to achieve mutual economic and legal certainty to the extent possible.

D. Sublease.

A sublease is the struggling tenant's best friend. As discussed above, however, the tenant will often have to involve the landlord in the subleasing process as a result of statutory or contractual consent requirements.

While landlords will often react negatively to proposed subleases, because landlords do not like competition from their tenants for lease prospects, it is important to remember - and to remind the landlord as necessary - that a solvent rent-paying tenant in the premises is preferable to a financially challenged tenant and the risk of interruption in the rental stream. To the extent the initiating tenant can come to the negotiating table with a ready, willing, able and financially sound subtenant prospect, the issues surrounding competition for lease prospects is materially lessened.

More often, however, the tenant has not identified an acceptable subtenant at this point, and is forced to initiate the lease workout process prior to marketing the space for sublease. While landlords may react negatively to this, the tenant should remind the landlord that the landlord has a duty to mitigate its damages and that the landlord is benefitted, and not harmed, by the tenant's separate marketing efforts.

Attached hereto as Exhibit D is a form of Landlord's Consent, consenting to a proposed sublease. Attached as a Exhibit E is a sample form of Sublease Agreement.

E. Assignment.

Often, the best scenario of all for a struggling tenant is to assign all of its rights with respect to the premises to a third party, pursuant to an assignment, and walk away from the project completely. Landlords often have the same competitive issues with respect to proposed assignments, and the landlord's concerns should be addressed in a manner similar to that described above with respect to proposed subleases.

The landlord's consent will often be required in connection with the lease assignment. One of the most important issues that will be discussed in connection with such consent is the continuing liability of the tenant. Most landlords will resist releasing the assigning tenant from liability under the lease and such continuing liability, without the requisite control given by the sublease, is an issue that must be considered by the assigning tenant. Depending on the identity, relationship and financial condition of the proposed assignee, a sublease may actually be preferable to an outright assignment, since the sublease gives the original tenant the ability to retake possession of the premises upon the subtenant's default and better manage its continuing liability.

Attached as Exhibit F is a form of Assignment of Lease.

F. Lease Workout Agreement.

While it is often simpler and cleaner to agree upon an early termination or a lease amendment, often the absence of sufficient alternatives requires the parties to agree on a more complicated workout agreement. For example, some agreements require the landlord and/or the tenant to market the space to acceptable assignees or subtenants, require the tenant to pay some or all of the rent during the marketing period and provide the tenant with a credit against sums received by the landlord from sublessees or assignees.

One important issue in agreements of this nature is the qualification of acceptable sublessees or assignees. From a tenant's perspective, almost any assignee or sublessee is acceptable, since any sums paid by that party will reduce the tenant's economic obligations under the troubled lease. From the landlord's perspective, however, there should be financial qualifications for any sublessee or assignee. The landlord does not want to replace one troubled tenant with another. There is a natural and unavoidable tension between these positions and the documentation must specifically and objectively set forth the conditions that must be met before a sublessee or assignee will be permitted to occupy the premises.

Additionally, tenants should attempt to cap their exposure for rent to a stated number of months, under the theory that (a) a motivated landlord should be able to find a replacement tenant within a certain period of time and (b) a certain number of months of rent are better from the landlord's perspective than tenant bankruptcy or other action that might cause an immediate interruption in the rental stream.

The tenant should require that all renewal rights and other similar tenant-beneficial provisions of the lease inure to the benefit of any assignee, under the workout arrangement. The more benefits the tenant can assign to a potential assignee, the more desirable a proposed assignee will find the lease and the premises. On the other hand, landlords will often try to limit the inurement of such rights to assignees and sublessees.

VI. STRATEGY CONSIDERATIONS

There are a lot of facts and issues that affect lease workout negotiations. In addition to the issues and concerns set forth above, numerous other issues should be considered. The following serve as examples only.

A. Abandonment is Risky.

Since a landlord may have little or no legal duty to re-take possession and seek to re-let, a tenant should not assume that it will be the landlord's problem if the tenant abandons the premises. Where possible, it is preferable to proactively seek to control the process through workout negotiations. The existence of a guaranty from a solvent person or entity makes this approach especially risky. Sometimes, however, the tenant has no choice other than to trigger the resolution

process through abandonment and default. Prior to doing so, however, the default provisions of the lease must be reviewed and analyzed, as the landlord can often respond by exercising one or more legal remedies that place the landlord in an even better negotiating position (e.g., terminating the tenant's right to possession, accelerating rent, etc.).

B. But Landlords Can't Ignore the Problem.

From the landlord's perspective, the do-nothing option presents its own risks. Depending on the tenant's reasons for abandoning the premises, leaving the lease in place and limiting rent collection efforts to pursuit of the original tenant may not be prudent, particularly where financial inability is the reason the tenant defaulted in the first place. The landlord also has a practical need to maintain its asset, and there may be business or reputational disadvantages to letting the space lie empty. Legal principles or lease provisions requiring the landlord to mitigate its damages also make this approach risky.

C. Educating the Defaulted.

The landlord and the tenant should enter into negotiations with a reasonable and honest assessment of the tenant's actual financial condition, and the landlord's reasonable prospects for re-letting the premises. The landlord will typically have information about the marketplace, whereas the tenant may need to - and should - educate itself.

D. Say Hello to My Friend.

Presenting a willing, qualified assignee or sublessee strengthens the position of a tenant who wants out of a lease in two ways. It mitigates liability exposure and it gives the tenant increased leverage during the lease workout negotiations.

E. Sublease vs. Direct Lease.

Sublease rent will often be at a discount since a subtenant (especially if the sublease is for less than all of the space covered by the lease) is subject to termination of the sublease by operation of law if the lease is terminated due to tenant's default. In addition, since a tenant can only sublease the term remaining under the lease, a subtenant may be reluctant to invest in the space to the same degree it might under a longer term lease. A landlord may be in a position to obtain a higher rent by entering into a direct lease with the prospective sublessee, either by exercising a right of recapture under the lease or by negotiating a termination of the lease with the tenant. Leaving the lease in place, in order to keep the tenant "on the hook" may not maximize the landlord's economic benefit. However, some landlords will try to negotiate a "follow-on" lease with the sublessee to take effect upon the expiration of the lease and sublease. It can be a tricky negotiation, but in the end the tenant will have better prospects for attaining an acceptable lease termination agreement if it can bring an attractive tenant prospect to the landlord, especially if the landlord sees a valuable opportunity to establish a long-term tenant relationship.

F. Beware Backloading the Tenant's Obligations.

One proposal that is often made by tenants in lease workout negotiations is the reduction in current rent in exchange for an increase in future rent. While there is a logical basis for this if the landlord believes the tenant's prospects may improve over time, this is risky from the landlord's perspective, since an increase in the back-end obligations may cause the lease to be significantly above-market in those later years, increasing the likelihood of subsequent tenant difficulties and further workout requests. Additionally, a back-end load like this could be viewed as troublesome by potential lenders and purchasers.

G. That Percentage Rent Thing.

Another option that is often proposed in the lease workout negotiations is reducing the guaranteed base rent in exchange for the inclusion of a percentage rent concept, so that the landlord will benefit if the tenant is able to reverse its fortune and be successful in the premises. Again, there is logic to this approach, but it is not without risk to the landlord. If the tenant is experiencing difficulty presently, the landlord needs to satisfy itself that there is a legitimate, objective reason to believe the tenant can turn things around. Percentage rent makes the landlord the de facto partner of the tenant with respect to the operations within the premises and, in some ways, is similar to a conditional loan. At a minimum, the landlord should require that percentage rent milestones be met to ensure that the landlord's concessions are being repaid over a reasonable timeline.

H. The Recapture Risk.

Prior to initiating lease workout negotiations, the tenant must determine whether the request to sublet or assign will trigger any rights on the part of the landlord. For example, if the landlord has the right to recapture the premises, any potential profit to the tenant in connection with the proposed sublease or assignment will likely be captured by the landlord via a termination and direct lease to the new prospect. While this may be fine in connection with a traditional workout, the presence of recapture provisions must be carefully managed in connection with proposed

subleases and assignments as a part of a business acquisition, joint venture, etc.

I. An Ounce of Prevention.

From landlord's perspective, it is wise to carefully monitor the condition of tenants, to avoid finding yourself in a reactionary mode after receiving a lease workout proposal. Landlord should require tenants to honor financial reporting requirements and should investigate any warning signs, such as habitual late payment, failure to pay other lease obligations, deferred maintenance, etc.

J. Bankruptcy Issues.

As a material part of the landlord's analysis of a proposed lease workout, the landlord must consult with bankruptcy counsel to determine the effects of and its rights under any bankruptcy proceeding that may be initiated by the tenant. In this regard, any lease workout concessions should be crafted in a manner to preserve the landlord's rights, to the extent possible, under a subsequent bankruptcy proceeding.

VII. CONCLUSION

By analyzing these issues and entering into the lease workout process educated and prepared, the parties can increase their chances of working out a new arrangement that is satisfactory to both parties and, to the extent possible, preserves their respective rights and benefits.

Exhibit A

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (this "Agreement") is between _____, a _____ ("Landlord") and _____, a _____ ("Tenant").

W I T N E S S E T H :

WHEREAS, _____ ("Original Landlord") and _____ ("Original Tenant") have previously entered into a lease agreement (the "Lease"), which covers and describes a certain tract or parcel of real property (the "Premises"), situated in _____ County, Texas and more particularly described on Exhibit A attached to and part hereof for all purposes; and

WHEREAS, Landlord has succeeded to the interest of Original Landlord in and to the Lease; and

WHEREAS, Tenant has succeeded to the interest of Original Tenant in and to the Lease; and

WHEREAS, Landlord and Tenant have agreed that it is to their mutual benefit to terminate the Lease; and

WHEREAS, Landlord and Tenant desire to terminate the Lease in accordance with the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the recitals set forth above, the covenants and conditions hereinafter set forth and good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged and confessed, Landlord and Tenant agree as follows:

1. The recitals set forth above are incorporated herein and made a part hereof by this reference thereto.

2. As of _____, 20___ (the "Termination Date") (a) the Lease shall be and is hereby terminated, and (b) except as described in item 3 below, Landlord and Tenant each release the other from any and all obligations and liabilities arising under or growing out of the Lease.

3. Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, item 2 above, neither Landlord nor Tenant is released from any obligations that (a) accrued prior to the Termination Date and/or (b) are intended to survive the termination or expiration of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement on this _____ day of _____, 20___, to be effective for all purposes as of _____ _____.

Executed by Landlord
this ____ day of
_____, _____.

_____

By: _____

By:_____
Name:_____
Title:_____

Executed by Tenant
this ____ day of
_____, _____.

_____

By:_____
Name:_____
Title:_____

Exhibit B

LEASE TERMINATION AGREEMENT

This LEASE TERMINATION AGREEMENT (this "Agreement") is by and between the _____ ("Landlord"), and _____ ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated _____ (the "Lease"), covering and describing approximately _____ square feet of net rentable area in the office building project known as _____ and located at _____, _____, _____ County, Texas _____; and

WHEREAS, Tenant has defaulted in the payment of rent under the Lease and, as a result thereof, Landlord has filed suit against Tenant (the "Lawsuit") in the _____ Judicial District Court of Harris County, Texas; and

WHEREAS, Landlord and Tenant have agreed that it is to their mutual benefit to settle the Lawsuit, and terminate the Lease and release each other from all obligations, liabilities, claims, demands, costs and expenses (including, without limitation, attorneys' fees, accountants' fees, court costs and interest) arising under, growing out of, or in any way connected with the Lease, all in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the above described recitals, the covenants and conditions contained in this Agreement and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby mutually acknowledged and confessed, Landlord and Tenant hereby agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part hereof by this reference thereto.

2. Payments. Contemporaneously with the execution of this Agreement, Tenant shall deliver to Landlord a check in the amount of _____ Dollars ($_____) (the "Initial Payment"). In addition, Tenant shall pay to Landlord additional payments in the aggregate amount of _____ Dollars ($_____) (the "Deferred Amount"), with such payments to be in the following amounts and to be due on the following dates:

_____	$_____
_____	$_____
_____	$_____

The Initial Payment and the Deferred Amount are hereinafter referred to collectively as the "Payments."

3. Interest. Contemporaneously with the payment of each installment of the Deferred Amount, Tenant shall pay to Landlord interest on the outstanding balance of the Deferred Amount at a rate of interest (the "Agreed Rate") equal to the lesser of (a) _____ percent (__%) per annum or (b) the highest nonusurious rate of interest allowed by applicable law.

4. Agreed Judgment. Contemporaneously with the execution of this Agreement, Landlord and Tenant shall execute and file with the court in connection with the Lawsuit a Joint Motion for Agreed Judgment (the "Judgment") in the form of Exhibit A attached hereto and made a part hereof for all purposes. So long as Tenant fully and timely performs all of its obligations under this Agreement, Landlord agrees to refrain from executing on or taking any other action to collect the Judgment. If Tenant fails to fully and timely perform all of its obligations under this Agreement, Landlord may, without notice, collect on the Judgment.

5. Conditional Release. Upon the timely receipt by Landlord of all of the Payments, (a) the Lease shall automatically be deemed terminated and rendered of no further force and effect and Landlord and Tenant, jointly and severally, hereby RELEASE, RELINQUISH, ACQUIT, and FOREVER DISCHARGE the other from all obligations, liabilities, claims, demands, costs, expenses (including, without limitation, attorneys' fees, accountants' fees, court costs and interest) and causes of action arising under, growing out of, or any way connected with the Lease, and (b) Landlord shall file with the court in connection with the Lawsuit a motion to dismiss the Lawsuit with prejudice.

6. Tenant's Default. If Tenant fails to make timely payment of any sums payable hereunder, Landlord shall have the right, but not the obligation, to terminate this Agreement, render the conditional release set forth above inoperative, execute on or take any other action necessary or desirable to collect the Judgment and seek to recover from Tenant any and all damages to which Landlord may be entitled under the Lease; provided, however, that any of the Payments actually received by Landlord shall be credited against the amount of such damages. If Tenant fails to pay to Landlord any sums required to be paid pursuant to this Agreement on or before the dates the same are due, such sums shall bear interest from the date due until the date received by Landlord at the Agreed Rate.

7. Attorneys' Fees In the event of any controversy, claim or dispute between Landlord and Tenant affecting or relating to the subject matter or performance of the rights, duties and obligations under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of the prevailing party's reasonable expenses, including, without limitation, attorneys' fees, accountants' fees, court costs and interest.

It is AGREED and UNDERSTOOD that this Agreement has been executed by Landlord and Tenant in compromise and settlement of disputed claims and in order that such parties may ensure their peace, and neither the existence of this Agreement nor the terms and provisions hereof shall be construed as an admission of liability on the part of Landlord, Tenant or any other party.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement on the dates set forth below, to be effective for all purposes as of the later of such dates.

Executed by Landlord
this ____ day of
_____, _____.

_____

By:_____
Name:_____
Title:_____

Executed by Tenant
this ____ day of
_____, _____.

_____

By:_____
Name:_____
Title:_____

Exhibit A

NO. _____

_____	§	IN THE DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
VS.	§	_____ COUNTY, T E X A S
	§	
_____,	§	
Defendant	§	_____ JUDICIAL DISTRICT

JOINT MOTION FOR AGREED JUDGMENT

COMES NOW _____ and _____ to ask this Court to enter the Agreed Judgment attached here to and incorporated herein for all purposes.

Respectfully submitted,

By:_____

_____

State Bar No. _____

_____

Telephone: _____

Telecopier: _____

Counsel for Plaintiff _____

_____

By:_____

_____

State Bar No. _____

_____

_____

_____

Telephone: _____

Telecopier: _____

CERTIFICATE OF SERVICE

In compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on _____, _____, this pleading was served upon the following: _____ _____.

_____

_____

NO. _____

_____	§	IN THE DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
VS.	§	_____ COUNTY, T E X A S
	§	
_____,	§	
Defendant	§	_____ JUDICIAL DISTRICT

AGREED JUDGMENT

COMES NOW _____ and _____ to

After considering the joint motion of the parties to enter judgment in this case, the Court has decided that plaintiff _____ should have and recover from defendant _____ the following:

The principal sum of _____ Dollars ($_____); plus

Reasonable attorneys' fees of _____ Dollars ($_____); plus

All costs of court; plus

Post judgment interest at the lesser of _____ percent (___%) per annum or the highest nonusurious rate of interest allowed by applicable law from the date this Agreed Judgment is signed and entered until the judgment is paid.

The defendant is denied any and all recovery on any and all causes of action which could have been brought as a part of or in connection with this litigation.

DONE this _____ day of _____, _____.

_____
PRESIDING JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

_____

By:_____
_____
_____
_____
_____
Telephone: _____
Telecopier: _____
Counsel for Plaintiff _____
_____

_____

By:_____
_____
_____
_____
_____
_____
Telephone:_____
Telecopier:_____
Counsel for Defendant _____
_____

Exhibit C

LEASE TERMINATION AGREEMENT AND RELEASE

This Lease Termination Agreement and Release (this "Agreement") is between _____ ("Landlord") and _____ ("Tenant").

W I T N E S S E T H:

WHEREAS, _____ ("Original Landlord") and _____ ("Original Tenant") previously entered into a [**Lease Agreement**] dated _____, 20__ initially covering approximately _____ square feet of [**rentable area**] (the "Premises") in the building and related improvements located at _____, _____, Texas (the "Project") and situated on the real property described on Exhibit A attached hereto and made a part hereof for all purposes (the "Land"); and

WHEREAS, the Lease was amended by (a) a [**First Amendment to Lease**] dated _____, 20__ (the "First Amendment"), (b) a [**Second Amendment to Lease**] dated _____, 20__ (the "Second Amendment"), and (c) a [**Third Amendment to Lease**] dated _____, 20__ (the "Third Amendment"); and

WHEREAS, the Lease and (a) all amendments thereto[**, including, without limitation, the [First Amendment, the Second Amendment and the Third Amendment**] and (b) all other agreements between Landlord and Tenant relating to the Lease, the Premises, the Project and/or the Land, are hereinafter collectively referred to as the "Lease Agreement"; and

WHEREAS, Landlord has succeeded to the interest of Original Landlord in and to the Lease Agreement and Tenant has succeeded to the interest of Original Tenant in and to the Lease Agreement; and

WHEREAS, Landlord and Tenant have agreed that it is to their mutual benefit to terminate the Lease Agreement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

THAT, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged and confessed, Landlord and Tenant have agreed and do hereby agree as follows:

1. Termination of Lease Agreement. Landlord and Tenant agree that the Lease Agreement shall terminate effective as of _____, 20__ (the "Termination Date"). Tenant shall continue to pay rent and other sums due and payable by Tenant under the Lease up to the Termination Date. On or before the Termination Date, Tenant shall vacate the Premises and leave the Premises in broom clean condition. Effective on the Termination Date, the Lease shall terminate and be rendered null and void and of no further force or effect.

2. Termination Payment. On or before the Termination Date, Tenant shall pay to Landlord the sum of $_____, in cash or other readily available funds (the "Termination

Payment"), as consideration for the early termination of the Lease. Tenant [**may/may not**] assign to Landlord the Security Deposit (as such term is defined in Section ____ of the Lease) as a partial payment of the Termination Payment. [**If the Security Deposit is not assigned to Landlord pursuant to the preceding sentence,**] Landlord shall refund the Security Deposit to Tenant within 30 days after the Termination Date.

3. [**Going Out of Business Sale. Notwithstanding anything to the contrary contained in the Lease, Tenant shall have the right from the date of this Agreement until the Termination Date to conduct a "Going Out of Business" or similar sale at the Premises. Tenant may advertise such sale in print and through placards and temporary signs placed on the windows, doors and exterior of the Premises.**]

4. Mutual Release. Landlord hereby agrees to accept the surrender of the Premises in its current condition (subject only to Tenant's obligation to leave the Premises in a broom clean condition). Landlord and Tenant hereby each irrevocably and unconditionally release the other and their respective officers, employees and affiliates from any and all liability, cost or obligation, past, present or future, known or unknown, in contract or in tort, which may or now hereafter exist with regard to (a) the Lease Agreement, (b) the Premises, including, without limitation, the condition thereof, (c) the Project, (d) the Land and/or (e) any other agreements between Landlord and Tenant relating to the Lease Agreement or the Premises.

5. Representation and Warranty. Landlord represents and warrants to Tenant that (a) Landlord is the owner of the interest of the "[**Landlord/Landlord**]" under the Lease Agreement, and (b) that Landlord has the right, power and authority to execute this Agreement without any consent or approval from any other person or entity. Tenant represents and warrants to Landlord that (a) Tenant is the owner of the interest of the "[**Tenant/Tenant**]" under the Lease Agreement, and (b) that Tenant has the right, power and authority to execute this Agreement without any consent or approval from any other person or entity.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement on the dates set forth below, to be effective for all purposes as of _____, 20__.

Executed by Landlord
this ____ day of
_____, _____.

_____

By:_____
Name:_____
Title:_____

Executed by Tenant
this ____ day of
_____, _____.

_____

By:_____
Name:_____
Title:_____

Exhibit D

CONSENT TO SUBLEASE

_____ ("Landlord"), as landlord under that certain lease dated _____ (the "Lease") by and between Landlord and _____ ("Tenant"), as tenant, subject to and specifically conditioned upon the following terms and conditions, hereby grants its consent ("Sublet Consent") to the sublet of certain premises (the "Sublet Premises") in the **[building/center]** commonly known as _____, as more particularly described in the sublease, dated **[insert sublease date]**, made by and between Tenant, as sublandlord, and **[insert subtenant's name]** ("Subtenant"), as subtenant, a copy of which is attached hereto as Exhibit **[insert #]** (the "Sublease").

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Lease or the Sublease, as the case may be. The titles or headings to the various paragraphs of this Sublet Consent are for convenience of reference only, do not define or limit the contents thereof, and should be ignored in any construction thereof.

As conditions to Landlord's consent to the sublet of the Sublet Premises, it is understood and agreed as follows:

1. NO RELEASE

This Sublet Consent shall in no way release the Tenant, or any other person or entity claiming by, through, or under Tenant including, without limitation, Subtenant, from any of its covenants, agreements, liabilities, and duties under the Lease (including, without limitation, all duties to cause and keep Landlord and others named or referred to in the Lease fully insured and indemnified with respect to any acts or omissions of Subtenant or its agents, employees, or invitees, or other matters arising by reason of the Sublease or Subtenant's use or occupancy of the Sublet Premises), as the same may be amended from time to time, without respect to any provision to the contrary in the Sublease. In no event shall anything contained in this Sublet Consent be deemed a waiver of any of Landlord's rights under the Lease.

2. NO APPROVAL OF SUBLEASE

This Sublet Consent does not constitute approval by Landlord of any of the provisions of the Sublease, or agreement thereto or therewith, but only approval of the sublet of the Sublet Premises to Subtenant.

3. NO AMENDMENT OF SUBLEASE

Tenant and Subtenant shall not amend in any respect the Sublease without the prior written approval of Landlord. In no event shall any such amendment, whether or not Landlord shall approve the same, affect or modify or be deemed to affect or modify the Lease in any respect.

4. LIMITED CONSENT

This Sublet Consent shall be deemed limited solely to the Sublease, and Landlord reserves the right to consent or to withhold consent with respect to any other matters under the Lease including, without limitation, any proposed alterations to the Premises or the Sublet Premises, and to any further or additional sublets, assignments, or other transfers of the Lease or any interest therein or thereto, including, without limitation, a sub-sublet or any assignment of this Sublease.

5. TENANT'S LIABILITY; LANDLORD'S REMEDIES

Tenant shall be liable to Landlord for any default under the Lease, whether such default is caused by Tenant or Subtenant or anyone claiming by, through, or under either Tenant or Subtenant or anyone claiming by, through, or under either Tenant or Subtenant. The foregoing shall not be deemed to restrict or diminish any right which Landlord may have against Subtenant pursuant to the Lease, or in law or in equity for violation of the Lease or otherwise, including, without limitation, the right to enjoin or otherwise restrain any violation of the Lease by Subtenant. Landlord may at any time enforce the Lease against Tenant, Subtenant, or both.

6. SUBORDINATION TO LEASE

The Sublease is, in all respects, subordinate and subject to the Lease, as the same may be amended. Furthermore, in the case of any conflict between the provisions of this Sublet Consent or the Lease and the provisions of the Sublease, the provisions of this Sublet Consent or the Lease, as the case may be, shall prevail unaffected by the Sublease.

7. EXCESS RENT AND SUBLEASE CHARGES

Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that it will promptly pay to Landlord throughout the Lease Term any excess Rent owed to Landlord as required under Clause **[insert # of sublet profit sharing clause]** of the Lease, and otherwise comply with the provisions of such Clause and any other Clause of the Lease which may be relevant to the Sublease. Without limiting the generality of the foregoing, Tenant specifically agrees to pay all of Landlord's costs, charges, and expenses, including reasonable attorney's fees as provided in Clause **[insert # of assignment and subletting clause]** of the Lease, incurred in connection with the Sublease and this Sublet Consent upon submission of bills therefor. Any failure to pay such excess Rent or charges upon demand shall be a default under the Lease.

8. TERMINATION OF LEASE

If at any time prior to the expiration or termination of the Sublease, the Lease shall expire or terminate for any reason (or Tenant's right to possession shall terminate without termination of the Lease), the Sublease shall simultaneously expire or terminate. However, Subtenant agrees, at the election and upon the written demand of Landlord, and not otherwise, to attorn to Landlord for the remainder of the term of the Sublease, such attornment to be upon all of the terms and conditions of the Lease, with such reasonable modifications as Landlord may require, except that the Minimum Rent set forth in the Sublease shall be substituted for the Minimum Rent set forth in the Lease and the computation of Additional Rent as provided in the Lease shall be modified as set forth in the Sublease.

The foregoing provisions of this Paragraph shall apply notwithstanding that, as a matter of law, the Sublease may otherwise terminate upon the termination of the Lease and shall be self-operative upon such written demand of the Landlord, and no further instrument shall be required to give effect to said provisions; provided, however, Subtenant agrees to execute an attornment agreement, in form and substance acceptable to Landlord, pursuant to which Subtenant confirms that all obligations owed to Tenant under the Sublease shall become obligations owed to Landlord for the balance of the term of the Sublease.

9. SERVICES

Tenant and Subtenant hereby agree that Landlord may furnish to the Sublet Premises services requested by Subtenant other than or in addition to those to be provided under the Lease, and bill the Subtenant directly for such services for the convenience of and without notice to Tenant. Subtenant hereby agrees to pay to Landlord all amounts that may become due for such services on the due dates therefor. If Subtenant shall fail to make such payment, Tenant agrees to pay such amounts to Landlord upon demand as Additional Rent under the Lease, and the failure to pay the same upon demand shall be a default under the Lease.

10. NO PRIVITY

Notwithstanding anything to the contrary in this Sublet Consent, in no event shall Landlord be deemed to be in privity of contract with Subtenant or owe any obligation or duty to Subtenant under the Lease or otherwise, any duties of Landlord under the Lease or required by law being in favor of, for the benefit of, and enforceable solely by Tenant.

11. NOTICES

Subtenant agrees to promptly deliver a copy to Landlord of all notices of default and all other notices sent to Tenant under the Sublease, and Tenant agrees to promptly deliver a copy to Landlord of all such notices sent to Subtenant under the Sublease. All copies of any such notices shall be delivered personally or sent either by recognized national overnight courier service or by United States registered or certified mail, postage prepaid, return receipt requested, to **[insert name and address of owner or managing agent]**, with a copy to **[insert name and address of**

owner's attorney], or to such other place or persons as Landlord or its agent may from time to time designate.

12. REAL ESTATE BROKERS

Tenant and Subtenant jointly and severally agree to indemnify and hold Landlord harmless from all loss, costs (including, without limitation, reasonable attorney's fees), damages, and expenses arising from any claims or demands of any broker or finder for any commission or fee due or alleged to be due in connection with the Sublease or this Sublet Consent.

13. CONSENT CONDITIONED; PARTIES BOUND

Tenant and Subtenant understand that Landlord has agreed to consent to the sublet of the Sublet Premises to Subtenant, and to execute this Sublet Consent, conditioned upon Tenant's and Subtenant's express acknowledgment of and agreement to be bound by all of the terms and conditions hereof. By executing this Sublet Consent, Tenant and Subtenant hereby acknowledge and agree to be bound by all of the terms and conditions of this Sublet Consent.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Sublet Consent as of **[insert date]**.

Landlord: _____

Tenant: _____

Subtenant: _____

GUARANTOR'S ACKNOWLEDGMENT

The undersigned Guarantor acknowledges that he or she has read this Sublet Consent and agrees to be bound by its terms.

Guarantor: _____

Exhibit E

SUBLEASE AGREEMENT

This Sublease Agreement (this "Sublease") is made and entered into as of the ___ day of _____, 20___ (the "Effective Date"), by and between _____ _____, a _____ ("Sublessor"), and _____, a _____ ("Sublessee").

In consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged and confessed, Sublessor and Sublessee have agreed and do hereby agree as follows:

ARTICLE I
BASE LEASE

Section 1.1 Base Lease. _____ ("Lessor") and _____ ("Original Lessee") previously entered into that certain Lease Agreement dated _____, _____ (the "Base Lease"), pursuant to which Lessor leased to Original Lessee **[approximately __ square feet of net rentable area of space in the building situated on]** the property described on Exhibit A attached hereto and made a part hereof for all purposes (the "Base Lease Premises"). **[Sublessor has succeeded to all of the interest of Original Lessee in and to the Base Lease and the Base lease Premises.]** Lessor has consented to the sublease by Sublessor to Sublessee to that portion of the Base Lease Premises described on Exhibit B attached hereto and made a part hereof for all purposes (the "Premises") on the terms and conditions set forth in this Sublease.

Section 1.2 Compliance with Base Lease. All of the terms and conditions contained in the Base Lease are hereby incorporated into and made a part of this Sublease as if stated in full. Sublessee accepts this Sublease subject and subordinate to, and hereby agrees to be bound by and perform, all of the terms and conditions contained in the Base Lease, other than (a) the provisions of the Base Lease providing for the payment of Base Rent (as defined in the Base Lease) **[and (b) the provisions of the Base Lease providing for the payment of _____ _____ (as defined in the Base Lease)]**, which shall be performed by Sublessor. [**Notwithstanding the foregoing, Sublessee shall be responsible for any charges assessed by Lessor for any [additional services] (as described in or contemplated by Section __ of the Base Lease) provided to Sublessee by Lessor.** Sublessee shall have no rights with respect to the Premises greater than Sublessor's rights as tenant with respect thereto. To the extent there is a conflict between the terms and conditions of the Base Lease and the terms and conditions of this Sublease, the more restrictive provision shall control. Sublessee agrees that whenever the consent of Lessor is required under the terms and conditions of the Base Lease with respect to any action, Sublessee shall obtain the consent of both Lessor and Sublessor prior to taking such action. Sublessor and Sublessee each agree to deliver promptly to the other copies of any and all notices or other correspondence relating to the Premises received by it from Lessor, and further

agree to deliver the same in the manner most appropriate to ensure that the other party will be able to respond to any of such notices or other correspondence from Lessor within any time periods set forth in the Base Lease or in such notice. Notwithstanding anything to the contrary contained herein, Sublessee shall not have any rights to exercise any expansion options, renewal options, purchase options or similar rights that may now or hereafter exist under the Base Lease.

ARTICLE II
PREMISES AND TERM

Section 2.1 Premises. Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor the Premises, on the terms and conditions set forth in this Sublease.

Section 2.2 Initial Term. Subject to and upon the terms and conditions set forth herein, this Sublease shall be in force for an initial term (the "Initial Term") commencing on _____, _____ (the "Commencement Date") and ending on the earlier of (a) 12:01 a.m., _____, _____ time, on _____, _____ or (b) the expiration or earlier termination of the Base Lease.

Section 2.3 Renewal Terms. So long as Sublessee is not in default under this Sublease, Sublessee shall have the right, but not the obligation (the "Renewal Option"), to extend the Initial Term for ____ consecutive renewal terms of 1 year each (collectively the "Renewal Terms" and individually a "Renewal Term") at a rental rate equal to the greater of (a) $_____ per month or (b) the Fair Rental Value (as defined below) and on the other terms and conditions set forth in this Sublease. To exercise the Renewal Option, Sublessee must give Sublessor written notice of such election (an "Option Election Notice") at least _____ days prior to the expiration of the Initial Term or the current Renewal Term, as applicable. For purposes of this Sublease, the "Fair Rental Value" shall be determined as follows. Within 15 days after the date Sublessor receives an Option Election Notice, Sublessor shall deliver to Sublessee Sublessor's written determination of the fair rental value for the Premises for the Renewal Term in question. If Sublessee does not notify Sublessor in writing that it disagrees with Sublessor's determination of the fair rental value within 7 days after receiving Sublessor's calculation thereof, such calculation shall be the Fair Rental Value for the Renewal Term in question. If Sublessee notifies Sublessor within such 7 day period that Sublessee disagrees with the Sublessor's calculation, Sublessor and Sublessee shall negotiate in good faith for a period of 10 days (the "Negotiation Period") in an attempt to agree on the fair rental value. If Sublessor and Sublessee are able to agree on the fair rental value during the Negotiation Period, the agreed upon figure shall be the Fair Rental Value for the Renewal Term in question. If Sublessor and Sublessee are unable to agree on the fair rental value during the Negotiation Period, Sublessor and Sublessee shall each appoint an independent third party real estate broker with experience in the _____, _____ area and the appointed real estate brokers shall determine the fair rental value of the Premises for the Renewal Term in question. Such determination shall be made within 15 days after the date both brokers have been appointed; provided, however, that if either party fails to appoint its broker and notify the other party of such appointment within 5 days after the expiration of the Negotiation Period, the broker

appointed by the other party shall make the determination of the fair rental value and such determination shall be the Fair Rental Value for the Renewal Term in question. Each party shall pay the fees of the real estate broker appointed by it.

Section 2.4 Term. The Initial Term, and, if the Renewal Option is exercised, the appropriate Renewal Term(s) are hereafter referred to collectively as the "Term". The date the Term ends is hereafter referred to as the "Termination Date."

[Section 2.5 Termination Option. Notwithstanding anything to the contrary contained in this Sublease, at any time after the first 6 months of the Term, Sublessee shall have the right, but not the obligation, to terminate this Sublease at any time upon 30 days' prior written notice to Sublessor and the payment, contemporaneously with such notice, of _____ month's Rent (as such term is defined in Section 3.1 hereof).]

ARTICLE III
RENT

Section 3.1 Base Rent. Rent for the Term shall be $_____ per month (the "Base Rent") and shall be paid in advance by Sublessee to Sublessor, without set-off or demand, on or before the first day of each calendar month during the Term. Rent for any partial calendar months at the beginning or end of the Term shall be prorated.

Section 3.2 Additional Rent. In addition to the Base Rent, Sublessee shall pay to Sublessor during the Term a sum of money equal to Sublessee's Proportionate Share (as such term is hereinafter defined) of Actual Basic Costs (as such term is defined in the Base Lease and using Lessor's computation thereof) over and above Actual Basic Costs for calendar year 20__ (the "Additional Rent"). Such sums shall be due and payable by Sublessee to Sublessor within ten (10) days after written notice from Sublessor to Sublessee specifying the amount of Additional Rent due and including copies of Lessor's computation of Actual Basic Costs for the period of time in question. As used in this Sublease, the term "Sublessee's Proportionate Share" shall mean a fraction, the numerator of which shall be the square feet of rentable area (as such term is defined in the Base Lease) of the Premises and the denominator of which shall be the rentable area of the Leased Premises.

Section 3.3 Rent. Base Rent, Additional Rent and any other sums payable by Sublessee to Sublessor pursuant to this Sublease are hereinafter sometimes referred to collectively as "Rent".

Section 3.4 Security Deposit. Contemporaneously with the execution of this Sublease, Sublessee shall deposit with Sublessor $_____ (the "Security Deposit"). Sublessee has deposited the Security Deposit with Sublessor as security for the full, faithful and timely performance of each and every provision of this Sublease to be performed by Sublessee. If Sublessee defaults with respect to any provision of this Sublease, including, without limitation, the provisions relating to the payment of Rent, Sublessor may use, apply, or retain all or any part of the Security Deposit for the payment of any Rent, or any other sum in default, or for the

payment of any other amount Sublessor may spend or become obligated to spend by reason of Sublessee's default, or to compensate Sublessor for any other loss or damage Sublessor may suffer by reason of Sublessee's default. If any portion of the Security Deposit is so used, applied or retained, Sublessee shall, within 5 days after written demand from Sublessor, deposit cash with Sublessor in an amount sufficient to restore the Security Deposit to its original amount. Sublessor shall not be required to keep the Security Deposit separate from its general funds, and Sublessee shall not be entitled to interest on the Security Deposit. The Security Deposit shall not be deemed a limitation on Sublessor's damages or a payment of liquidated damages or a payment of the monthly Rent due for the last month of the Term. If Sublessee performs all of its obligations under this Sublease, the Security Deposit or any balance of the Security Deposit shall be returned to Sublessee within 60 days after the expiration of the Termination Date.

ARTICLE IV
PERMITTED USE; OPERATIONS

Section 4.1 Permitted Use. Sublessee shall have the right to occupy and use the Premises for the purposes specified in the Base Lease and for no other purpose without the prior written consent of Lessor and Sublessor, which consent may be granted or withheld in such parties' sole and absolute discretion. Sublessee shall not do or permit anything to be done in, on or about the Premises, or bring or keep or permit anything to be brought thereto or kept therein, which is now or hereafter prohibited by or which will in any way conflict with (a) the Base Lease, (b) all orders, injunctions, writs, statutes, rulings, rules, regulations, requirements, permits, certificates, ordinances, and similar pronouncements of any federal, state or local legislative body or governmental department, commission, board, bureau, agency, authority or other entity having jurisdiction over Sublessee or the Premises (collectively, "Applicable Law"), or (c) Sublessor's or Sublessee's existing or subsequently obtained insurance policy or policies relating to the Premises, if any. Sublessee shall not cause any public or private nuisance in, on or about the Premises.

Section 4.2 No Hazardous Materials. Sublessee shall not permit any Hazardous Materials (as such term is hereinafter defined) to be brought onto, stored in, used in, or disposed of in, on, under or about the Premises except in such quantities as are found in materials used in connection with the operation of Sublessee's business on the Premises and which comply with and are handled, stored, used and disposed of in compliance with the Base Lease and Applicable Law. As used herein "Hazardous Materials" means (a) any petroleum or petroleum products, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls, and radon gas, (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under Applicable Law, (c) any other chemical, material or substance which is in any way regulated by Applicable Law, and (d) any substance covered by Section ____ of the Base Lease.

ARTICLE V
UTILITIES; TAXES; MAINTENANCE AND REPAIR; ALTERATIONS

Section 5.1 Utilities. [**Sublessee shall be responsible for all usage charges, tap or connection charges, metering fees, deposits and all other expenses of and related to any and all utilities consumed at the Premises, including, without limitation, electricity, gas, telephone, water, sewer and trash pickup and disposal. Sublessor shall not be responsible for providing any utilities to the Premises. Sublessor shall not be responsible for any interruption in utility services. Sublessee shall promptly pay all charges and related expenses for such utilities promptly as the same become due, and all payments shall be made directly to the entity providing such utilities. No interruption of utility service shall be construed as either a constructive or an actual eviction of Sublessee, cause an abatement of Rent, or relieve Sublessee from fulfilling any of its obligations under this Sublease. / Sublessee shall be responsible for all utility charges related to any and all utilities consumed at the Premises, in accordance with the Base Lease and as modified by the base year provisions of Section 3.2 hereof. No interruption of utility service shall be construed as either a constructive or an actual eviction of Sublessee, cause an abatement of Rent, or relieve Sublessee from fulfilling any of its obligations under this Sublease.**]

Section 5.2 Taxes. Sublesee shall be responsible for the payment of all taxes, special assessments and similar charges required to be paid by the tenant under the Base Lease, including, without limitation, pursuant to Section ___ of the Base Lease. Sublessee shall be responsible for the payment of all taxes, special assessments and similar charges assessed against any personal property or above Building-standard improvements in the Premises.

Section 5.3 Maintenance. Sublessee, at its sole cost and expense, shall clean, maintain, replace and repair the Premises as required by the Base Lease. Sublessor shall have no obligation whatsoever to clean, maintain, replace or repair the Premises or any portion thereof, it being recognized, stipulated and agreed by Sublessor and Sublessee that Sublessee's undertaking of the obligation to maintain and repair the Premises is a material inducement to Sublessor in the execution of this Sublease and constitutes a material portion of consideration to Sublessor hereunder.

Section 5.4 Sublessor's Disclaimer. SUBLESSOR AND SUBLESSEE RECOGNIZE, STIPULATE AND AGREE THAT SUBLESSEE HAS ACCEPTED THE PREMISES IN ITS CURRENT "AS IS", "WHERE IS" CONDITION AND WITH ALL FAULTS AND WITHOUT ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OR CHARACTERISTICS OF THE PREMISES. WITHOUT LIMITING THE FOREGOING, SUBLESSOR MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE CONDITION OF THE PREMISES, THE FITNESS OF THE PREMISES FOR THE OPERATION OF SUBLESSEE'S BUSINESS, THE FITNESS OF THE PREMISES FOR A PARTICULAR PURPOSE, OR THE FITNESS OF THE PREMISES FOR ANY PURPOSE.

Section 5.5 Alterations. Sublessee shall not make any alterations or additions to the Premises, without (a) obtaining all consents and approvals required by the Base Lease and (b) obtaining Sublessor's prior written consent, which consent may be granted or withheld in Sublessor's sole and absolute discretion. Any alterations or additions approved by Sublessor and performed by or on behalf of Sublessee shall be at Sublessee's sole cost and expense, shall be performed promptly and shall be diligently prosecuted to completion in a good and workmanlike manner in accordance with the Base Lease and Applicable Law. **[All such improvements shall become a part of the Premises and shall be surrendered with the same upon the expiration or earlier termination of this Sublease.]**

Section 5.6 Permits; Insurance. Prior to commencing any alterations or additions approved by Sublessor, Sublessee shall, at Sublessee's sole cost and expense, obtain (a) any and all building or other permits required by Applicable Law and deliver true, correct and complete copies of the same to Sublessor, and (b) such insurance policy or policies, including, without limitation, a builder's risk policy, as required by the Base Lease and as Sublessor may reasonably require.

Section 5.7 Tenant Finish Allowance. Sublessor shall provide to Sublessee a tenant finish allowance equal to $_____ per rentable square foot of the Premises (the "Allowance") to be used for construction of leasehold improvements and other occupancy related expenses (collectively, the "Permitted Expenses"). The Allowance shall be payable by Sublessor to Sublessee within 15 days after delivery by Sublessee to Sublessor of draw requests from time to time (but not more than once per month) together with paid invoices from the contractor or contractors performing the work (or in the case of other occupancy related expenses, from the provider of the applicable goods or services), appropriate lien waivers from all contractors **[and subcontractors]** performing such work releasing all lien rights with regard to completed work, and any other documentation required by the Base Lease. Any portion the Allowance that is not used for Permitted Expenses **[by _____, 20__]** shall be **[credited against the Rent first due under this Sublease until all of the Allowance has been used or credited / forfeited and no longer available to Sublessee, with no adjustment to the Rent or any other term or condition of this Sublease]**. Invoices and other correspondence related to the Allowance shall be delivered to the addresses set forth in Section 9.__ hereof.

ARTICLE VI
INSURANCE; INDEMNITY

OPTION A

Section 6.1 Insurance. Throughout the Term, Sublessee shall carry and maintain, at Sublessee's sole cost and expense, all insurance required to be maintained by the **[tenant/lessee]** under the Base Lease, including, without limitation, the insurance described in Section ____ of the Base Lease. In addition to complying with the requirements of the Base Lease, such insurance shall name Sublessor as an additional insured. Copies of such insurance policies shall be delivered to Sublessor on or prior to the Effective Date and copies of renewal or replacement

policies shall be delivered to Sublessor at least 15 days prior to the expiration date of any such policy.

OPTION B

Section 6.1 **Liability Insurance.** Throughout the Term, Sublessee shall carry and maintain, at Sublessee's sole cost and expense, commercial general liability insurance of an "occurrence" type against all claims arising out of liability of Sublessee for injury to persons or property occurring in or about the Premises or arising out of the use or occupancy thereof, with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 as a general aggregate. Sublessee's commercial general liability insurance shall include Broad Form Property Damage, Personal Injury Liability Insurance with a limit of $1,000,000.00 per occurrence and Blanket Broad Form Contractual Liability Insurance. Sublessee shall, if Sublessee so elects, carry fire and extended coverage insurance covering Sublessee's personal property situated in the Premises in such amounts as Sublessee may elect in Sublessee's sole and absolute discretion.

Section 6.2 **Property Insurance.** Throughout the Term, Sublessee shall carry and maintain, at Sublessee's sole cost and expense, fire and extended coverage insurance covering all insurable items and structures (other than Sublessee's personal property) on the Premises in an amount not less than 100% of the full replacement cost thereof, providing protection against perils included within the standard form of fire and extended coverage insurance policy used in the state in which the Premises is located with a broad form endorsement covering sprinkler damage, vandalism and malicious mischief.

Section 6.3 **Form of Policies.** All policies of insurance described in this Article VI or otherwise required to be obtained pursuant to this Sublease shall be issued in form acceptable to Sublessor and Sublessee by insurance companies acceptable to Sublessor and Sublessee and admitted to conduct casualty insurance business in the state where the premises is located. All such policies of insurance shall name Sublessor, Sublessee and Lessor as named insureds as to the Premises.

Section 6.4 **Additional Rights.** If Sublessee fails to maintain the insurance required to be maintained pursuant to this Sublease and does not provide evidence to Sublessor that such insurance has been obtained and is in place within 5 days after written notice from Sublessor, Sublessor shall have the right, but not the obligation, and without limitation of its other rights hereunder, to take out and maintain such an insurance policy or policies on behalf of Sublessee, at Sublessee's sole cost and expense, in which event Sublessee shall pay to Sublessor on demand the amount of the premium applicable to such policy or policies.

Section 6.5 **Indemnity.** Sublessee shall indemnify, defend and hold harmless Sublessor and Sublessor's directors, officers and employees from and against all claims, demands, liabilities, losses, costs, damages or expenses (including, without limitation, attorneys' fees, accountants' fees, court costs and interest) resulting or arising from any and all injuries to,

including death of, any person or damage to any property to the extent caused by the negligence or willful misconduct of Sublessee or Sublessee's directors, officers, employees, agents, contractors or invitees. Sublessor shall indemnify, defend and hold harmless Sublessee and Sublessee's directors, officers and employees from and against all claims, demands, liabilities, losses, costs, damages or expenses (including, without limitation, attorneys' fees, accountants' fees, court costs and interest) resulting or arising from any and all injuries to, including death of, any person or damage to any property to the extent caused by the negligence or willful misconduct of Sublessor or Sublessor's directors, officers, employees, agents, contractors or invitees.

Section 6.6 Waiver of Subrogation. Anything in this Sublease to the contrary notwithstanding and to the extent permitted by Applicable Law, each party hereto hereby releases and waives all claims, rights of recovery, and causes of action that either such party or any party claiming by, through, or under such party (including each party's insurers) by subrogation or otherwise may now or hereafter have against the other party or any of the other party's directors, officers, employees, or agents for any loss or damage that may occur to the Premises, or any of the contents of any of the foregoing by reason of force majeure or any other cause, excluding gross negligence or willful misconduct, but including negligence of the parties hereto or their directors, officers, employees, or agents, to the extent such loss (a) is insured against under the terms of the insurance policies actually maintained or (b) would have been insured against had the party suffering such loss maintained the insurance required to by maintained by such party under this Sublease.

Section 6.7 Express Negligence Provision. IT IS THE EXPRESS INTENTION OF SUBLESSOR AND SUBLESSEE THAT THE INDEMNIFICATIONS AND WAIVERS CONTAINED IN THIS ARTICLE VI APPLY TO ALL MATTERS DESCRIBED HEREIN, INCLUDING, WITHOUT LIMITATION, ANY OF THE SAME THAT ARE CAUSED IN WHOLE OR IN PART BY THE SOLE OR CONCURRENT NEGLIGENCE OF SUBLESSOR, SUBLESSEE OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES.

ARTICLE VII
ASSIGNMENT AND SUBLETTING

Section 7.1 Sublessor's Assignment Rights. Sublessor shall have the right to transfer and assign, in whole or in part, by operation of law or otherwise, its rights and obligations hereunder. If Sublessor transfers and assigns its rights and obligations hereunder, Sublessor shall be automatically relieved of any further liability under this Sublease and Sublessee agrees to look solely to Sublessor's transferee for the performance of any and all of Sublessor's duties and obligations arising subsequent to the date of such transfer and assignment.

Section 7.2 Sublessee's Assignment Rights. Sublessee shall not assign or otherwise transfer, mortgage, pledge, hypothecate or otherwise encumber this Sublease, or any interest herein, by operation of law or otherwise, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other party to occupy or use the

Premises, or any portion thereof, without (a) obtaining all consents and approvals required by the Base Lease and (b) obtaining Sublessor's prior written consent, which consent may be granted or withheld in Sublessor's sole and absolute discretion. Any such consent by Sublessor shall not release Sublessee from any of Sublessee's obligations hereunder and Sublessee shall remain primarily liable for the performance of all of the terms and conditions of this Lease. No such consent by Sublessor shall be deemed to be a consent to any subsequent or other assignment, subletting, occupancy, or use by another party. If Sublessee is a corporation, partnership, trust or other entity, a transfer or encumbrance of a controlling interest therein shall constitute an assignment for purposes of this Section 7.2. Any attempt to convey an interest herein without Sublessor's prior written consent shall be voidable at Sublessor's election and shall, at Sublessor's sole option, constitute an Event of Default.

ARTICLE VIII
DEFAULT

Section 8.1 Event of Default. To the full extent not prohibited by Applicable Law, an event of default (an "Event of Default") shall be deemed to exist on the part of Sublessee:

(a) if Sublessee defaults in the payment of any installment of Rent or any other sum payable by Sublessee to Sublessor hereunder, which default continues for 5 days after written notice from Sublessor to Sublessee specifying the amount and nature of the sums due in reasonable detail;

(b) if Sublessee fails to perform any of the covenants, agreements, terms or conditions contained in this Sublease (other than those referred to in Section 8.1(a) above) which default continues for 30 days after written notice from Sublessor to Sublessee specifying the failure to perform in reasonable detail; provided, however, that if such default is not susceptible to cure within such 30 day period, such period of time shall be extended whatever period of time is necessary to cure such default as long as Sublessee is exercising diligent efforts to effectuate a cure; provided, however, that such time period shall not be extended beyond the date on which such failure would constitute a default under the Base Lease;

(c) if Sublessee fails to perform any of its obligations pursuant to Section 9.1, **[9.5 or 9.15]** of this Sublease;

(d) if an involuntary petition is filed against Sublessee under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, or a receiver of Sublessee's interest in the Premises is appointed incident to a bankruptcy proceeding without the acquiescence of Sublessee and such situation continues for 60 days after the occurrence of any such event;

(e) if Sublessee admits in writing its inability to pay its debts or makes an assignment of the property of Sublessee for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction approves a petition filed by Sublessee under the reorganization provisions of

the United States Bankruptcy Code or under the provisions of any law of like import, or whenever a petition is filed by Sublessee under the arrangement provisions of the United States Bankruptcy Code or under the provisions of any law of like import;

(f) if any trustee, receiver or liquidator of Sublessee or of all or any portion of its properties is appointed to any action, suit or proceeding which is not dismissed within 60 calendar days; and

[(g) if any act or omission of Sublessee or its directors, officers, employees, agents, contractors or invitees constitutes a default under the Base Lease or results in a condition that upon the passage of time, the giving of notice or both would constitute a default under the Base Lease.]

Section 8.2 Sublessor's Remedies. The occurrence of any Event of Default shall constitute, and Sublessor may treat the same as, a breach of this Sublease and, at Sublessor's option, Sublessor may elect any one or more of the following described remedies:

(a) Sublessor may terminate this Sublease, repossess the Premises and recover from Sublessee as damages a sum of money equal to the total of:

(i) the unpaid Rent and any other amounts accrued and owing at the time of termination; plus

(ii) an amount equal to the excess, if any, of (A) the total Rent and other amounts payable by Sublessee under this Sublease for the balance of the Term then remaining over (B) the fair market rental value of the Premises for the balance of the Term as of the time of the Event of Default, such excess amount to be discounted to the date of such default at the per annum rate equal to the per annum rate most recently announced as of the date of such default by J. P. Morgan Chase Bank, Houston, Texas, as its "Prime Rate" or the equivalent thereto, compounded quarterly; or

(b) Sublessor may terminate Sublessee's right to possession of the Premises and may repossess the Premises by forcible detainer suit or otherwise, without demand or notice of any kind to Sublessee other than the notices required by this Sublease and without terminating this Sublease or extinguishing Sublessee's obligation to pay Rent or other amounts provided to be paid by Sublessee under this Sublease. If Sublessor terminates Sublessee's right to possession of the Premises under this Section 8.2(b), Sublessor shall exercise reasonable efforts to relet the Premises**[; provided, however that (i) Sublessor shall only be required to offer the Premises for lease to the extent Sublessee has the right to do so under the Base Lease, (ii) Sublessor shall not be required to give the Premises priority over any other vacant or available space owned, leased or controlled by Sublessor, and (iii) Sublessor may give priority to other vacant or available space owned, leased or controlled by Sublessor]**. Sublessor shall be entitled to recover and Sublessee shall pay Sublessor all unpaid, accrued Rent and

other amounts provided to be paid by Sublessee under this Sublease due on the date Sublessee's right to possession is terminated and all Rent and other amounts provided to be paid by Sublessee under this Sublease as the same thereafter comes due under this Sublease; provided that if Sublessor relets the Premises all sums received from such reletting for the remainder of the Term in excess of all reasonable costs incurred by Sublessor in connection with such reletting shall be applied against sums due Sublessor from Sublessee and Sublessee shall remain liable for any deficiency. Sublessor may file suit from time to time to recover any sums due or coming due under this Sublease and no delivery to or recovery of any portion thereof due Sublessor hereunder shall be a defense in any action to recover any amount not theretofore paid or reduced to judgment in favor of Sublessor. A reletting of the Premises by Sublessor shall neither constitute nor be construed as an election on the part of Sublessor to terminate this Sublease unless Sublessor gives written notice of such termination to Sublessee. Sublessee shall remain obligated to pay the amount of any deficiency of the Rent obtained on such reletting below the Rent and other amounts provided to be paid by Sublessee under this Sublease but if the rent obtained on such reletting is greater than the Rent and other amounts provided to be paid by Sublessee under this Sublease herein reserved, plus all reasonable costs incurred by Sublessor in connection with such reletting, Sublessor shall be entitled to receive such excess (but shall credit such excess against any Rent and other amounts provided to be paid by Sublessee under this Sublease and thereafter becoming due from Sublessee hereunder). Notwithstanding any such reletting without termination, Sublessor may at any time thereafter elect to terminate this Sublease for such previous breach pursuant to Section 8.2(a), above; or

(c) Without terminating this Sublease, enter onto the Premises, Sublessee hereby waiving any and all claims, damages and causes of action as a result thereof, and take whatever act or perform whatever obligation Sublessee has failed to take or perform on Sublessee's behalf and at Sublessee's sole cost and expense, in which event all sums incurred by Sublessor in connection therewith shall be paid by Sublessee to Sublessor within 10 days after written invoice therefor; or

(d) Pursue any other remedy now or hereafter available to Sublessor under Applicable Law, it being agreed that Sublessor's remedies set forth herein are cumulative and in addition to any and all other remedies now or hereafter provided by Applicable Law.

Failure of Sublessor to declare any default immediately upon occurrence thereof and any delay in taking any action in connection therewith shall not constitute a waiver of such default, but Sublessor shall have the right to declare any such default at any time prior to the default being cured and to take such action as might be lawful or authorized hereunder, either in law or in equity.

ARTICLE IX
MISCELLANEOUS

Section 9.1 **Parking.** To the extent Sublessor is permitted to do so under the Base Lease and so long as Sublessee is not in default under this Sublease, Sublessor shall provide to Sublessee during the Term _____ parking spaces in the Garage (as such term is defined in the Base Lease), at a specific location to be reasonably identified by Sublessor. Sublessee shall pay Sublessor $75.00 per month per reserved parking space and $45.00 per month per unreserved parking space. Sublessee's use of such parking spaces shall be subject to and in accordance with the provisions of the Base Lease and if the parking charges charged to Tenant under the Base Lease increase, the above described charges shall automatically increase by an equal amount.

OPTION A

Section 9.2 **Furniture.** During the Term, Sublessor shall permit Sublessee to use all of Sublessor's existing furniture currently located in the Premises on an **AS IS**, **WHERE IS** basis, without warranty, express or implied, as to the condition or fitness thereof. If Sublessee complies with all of its obligations under this Sublease, Sublessor shall execute and deliver to Sublessee at the expiration of the Term a bill of sale, containing an express disclaimer of all express or implied warranties, conveying the Furniture to Sublessee.

OPTION B

Section 9.2 **Furniture.** So long as Sublessee is not in default under this Sublease, Sublessee shall have the right to use the furniture and equipment owned by Sublessor, located in the Premises and described on Exhibit **[ ]** attached hereto and made a part hereof for all purposes (the "Personal Property") during the Term at no additional charge. The Personal Property is hereby accepted by Sublessee on an **AS IS**, **WHERE IS** basis, without warranty, express or implied, as to the condition or fitness thereof . So long as Sublessee complies with all of its obligations under this Sublease, Sublessee shall have the right, but not the obligation, to purchase the Personal Property from Sublessor upon the expiration of the Term at Fair Market Value (as such term is defined below). As used herein, the term "Fair Market Value" shall mean the price upon which the Personal Property would be sold in the open market by a reasonably motivated seller to a reasonably motivated buyer. Sublessor and Sublessee shall negotiate in good faith to agree on the Fair Market Value. If Sublessor and Sublessee cannot agree upon the Fair Market Value, the parties shall jointly appoint a qualified, independent third party to determine the Fair Market Value and such person's determination shall be final and binding upon Sublessor and Sublessee. Any conveyance of the Personal Property by Sublessor shall be on an **AS IS**, **WHERE IS** basis, without warranty, express or implied, as to the condition or fitness thereof.

Section 9.3 **Telephone System.** During the Term, Sublessor shall permit Sublessee to use Sublessor's existing telephone system currently located in the Premises (the "Telephone System"), on an **AS IS**, **WHERE IS** basis, without warranty, express or implied, as to the condition or fitness thereof. If Sublessee complies with all of its obligations under this Sublease,

Sublessor shall execute and deliver to Sublessee at the expiration of the Term a bill of sale, containing an express disclaimer of all express or implied warranties, conveying the Telephone System to Sublessee. Any conveyance of the Telephone Equipment by Sublessor shall be on an **AS IS**, **WHERE IS** basis, without warranty, express or implied, as to the condition or fitness thereof.

Section 9.4 Signage. Sublessor will reasonably cooperate with Sublessee's attempts to obtain signage adjacent to the Building; provided, however, that (a) Sublessee must obtain Lessor's consent to such signage, and (b) such signage shall be installed, operated and maintained at Sublessee's sole cost and expense.

Section 9.5 Sublessor's Access. Sublessor shall have the right upon reasonable advance notice, except in the event of a bona fide emergency, in which case no prior notice shall be necessary, to enter the Premises to inspect the condition thereof, to show the Premises to prospective new Sublessees during the last 90 days of the Term or to show the Premises to potential purchasers at any time during the Term, to determine if Sublessee is performing its obligations under this Sublease, to cure any defaults of Sublessee hereunder that Sublessor elects to cure, and to remove from the Premises any improvements thereto or property placed therein or thereon in violation of this Sublease. In addition, Sublessor shall have the right to erect on or about the Premises a sign or signs advertising the Premises for Sublease during the last 90 days of the Term or advertising the Premises for sale at any time during the Term.

Section 9.6 Surrender. [On or before/within ____ days after] the Termination Date, Sublessee shall peaceably and quietly surrender the Premises to Sublessor in substantially the condition the Premises were in on the Effective Date, subject to reasonable wear and tear, **[casualty loss, condemnation and other matters beyond Sublessee's control]**. If Sublessee fails to do any of the foregoing, Sublessor, in addition to other remedies available to it at law or in equity, may enter upon, reenter, possess and repossess the Premises, without breach of the peace, and may dispossess and remove Sublessee and all persons and property from the Premises. Such dispossession and removal of Sublessee shall not constitute a waiver by Sublessor of any claims by Sublessor against Sublessee.

Section 9.7 Holding Over. If Sublessee does not surrender possession of the Premises by the date specified in Section 9.6 hereof, then at the election of Sublessor, Sublessee shall be a Sublessee-at-sufferance of Sublessor, and the rental for each day during the period of such holdover shall be 200% of the Rent prevailing hereunder (determined on a daily basis) immediately prior to such expiration or termination.

Section 9.8 Non-Waiver. Neither the acceptance by Sublessor of any Rent or other payment hereunder, whether or not any default hereunder by Sublessee is then known to Sublessor, or any custom or practice followed in connection with this Sublease shall constitute a consent or waiver of any right or obligation by either party. Failure by either party to complain of any action or non-action on the part of the other or to declare the other in default, irrespective of how long such failure may continue, shall not be deemed to be a waiver of any rights hereunder. Except for the execution and delivery of a written agreement expressly accepting surrender of the

Premises, no act taken or failed to be taken by either party shall be deemed an acceptance or surrender of the Premises.

Section 9.9 **Notices.** Each notice required or permitted to be given hereunder by one party to the other shall be in writing with a statement therein to the effect that notice is given pursuant to this Sublease, and the same shall be given and shall be deemed to have been delivered, served and given if personally delivered, sent by facsimile transmission or placed in the United States mail, postage prepaid, by United States registered or certified mail, return receipt requested, addressed to such party at the address provided for such party herein. Any notices to Sublessor shall be addressed and given to Sublessor as follows:

_____
_____
_____
Attention: _____
Facsimile No.: (_____) _____-_____

with a copy thereof to:

_____
_____
_____
Attention: _____
Facsimile No.: (_____) _____-_____

Any notices to Sublessee shall be addressed and given to Sublessee as follows:

_____
_____
_____
Attention: _____
Facsimile No.: (_____) _____-_____

Either party may change the address to which notices shall be delivered pursuant to this Sublease by providing the other party with 30 days prior written notice, forwarded in accordance with the provisions of this Section 9.9.

Section 9.10 **Interest.** All amounts of money payable by either party to the other in this Sublease, if not paid when due, shall bear interest from the date due until paid at a per annum rate of interest equal to the lesser of (a) 4% plus the Prime Rate announced from time to time by J. P. Morgan Chase Bank, Houston, Texas or (b) the maximum non-usurious rate of interest allowed by Applicable Law from the date due until paid.

Section 9.11 Governing Law. This Sublease and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the internal laws of the state in which the Premises is located, without regard to the conflicts of laws principles thereof.

Section 9.12 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship between the parties hereto other than the relationship of Sublessor and Sublessee.

Section 9.13 Survival of Obligations. All obligations of Sublessor and Sublessee which by their nature involve performance, of any kind extending past the expiration or earlier termination of this Sublease or which cannot be ascertained to have been fully performed until after the end of the Term, shall survive the expiration or earlier termination of this Sublease.

Section 9.14 Limitation of Sublessor's Liability. The term "Sublessor" as used herein shall mean only the owner or owners, at the time in question, of the fee title or the leasehold interest under the Base Lease. In the event of any transfer of such title or interest, the Sublessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Sublessor's obligations thereafter to be performed, provided that any funds in the hands of Sublessor or the then grantor at the time of such transfer in which Sublessee has an interest, shall be delivered to the grantee. The obligations contained in this Sublease to be performed by Sublessor shall be binding on Sublessor's successors and assigns, only during their respective periods of ownership. All liability of Sublessor for damages for breach hereunder shall be satisfied only out of Sublessor's interest in the Premises.

Section 9.15 No Recordation. Neither party shall record this Sublease or any memorandum or other evidence hereof. **[ANY RECORDATION OF THIS SUBLEASE OR ANY MEMORANDUM OR OTHER EVIDENCE HEREOF BY SUBLESSEE SHALL, AT SUBLESSOR'S ELECTION, CONSTITUTE AN IMMEDIATE EVENT OF DEFAULT.]**

Section 9.16 Headings and Interpretations. The article and section headings used throughout this Sublease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Sublease.

Section 9.17 Mechanic's Liens. Sublessee shall not permit any mechanic's or materialmen's liens to be filed against the Premises or Sublessee's leasehold interest therein, and Sublessee shall cause any such liens arising or alleged to arise as a result of Sublessee's activities in the Premises to be paid and released of record without cost to Sublessor within 30 days following delivery by Sublessor to Sublessee of written notice regarding the existence of any such lien.

Section 9.18 Severability. If any provision of this Sublease is or becomes invalid, void, illegal or unenforceable, it shall be considered separate and severable from the Sublease, and the remaining provisions shall remain in full force and effect and be binding upon the parties hereto as though such provisions had not been included.

Section 9.19 Security. Sublessee hereby acknowledges that Sublessor has made no representation or warranty, express or implied, with regard to the existence, nature or sufficiency of any guard service or other security measures for the benefit of the Premises. **[Sublessee recognizes, stipulates and agrees that Sublessor shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises. Sublessee assumes all responsibility for the protection of Sublessee, its employees, agents, invitees and customers and the property of Sublessee and its employees, agents, invitees and customers from acts of third parties.]**

Section 9.20 Time is of the Essence. Time is of the essence with respect to all obligations to be performed hereunder.

Section 9.21 Fees and Expenses. If either Sublessor or Sublessee files any proceeding in connection with this Sublease, the prevailing party shall be entitled to obtain its attorneys' fees, accountants' fees, court cost and interest from the other party.

Section 9.22 Entire Agreement. No oral statements or prior written material not specifically incorporated herein shall be of any force or effect. Each party agrees that in entering into and taking this Sublease, it relies solely upon the representations and agreements contained in this Sublease and no others. This Sublease, including the exhibits attached hereto, attached hereto, constitutes the whole agreement of the parties and shall in no way be constituted, modified or supplemented, except by a written agreement executed by both Sublessor and Sublessee.

Section 9.23 Successors and Assigns. This Sublease and the terms and conditions hereof shall be binding upon and enforceable by the parties hereto and, subject to the restrictions and conditions contained in Article VI hereof, their successors and assigns.

IN WITNESS WHEREOF, this Sublease is hereby executed as of the date set forth above.

_____,
a _____

By: _____
Name: _____
Title: _____

"**Sublessor**"

_____,
a _____

By:_____
Name:_____
Title:_____

"**Sublessee**"

Exhibit F

ASSIGNMENT OF LEASE

This ASSIGNMENT OF LEASE ("Assignment") is made and entered into effective as of the ____ day of _____, 20__, by and between _____, a _____ ("Assignor"), _____, a _____ ("Assignee") and _____, a _____ ("Landlord").

R E C I T A L S

Landlord or its predecessor in interest, and Assignor or its predecessor in interest, have heretofore entered into that certain lease dated _____, _____, for premises (the "Premises") described as Suite(s) or Room(s) _____, initially containing approximately _____ square feet in the property (the "Property") known as _____ located at _____, which lease has heretofore been amended or assigned or the Premises subleased or the term extended by instruments dated _____ (such lease and all such amendments, prior assignments, subleases and extensions shall hereinafter be referred to collectively as the "Lease").

Assignor desires to assign all of its right, title and interest in the Lease to Assignee. Assignee desires to accept and assume the same, and Landlord is willing to consent to the proposed Assignment, all on the terms and conditions hereof.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. Assignor hereby TRANSFERS, ASSIGNS, GRANTS AND CONVEYS to Assignee, all of Assignor's right, title and interest, in, to and under the Lease, including any security deposit or prepaid rent thereunder. Notwithstanding the foregoing, Assignor reserves the right to receive any refunds of overpayments from Landlord relating to the period prior to the Effective Date hereof. **[Assignor hereby agrees to remain liable for and as a guarantor of all obligations of tenant under the Lease both before and after the Effective Date of this Assignment, through the principal and any extended term. Assignor will not be released from any liability by any further assignment or subletting, whether or not Assignor has received notice or has consented to the same. Landlord will have all remedies against Assignor as are provided in the Lease in the same manner as if this Assignment had not been made. The exercise by Landlord of any remedy against Assignee will not preclude Landlord from the exercise of the same or other remedies against Assignor at the same or different times.]**

2. Acceptance. Assignee hereby accepts the Assignment granted herein, and assumes and agrees to make all payments and to perform all other obligations of Assignor as the

tenant under the lease **[accruing from and after the Effective Date of this Assignment].** Assignee may make no further assignment of the Lease or sublease of the Premises, or any part thereof, nor may Assignee, mortgage, pledge or hypothecate the Lease, without Landlord's prior written consent, which Landlord may withhold in its sole discretion, except as provided to the contrary in the Lease. **[The exercise by Landlord of any remedy against Assignor will not preclude Landlord from the exercise of the same or other remedies against Assignee at the same or different times. In recognition that Landlord must continue to have all remedies otherwise available to Landlord for defaults under the Lease, including the right to apply any security deposition, terminate the Lease and/or recover possession, regardless of whether Assignor or Assignee committed such defaults, Assignee's liability hereunder will in no way be limited to those matters arising after the Effective Date, but will extend to any and all obligations under the Lease arising prior to the Effective Date, as well as the performance of all obligations arising thereafter, and Assignee must look solely to Assignor for indemnity or reimbursement of any expenses, costs, damages or liabilities incurred with respect to any default in the performance of such obligations relating to the period prior to the Effective Date.]**

3. Effective Date. The effective date of this Assignment is _____, 20__, ("Effective Date"). [**As between Assignor and Assignee,] [A]**ll obligations under the Lease arising, accruing or relating to the period before the Effective Date are allocated to Assignor and all obligations arising, accruing or relating to the period thereafter shall be allocated to Assignee. If the Effective Date occurs other than at the end of any period for which rentals or other charges under the Lease accrue or are due, then such rentals or other charges will be prorated between Assignor and Assignee on a per diem basis. Any as yet undetermined charges may be reasonably estimated by Landlord in its sole discretion, subject to re-proration between Assignor and Assignee after the actual charges have been determined.

4. **[Release Fee. In consideration of the release set forth in Paragraph 5 below within three (3) business days the Effective Date, Assignor must pay to Landlord a release fee of $_____ in good funds (i.e., cashier's check or wire transfer). If Assignor fails to make the required payment in the manner set forth herein, Assignor will be in default under this Agreement and Landlord may exercise all remedies available at law or in equity against Assignor.]**

5. [Release and Surrender of Assignor. Except as otherwise expressly set forth in this Assignment, Assignor will be discharged from any and all further obligations under the Lease as of the Effective Date. Notwithstanding the foregoing, Assignor will remain liable for all indemnities, liabilities and obligations of Assignor which expressly survive the termination of the Lease or which accrued prior to the Effective Date but have not yet been performed. Assignor must surrender the Premises to Landlord on or before 11:59 p.m. on the date prior to the Effective Date, in its present condition. Assignor relinquishes any right to any improvements, fixtures or equipment in the Premises.]

6. Representations: Indemnity. **[As between Assignor and Assignee, without in any way affecting, limiting or waiving any rights of Landlord against either Assignor or Assignee under the Lease,]** Assignor represents, warrants and covenants with Assignee that as of the Effective Date: (a) the Lease is in full force and effect; (b) all sums due and payable under the Lease as of the Effective Date have been paid in full; (c) any amounts that become payable after the Effective Date relating to the period prior to the Effective Date must be paid by

Assignor promptly; (d) the Lease has not been previously assigned, subleased, extended, modified, or amended, except as noted in this Assignment; (e) Assignor is not in default under any of its obligations under the Lease; and (f) a true and correct copy of the Lease (including any amendments, prior assignments, subleases, or extensions thereto) is attached hereto as Exhibit "A". Assignor further represents and warrants to both Assignee and Landlord that Landlord is not in default under any of the terms and provisions of the Lease. Landlord and Assignor warrant and represent to Assignee that the Lease attached hereto as Exhibit A is a true, correct and complete copy of the Lease and all amendments thereto. ASSIGNOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS ASSIGNEE FROM AND AGAINST ANY AND ALL LIABILITY, COSTS OR DAMAGES ARISING WITH RESPECT TO ANY BREACH OF THE FOREGOING REPRESENTATIONS, WARRANTIES OR COVENANTS. ASSIGNEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS ASSIGNOR FROM AND AGAINST ANY LIABILITY, COSTS OR DAMAGES ARISING WITH RESPECT TO ANY BREACH OF THE LEASE AFTER THE EFFECTIVE DATE

7. Landlord's Consent. Landlord hereby consents to this Assignment upon the terms and conditions set forth herein. Unless and until Landlord has executed this Assignment, this Assignment is of no effect, notwithstanding that Landlord may have accepted and may continue to accept rent or the performance of other obligations by Assignee. The consent granted herein should not be construed as consent to any further assignment. The failure or delay of Landlord in seeking to enforce any provisions of the Lease or this Assignment should not be deemed a waiver of rights or remedies that Landlord may have, or a waiver of any subsequent breach of the terms and provisions therein or herein contained.

8. [Reassignment Provision. Assignee hereby agrees that if Assignee defaults in the performance of any obligation under the Lease, Assignor may at any time after notice thereof from Landlord cure said default, in which case Assignee shall immediately upon demand reassign the lease to Assignor, vacate and surrender possession of the Premises to Assignor, and reimburse Assignor for all amounts expended by Assignor to cure Assignee's default as well as any additional damages suffered by Assignor because of Assignee's default. If Assignee fails to reassign the Lease to Assignor within ten (10) days after demand, or to vacate and surrender the Premises to Assignor, Assignee acknowledges that Assignor will suffer irreparable injury for which there would be no adequate remedy at law, that Assignor would be entitled to an injunction to compel the reassignment of the lease and the restitution of the Premises to Assignor, and that Assignor will not oppose a motion for such injunctive relief. NOTE; INCLUSION OF THIS PROVISION MAY RENDER THE ASSIGNMENT A SUBLEASE].

9. [Guaranty and Consideration of Landlord's Consent to This Assignment. The release of Assignor pursuant to the terms of this Assignment, Landlord has required the execution of a Guaranty from _____. In that regard, concurrently with the execution of this Assignment, _____ has executed and delivered to Landlord a Guaranty in the form attached hereto as Exhibit B.

10. [Brokers. ASSIGNOR HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND OR CHARACTER ARISING OUT OF OR RESULTING FROM ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING ALLEGED TO HAVE BEEN MADE BY LANDLORD, ASSIGNOR OR

ASSIGNEE WITH ANY BROKER OR FINDER IN CONNECTION WITH THE ASSIGNMENT OR THE TRANSACTION CONTEMPLATED HEREBY.]

11. Limitation of Liability. Except to the extent provided expressly in the Lease, no partner, trustee, director, officer, employee, beneficiary, shareholder or agent of Landlord or its agent is personally liable under or in connection with the Lease, or this Assignment, and Assignor and Assignee and their successors and assigns must look solely to Landlord's interest in the Property for the satisfaction of any claim or judgment requiring the payment of money by Landlord. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Landlord provided by law or any other agreement or instrument.

12. Notices. Any notice given by any party to another party hereto must be given in the manner required under the Lease. The addresses set forth below supercede any addresses for notices set forth in the Lease.

LANDLORD:

_____
_____
_____

ASSIGNOR:

_____
_____
_____

ASSIGNEE:

_____
_____
_____

13. Successors. Except as herein otherwise provided, this Assignment will be binding upon and inure to the benefit of the parties, and their respective heirs, executors, administrators successors and assigns

14. [Submission Fee. In order to reimburse Landlord's legal and administrative expenses in reviewing this Assignment, Assignor must pay before or contemporaneously with its submission hereof for Landlord's review the non-refundable amount of _____ ($_____) (the "Submission Fee"). Landlord's acceptance of such Submission Fee will impose no duty or obligation upon Landlord to consent to the transaction contemplated herein nor to execute this Assignment. If the foregoing Submission Fee has not been submitted before or contemporaneously with this Assignment, it will become due as an additional rental obligation under the Lease, payable upon demand by Landlord, and will become the joint and several obligation of the Assignor, and if this Assignment is executed by Landlord, of Assignee. Assignor and Assignee are jointly and severally liable for any other amounts required to be paid

under the Lease in connection with the assignment of the lease, including without limitation, any required share of premiums or profits in connection therewith.

15. Counterparts. This Assignment may be executed in multiple counterparts, each of which, once executed, will be an original and fully-binding on the parties so executing; and all such counterparts together constitute one and the same agreement

16. Binding Offer. This Assignment will not be binding until executed and delivered by all three parties.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

ASSIGNOR:

_____
a _____

By:_____
Name:_____
Title:_____

ASSIGNEE:

_____
a _____

By:_____
Name:_____
Title:_____

LANDLORD:

_____
a _____

By:_____
Name:_____
Title:_____