

MODEL CONSENT

Protect Your Lease Rights When Consenting to Assignment

The following consent to an assignment was drafted by Denver real estate attorney Neil B. Oberfeld and New Jersey attorney Marc L. Ripp. It lets you protect your lease rights while consenting to an assignment.

The consent begins by giving the parties' names, identifying the lease and the assignment, and saying that your consent is being given to the assignment on the conditions that follow. Paragraph 1 says that the tenant isn't released from its lease obligations. Paragraph 2 requires the assignee to assume the tenant's lease obligations. Paragraph 3 says that the assignee accepts the space "as-is." Paragraph 4 reaffirms the owner's right, set out in the lease, to share any assignment profits. Paragraph 5 requires the tenant and assignee to deliver key documents to you. Para-

graph 6 discusses the maintenance and disposition of the security deposit. Paragraph 7 blocks a broad interpretation of the consent. Paragraph 8 terminates special rights and options that were personal to the tenant. Paragraph 9 requires the tenant and assignee to indemnify you for any broker's fees. Paragraph 10 lets you bill the tenant or assignee for your attorney's fees. Paragraph 11 gives contact information so you can send notices to the assignee. Paragraph 12 says that the written consent isn't assignable. The consent ends with spaces for you, the tenant, and the assignee to sign, and sets out an acknowledgment that any lease guarantor should sign.

Consult your attorney to adapt this consent to the specific provisions of your lease and your state's laws. **CLLI0041**

LANDLORD'S CONSENT TO ASSIGNMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, *[insert landlord's name]*, as Landlord, under that certain lease dated *[insert date]* (the "Lease"), with *[insert tenant's name]* ("Tenant"), pertaining to the premises located at *[insert address]* (the "Premises"), hereby consents to the assignment and assumption of the Lease (the "Assignment"), between *[insert assignee's name]*, as Assignee, to Tenant, as Assignor, upon the following terms and conditions:

1. NO RELEASE

Tenant and any guarantors and other parties who are liable for Tenant's obligations under the Lease shall not be released or discharged from any liability for Tenant's obligations under the Lease, whether past, present, or future (including liabilities and obligations arising or accruing during any renewal or extension terms of the Lease or with respect to any expansion space hereinafter included in the Premises). Tenant shall obtain the written consent and acknowledgment of continuing liability of any and all guarantors and other parties who are liable for Tenant's obligations.

2. ASSUMPTION BY ASSIGNEE

Assignee shall assume and agree to perform all of the terms, covenants, and conditions of Tenant under the Lease. The Agreement (as defined in Paragraph 5 hereof) shall be subordinate and subject to the Lease.

3. PREMISES ACCEPTED 'AS-IS'

Assignee has inspected the Premises, knows the present physical condition thereof, accepts same in current "as-is" physical condition, and confirms that Landlord has not made any representation or warranty to Assignee con-

cerning the physical condition of the Premises, or otherwise, expressed or implied.

4. ASSIGNMENT PROFITS

If Tenant is entitled to any amounts or other consideration from Assignee with respect to the Assignment in excess of those amounts required to be paid under the Lease, such excess shall be subject to the terms of Clause *[insert # of assignment/sublet profit sharing clause]* of the Lease.

5. DOCUMENTS TO BE DELIVERED TO LANDLORD

- a. Tenant shall deliver to Landlord a copy of the fully executed written assignment and assumption of lease agreement evidencing the Assignment (the "Agreement") within *[insert #, e.g., 5]* days after the date of this Consent.
- b. Assignee shall deliver to Landlord, on the date of this Consent:
 - (i) *[Insert proof of insurance required by lease, e.g., certified copies of each insurance policy]*, as required under Clause *[insert # of insurance clause]* of the Lease to be maintained by Tenant thereunder; and
 - (ii) Evidence of payment of all premiums applicable to the insurance coverage to be maintained by the tenant, as required by Clause *[insert # of insurance clause]* of the Lease.

6. SECURITY DEPOSIT

Tenant waives and disclaims any interest in the Security Deposit. Landlord shall hold and apply the proceeds of the Security Deposit in accordance with the terms of Clause *[insert # of security deposit clause]* of the Lease. Subject to

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LANDLORD'S CONSENT TO ASSIGNMENT (continued)

the foregoing, Landlord shall deliver any remaining balance of the Security Deposit (which is currently in the amount of $[\textit{insert amount}]$) to Assignee within $[\textit{insert \#, e.g., 60}]$ days after whichever date occurs later:

- a. The expiration date, or earlier termination date, of the Lease, and
- b. The date on which Assignee delivers possession of the entire Premises to Landlord.

7. CONSENT

Neither the Assignment nor this Consent shall:

- a. Operate as Landlord's written consent to or approval of any of the terms, covenants, conditions, provisions, or agreements of the Agreement, and Landlord shall not be bound thereby;
- b. Be construed to:
 - (i) Modify, waive, release, or otherwise affect any of the terms, covenants, conditions, provisions, or agreements of the Lease;
 - (ii) Waive any Events of Default (as defined in Clause $[\textit{insert \#}]$ of the Lease) by Tenant or any claims, rights, suits, or actions against Tenant under the Lease;
 - (iii) Waive any of Landlord's rights as Landlord under the Lease;
 - (iv) Enlarge or increase Landlord's obligation as Landlord under the Lease; or
 - (v) Enlarge or increase Assignee's rights and benefits in excess of the rights and benefits applicable to Assignee under the Lease;
- c. Be construed as a written consent by Landlord to:
 - (i) Any further subletting of the Premises or any part thereof by Assignee;
 - (ii) Any further assignment by Assignee of the Lease; or
 - (iii) Any addition, alteration, or improvement to the Premises by Assignee; or
- d. Be construed to permit Assignee to:
 - (i) Assign, mortgage, or encumber the Lease; or
 - (ii) Use the Agreement or Lease as security for a loan or any other transaction.

8. TERMINATION OF OPTIONS

The $[\textit{insert type of option, e.g., renewal option}]$ under Clause $[\textit{insert \#}]$ of the Lease is personal to Tenant and shall terminate upon execution of the Assignment.

9. BROKER'S COMMISSIONS

Tenant and Assignee shall be jointly and severally liable for any broker's fees or commissions in connection with the Assignment. Assignor and Assignee shall agree to indemnify, defend, and hold harmless Landlord, its partners, shareholders, members, and their respective officers, directors, employees, and agents from and against any and all liabilities and claims for broker's fees

or commissions asserted against or incurred by any of said indemnities and arising out of or in connection with the Assignment.

10. ATTORNEY'S FEES

On or before the date Landlord executes this Consent, Tenant or Assignee shall reimburse Landlord $[\textit{insert amount}]$, for the legal fees Landlord incurred in connection with the review of the Agreement and the drafting, negotiation, and execution of this Consent.

11. NOTICES TO ASSIGNEE

As of the date of this Consent, a copy of all notices, written demands and written requests under the Lease from Landlord to Assignor shall simultaneously be delivered to Assignee at the Premises and at the following address: $[\textit{insert address}]$ in accordance with Clause $[\textit{insert \# of notice clause}]$ of the Lease.

12. CONSENT NOT ASSIGNABLE

This Consent is not assignable, nor shall this Consent be deemed a written consent to any amendment, modification, extension, or renewal of the Lease.

All capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease.

This Consent shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and Tenant, Assignee, and their respective heirs, legal representatives, and permitted successors and assigns.

This Consent may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

LANDLORD'S SIGNATURE: _____ DATE: _____

AGREED AND ACCEPTED:

TENANT'S SIGNATURE: _____ DATE: _____

ASSIGNEE'S SIGNATURE: _____ DATE: _____

GUARANTOR'S ACKNOWLEDGMENT:

The undersigned Guarantor acknowledges that he or she has read this Landlord's Consent to Assignment, consents to the Assignment and the Agreement, and agrees to be bound by the terms of the Assignment, the Agreement, and this Landlord's Consent to Assignment.

GUARANTOR: _____