

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “**Agreement**”) is made as of the ____ day of _____, 20__ by and among _____, a _____, having an address at _____ (“**Bank**”) and _____, a _____, having an address at _____ (“**ABC**”; Bank and ABC, together with each of their successors and assigns, are individually or collectively (as the context requires) herein referred to as “**Lender**”), _____, a _____ (“**Tenant**”) and _____, a _____, both having an address at _____. (“**Landlord**”).

RECITALS:

A. Lender is the present owner and holder of a certain Deed of Trust and Security Agreement (the “**Security Instrument**”) given by Landlord to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the “**Property**”) and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by the Note (as defined in the Security Instrument);

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain [Lease] dated _____, 20__ between Landlord, as landlord, and Tenant, as tenant (the “**Lease**”); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant, Lender and Landlord agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate to the lien and terms of the Security Instrument, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such

joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default beyond any applicable notice and cure period under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. Attornment. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "**Purchaser**"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease, (b) subject to any offsets, defenses, abatement or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, except for those that are specifically provided for in the Lease, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser, (e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest (provided, however, Purchaser's consent is not required for a termination of the Lease exercised pursuant to the original terms of the Lease) or (f) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Purchaser succeeded to Landlord's interest other than if pursuant to the provisions of the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such

interest. Alternatively, upon the written request of Lender or its successors or assigns, Tenant shall enter into a new lease of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease (including without limitation any renewal options), except as otherwise specifically provided in this Agreement.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Intentionally Omitted.

6. Notice to Lender and Right to Cure. Tenant shall notify Lender of any default by Landlord under the Lease if the default is of such a nature as to give Tenant a right to terminate the Lease, reduce the rent or to credit or offset any amounts against future rents, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice, provided Lender, with reasonable diligence, shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, (i) Lender shall have no obligation to cure any such default and (ii) in the event that any aforesaid default cannot, by its nature, be cured by Lender prior to Lender's gaining possession of Landlord's interest in the Property, the aforesaid "reasonable period for remedying such default" shall be deemed to include such time as is required for Lender to gain possession of Tenant's interest in the Property.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for one (1) day overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: _____,
a _____

If to Lender:

Attention: _____
Facsimile No. _____

Attention: _____
Facsimile No. _____

With a copy to:

Attention: _____
Facsimile No. _____

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located. Notwithstanding anything to the contrary contained herein, this Agreement and the statements herein: (i) are made according to the actual knowledge, without investigation or inquiry, of the undersigned, (ii) may not be relied upon by anyone other than Lender and Landlord or their respective successors and assigns and may be relied upon by Lender only in the event Lender makes the Loan as contemplated hereby, and only to the extent Lender, at the time of acquiring its interests, does not have knowledge contrary to the statements herein, and (iii) notwithstanding anything to the contrary contained in this Agreement, shall not be deemed to amend the Lease except as expressly set forth herein or inure to the benefit of the current Landlord.

10. Miscellaneous. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any

respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Joint and Several Liability. If there is more than one Tenant under the Lease, the obligations and liabilities of each hereunder shall be joint and several.

12. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

13. Limitations on Purchaser's Liability. In no event shall the Purchaser, nor any heir, legal representative, successor, or assignee of the Purchaser have any personal liability for the obligations of Landlord under the Lease and should the Purchaser succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Purchaser in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Purchaser as landlord under the Lease, and no other property or assets of any Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Landlord to perform any such material obligation. Notwithstanding the foregoing, Tenant may offset against rent due under the Lease the amount of any judgment obtained against any Purchaser.

14. Estoppel Certificate. Tenant, shall, from time to time, within 10 Business Days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to any then presently accrued credits or offsets against rent, and, if so, the reasons therefor and the amount thereof, (e) that to Tenant's actual knowledge (without investigation) it is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default, (f) whether or not, to the actual knowledge

(without investigation) of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, (g) whether or not, to the actual knowledge (without investigation) of such person, any event has occurred which with the giving of such notice or passage of time, or both would constitute such a default, and, if so, specifying each such event, and (h) whether or not, to the actual knowledge (without investigation) of such person, Tenant has any then presently accrued claims, defenses or counterclaims against Landlord under the Lease, and, if so, specifying the same, it being intended that any such statement delivered pursuant hereto shall be deemed a certification by Tenant to be relied upon by Lender and by others with whom Lender may be dealing. Tenant also shall include in any such statement such other information concerning the status of the Lease as Lender may reasonably request. As used herein, the phrase "current actual knowledge" or words of similar import shall mean to the good faith actual knowledge of the undersigned officer of Tenant as of the date hereof, without the duty of investigation or inquiry. Notwithstanding anything to the contrary contained herein, this estoppel certificate and the statements herein: (i) may not be relied upon by any party to the extent such party has actual knowledge contrary to the statements herein (and all parties relying on this estoppel certificate shall be deemed to have knowledge of the express terms of the Lease), and (ii) shall not be deemed to amend the Lease, inure to the benefit of the current Landlord, or impose or create any additional obligations or liability on the part of Tenant.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender, Tenant and Landlord have duly executed this Agreement as of the date first above written.

TENANT:

_____,
a _____

By: _____
Name:
Title:

LANDLORD:

_____,
a _____

By: _____

By: _____
Name:
Title:

_____,
a _____

By: _____

By: _____
Name:
Title:

LENDER:

_____,
a _____

By: _____
Name:
Title:

_____,
a _____

By: _____
Name:
Title:

STATE OF _____)
_____) ss
COUNTY OF _____)

On _____, before me, the undersigned, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

Name:

(SEAL)

STATE OF _____)
_____) ss
COUNTY OF _____)

On _____, before me, the undersigned, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

Name:

(SEAL)

STATE OF _____)
_____) ss
COUNTY OF _____)

On _____, before me, the undersigned, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

Name:

(SEAL)

STATE OF _____)
_____) ss
COUNTY OF _____)

On _____, before me, the undersigned, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

Name:

(SEAL)

EXHIBIT A

[Attach Legal Description of Property]