

## **Mortgagee's Form Subordination, Non-Disturbance, and Attornment Agreement**

THIS AGREEMENT is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, by and among [Name of Landlord / Address of Landlord] (“**Landlord**”), [Name of Tenant / Address of Tenant] (“**Tenant**”), and [Name of Mortgagee / Address of Mortgagee] (“**Mortgagee**”).

### **RECITALS:**

A. By Lease dated \_\_\_\_\_ (the “**Lease**”), Landlord has leased to Tenant and Tenant has rented from Landlord the premises known as \_\_\_\_\_, \_\_\_\_\_ (the “**Premises**”) for an original term of \_\_\_\_\_ years, beginning on the date set forth in the Lease.

B. {It was a condition of the execution of the Lease that this Agreement be executed.} {Use Recital A if the Lease was in effect before the SNDA was executed. Use Recital B if the Lease and the SNDA are being executed simultaneously.}

C. Mortgagee is the holder of a mortgage or deed of trust dated \_\_\_\_\_, 20\_\_, and recorded or intended to be recorded among the Land Records of \_\_\_\_\_, which constitutes an encumbrance against the Premises (which mortgage or deed of trust, as the same may be modified, supplemented, extended and/or renewed from time to time, is called the “**Mortgage**”), and is the holder with respect to the Lease of an Assignment of Landlord’s Interest in Leases also dated \_\_\_\_\_, 20\_\_ and recorded or intended to be recorded among the aforesaid Land Records (the “**Assignment**”).

D. Mortgagee desires that Tenant agree to attorn to the purchaser at foreclosure of the Mortgage in the event of such foreclosure, or to Mortgagee in the event of collection of the rent by Mortgagee; and Tenant is willing to agree to so attorn if Mortgagee will recognize Tenant’s rights under the Lease to the extent hereinafter indicated.

NOW, THEREFORE, WITNESSETH for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **SECTION 1 NON-DISTURBANCE OF TENANT**

Mortgagee agrees with Tenant that so long as no default exists, nor any event has occurred and that has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease, or would entitle Landlord to dispossess Tenant, the Lease shall not be terminated by Mortgagee, nor shall Tenant’s use, possession, or enjoyment of the Premises be interfered with by Mortgagee, nor shall the leasehold estate granted by the Lease be affected by Mortgagee in any other manner, in any foreclosure or any action or

proceeding instituted under or in connection with the Mortgage, or in case Mortgagee takes possession of the Premises pursuant to any provision of the Mortgage.

## **SECTION 2 TENANT TO ATTORN TO MORTGAGEE**

Tenant agrees with Mortgagee that if the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by any other manner, Tenant shall be bound to Mortgagee under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof that may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Mortgagee were the Landlord under the Lease, and Tenant does hereby attorn to Mortgagee as its Landlord. Such, attornment shall be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee's succeeding to the interest of Landlord in the Premises. Tenant has received a copy of the Assignment and consents thereto, agrees to be bound thereby, and agrees if Mortgagee shall, pursuant to the Assignment, elect to require Tenant to pay to Mortgagee the rent and other charges payable by Tenant under the Lease, Tenant shall, until Mortgagee shall have cancelled such election, be similarly bound to Mortgagee and shall similarly attorn to Mortgagee as its Landlord. Tenant's obligations under this Agreement shall not be affected by its surrender of the Premises or its ouster therefrom in accordance with the provisions of the Lease by Landlord or any successor in interest to Landlord.

## **SECTION 3 TENANT TO ATTORN TO PURCHASER OR OTHER SUCCESSOR TO LANDLORD**

Tenant agrees with Landlord and Mortgagee that in the event of a foreclosure sale of the Premises under any present or future lien against Landlord's estate in the Premises, or in the event that Landlord's estate in the Premises passes to any other person or entity by operation of law or any other means, then Tenant shall promptly attorn to the purchaser at the foreclosure sale, or to the grantee of the Premises from Landlord, or to such other successor to Landlord's estate, under all of the terms, covenants, and conditions of the Lease; *provided that* such purchaser, grantee, or other successor agrees with Tenant in writing to recognize the right of possession and other rights of Tenant and its personal representatives, successors, and assigns under the Lease for the original term and any extensions or renewals thereof effected pursuant to any option therefor in the Lease.

## **SECTION 4 ESTOPPEL CERTIFICATE**

Tenant certifies to Landlord and Mortgagee as follows recognizing that Landlord and Mortgagee (and their respective successors and assigns) shall be entitled to rely on the information set forth herein:

a. Tenant is the tenant under a Lease dated \_\_\_\_\_ between Tenant, as tenant, and \_\_\_\_\_, as landlord, for the Premises. The Lease is in full force and effect. Tenant is in actual occupancy of the Premises.

b. The Lease has not been assigned, subleased, supplemented, modified, or amended except by the following documents: \_\_\_\_\_.

c. The monthly basic rent due under the Lease is \_\_\_\_\_ and has been paid through \_\_\_\_\_, 20\_\_\_. No advance rent has been paid by the undersigned to Landlord, except as follows: \_\_\_\_\_.

d. The commencement date of the Lease was \_\_\_\_\_, 20\_\_\_. Tenant has commenced the payment of rents for all space subject to the Lease. The expiration date of the Lease (excluding renewal terms) is \_\_\_\_\_. [The Lease provides that Tenant may extend the term of the Lease, subject to certain conditions, for the following time periods: \_\_\_\_\_.]

e. All conditions and agreements under the Lease to be satisfied or performed by Landlord have been satisfied and performed. Landlord is not in default under the Lease, and there are no defenses or offsets against the enforcement of the Lease by Landlord except as follows: \_\_\_\_\_.

f. Tenant is not in default under the Lease, and there are no defenses or offsets against the enforcement of the Lease by the undersigned except as follows: \_\_\_\_\_.

g. Tenant has not given to Landlord any security deposit or deposited any other funds with Landlord, except as follows: \_\_\_\_\_.

h. The current address of Tenant is as set forth above.

i. Tenant is not the subject of any bankruptcy or insolvency proceeding.

j. Tenant has always used the Premises in accordance with the terms of the Lease.

k. Tenant has not created any environmental issues at the Premises.

l. Tenant has no option (a) to renew the Lease or extend its term, (b) to take additional space from Landlord or an affiliate, or (c) to purchase the Premises or any portion thereof, in each case, except as follows: \_\_\_\_\_.

m. Tenant has not exercised any option it has or may have had under the Lease except as follows: \_\_\_\_\_.

**SECTION 5**  
**EXECUTION OF FUTURE ESTOPPEL CERTIFICATES**

(a) At any time, and from time to time, upon the written request of Mortgagee, Tenant (within fifteen (15) days of the date of such written request) agrees to execute and deliver to Mortgagee, without charge and in a form satisfactory to Mortgagee, a written statement: (i) ratifying the Lease; (ii) confirming the commencement and expiration dates of the term of the Lease; (iii) certifying that Tenant is in occupancy of the Premises and that the Lease is in full force and effect and has not been modified, assigned, supplemented, or amended except by such writings as shall be stated; (iv) certifying that all conditions and agreements under the Lease to be satisfied or performed by Landlord have been satisfied and performed except as shall be stated; (v) certifying that Landlord is not in default under the Lease and there are no defenses or offsets against the enforcement of the Lease by Landlord, or stating the defaults and/or defenses claimed by Tenant; (vi) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; (vii) reciting the amount of monies deposited with Landlord and the purpose thereof, if any; (viii) certifying that Tenant is not the subject of any bankruptcy or insolvency proceeding; (ix) certifying that Tenant has always used the Premises in accordance with the terms of the Lease; (x) certifying that Tenant has not created any environmental issues at the Premises, (x) certifying whether Tenant has any option (A) to renew the Lease or extend its term, (B) to take additional space from Landlord or an affiliate, or (C) to purchase the Premises or any portion thereof, (xi) certifying whether Tenant has exercised any option it has or may have had under the Lease, and (xii) containing any other information that Landlord or Mortgagee shall require.

(b) The failure of Tenant to execute, acknowledge, and deliver to Mortgagee a statement in accordance with the provisions of this Section within the time period set forth herein shall constitute an acknowledgment by Tenant that may be relied upon by any person holding or intending to acquire any interest whatsoever in the Premises of the following: that the Lease has not been assigned, amended, changed, or modified, and is in full force and effect; and that the annual rent and additional required under the Lease rent have been duly and fully paid not beyond the respective due dates immediately preceding the date of the request for such statement. Such failure shall also constitute as to any persons entitled to rely on such statements a waiver of any defaults by Landlord or defenses or offsets against the enforcement of the Lease by Landlord that may exist prior to the date of the written request. [*Consider having Tenant grant a power of attorney to Landlord to complete an estoppel certificate if Tenant does not do so within the stated period of time.*]

**SECTION 6**  
**SUCCESSOR LANDLORD**

Tenant agrees with Mortgagee that if Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be (a) liable for any action or omission of any prior Landlord under the Lease, or (b) subject to any offsets or defenses that Tenant might have against any prior Landlord, or (c) bound by any rent or additional rent that Tenant might have paid for more than the current month to any prior Landlord, or (d) bound by any assignment, amendment,

or modification of the Lease made without Mortgagee's consent, or (e) liable for any security deposit or escrow deposit for taxes, insurance, common area maintenance, or similar payment made under the Lease except to the extent that Mortgagee has actually received any such deposit. Tenant further agrees with Mortgagee that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Mortgagee's consent.

## **SECTION 7 NOTICE TO MORTGAGEE**

Tenant agrees that if Landlord is in default under the Lease, Tenant shall give written notice of such default to Mortgagee, and Mortgagee shall have thirty (30) days after Mortgagee has received a notice from Tenant giving Mortgagee the right to cure such default (at Mortgagee's option) or, in the event such default cannot be cured within thirty (30) days, Mortgagee shall have thirty (30) days to commence such cure and diligently pursue such cure thereafter. If Mortgagee so requests, the Lease shall not be terminated because of the occurrence of an event that Mortgagee is not able to cure, such as the filing of bankruptcy by Landlord. Notices to Mortgagee shall be sent by registered or certified return receipted mail and addressed to Mortgagee at its address above.

## **SECTION 8 LEASE SUBJECT TO MORTGAGE**

Except as otherwise specifically provided in this Agreement, the Lease is and shall be deemed to be subject and subordinate to the Mortgage. All provisions in the Mortgage shall control notwithstanding any conflicting provisions in the Lease. As an example, but without limitation, the provisions in the Mortgage with respect to distribution and application of insurance proceeds or of condemnation proceeds shall apply regardless of any provisions in the Lease.

## **SECTION 9 AMENDMENTS TO LEASE**

Mortgagee would not have made the loan secured by the Mortgage unless Landlord and Tenant agree that the Lease be amended as follows and that Tenant waive the rights described below that are otherwise set forth in the Lease. Landlord and Tenant, therefore, agree that the following provisions shall constitute and be an amendment to the Lease effective as of the date of this Agreement.

a. The provisions [in Section \_\_] of the Lease that provide Tenant with an option [*describe the option*] are deleted from the Lease.

b. The provisions in the Lease [in Section \_\_] that provide that Tenant's obligations under the Lease [*do not commence / are altered*] if co-tenancy requirements are not met, are deleted from the Lease.

c. Tenant releases Landlord from any liability for environmental issues that arise with respect to the Premises from and after the commencement date of the Lease, and Tenant agrees to indemnify and hold harmless Landlord from any loss or liability relating thereto.

d. Tenant waives any right it may have to enforce the following provisions [warranties made by Landlord] in the Lease: \_\_\_\_\_.

e. Tenant specifically agrees to look solely to Landlord's interest in the Building [and to Landlord for the amount of any security deposit or other deposit actually received by Landlord], for the recovery of any judgment against Landlord, it being agreed that Landlord shall never be personally liable for any such judgment [except for a claim relating to failure to return or apply a security deposit or other deposit actually received by Landlord, and then not beyond the amount of any security deposit or other deposit actually received by Landlord]. Further, Landlord shall not have liability under the provisions of this Lease with respect to such time as Landlord is not the owner of the Building.

## **SECTION 10 CERTAIN DEFINITIONS**

The word “**Lease**” as used herein shall be deemed to be the Lease as originally executed by Landlord and Tenant, as amended or modified by written agreements hereafter made, from time to time, between Landlord and Tenant and consented to by Mortgagee. The words “**foreclosure**” and “**foreclosure sale**” as used herein shall be deemed to include the acquisition of Landlord’s estate in the Premises by voluntary deed, assignment, or other disposition or transfer in lieu of foreclosure. The word “**Mortgagee**” shall include the Mortgagee herein specifically named and any of its successors and assigns, including any person who shall have succeeded to Landlord’s interest in the Premises by, through, or under foreclosure of the Mortgage or by voluntary deed, assignment, or other disposition, or transfer in lieu of foreclosure.

## **SECTION 11 BINDING EFFECT**

All of the terms, covenants, and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors, and assigns.

## **SECTION 12 APPLICABLE LAW; GRAMMAR**

This Agreement shall be construed according to the law of the State of \_\_\_\_\_ (excluding \_\_\_\_\_ conflict of laws). The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

**SECTION 13  
TIME OF ESSENCE**

Time is of the essence in this Agreement and in every provision hereof.

**SECTION 14  
TABLE OF CONTENTS; CAPTIONS**

The Table of Contents and the captions appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of the Sections of this Agreement nor in any way affect this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and sealed as of the day and year first above written.

ATTEST/WITNESS:

**LANDLORD**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_ (SEAL)

Name:

Title:

ATTEST/WITNESS:

**TENANT**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_ (SEAL)

Name:

Title:

ATTEST/WITNESS:

**MORTGAGEE**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_ (SEAL)

Name:

Title:

***[ADD ACKNOWLEDGMENTS OF LANDLORD, TENANT, AND MORTGAGEE***