

Tenant'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 Event of Default occurs and is continuing under the Lease as would entitle Landlord to terminate the Lease or would cause, without any further action of such Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, the Lease shall not be terminated by Mortgagee, nor shall Tenant’s use, possession, or enjoyment of the Premises in accordance with the terms of the Lease 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. Thereupon, Mortgagee shall perform Landlord's obligations under all of the terms, covenants, and conditions of the Lease for the balance of the term remaining and any extensions or renewals thereof in accordance with any option therefor that is exercised pursuant to the Lease. 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. Landlord hereby releases Tenant from any claim that Landlord may have against Tenant based on Tenant's compliance with Mortgagee's directions pursuant to the Assignment.

**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
SUCCESSOR LANDLORD**

Tenant agrees with Mortgagee that if Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be (a) bound by any rent or additional rent that

Tenant might have paid for more than the current month and the next succeeding month to any prior landlord (unless such rent or additional rent shall have been deposited in escrow with Mortgagee and be available for application by Mortgagee), *provided, however*, Tenant's estimated payments towards its Common Area Charges, insurance, Real Estate Taxes, or otherwise shall not be deemed "paid in advance" when paid in accordance with the terms of the Lease, and such estimated payments shall be credited to Tenant's account and recognized by Mortgagee the same as if such estimated payments had actually been paid to Mortgagee, or (b) bound by any assignment, amendment, or modification of the Lease made without Mortgagee's consent. For the purpose of clause (b) in the prior sentence, the following shall be deemed not to be assignments, amendments, or modifications of the Lease that require Mortgagee's prior consent for Mortgagee to be bound thereby: (i) an assignment that may be made under the lease without Landlord's prior consent; (ii) an agreement that does not (A) decrease Tenant's financial obligations under the Lease, or (B) alter Tenant's or Landlord's rights or obligations in the event of a default by Tenant or Landlord under the Lease, or (C) alter the term of the Lease (except as contemplated in the Lease following casualty loss or condemnation), or (D) increase Landlord's financial obligations under the Lease, or (E) modify or amend the assignment or alterations provisions of the Lease. Tenant further agrees with Mortgagee that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Mortgagee's consent.

[In many Mortgagee's forms of SNDAs, in addition to the limitations of subparts (a) and (b) above, there are clauses that Mortgagee "shall not be liable for any action or omission of any prior Landlord under the Lease" and that Mortgagee "shall not be subject to any offsets or defenses that Tenant might have against any prior Landlord." These clauses are not set forth in the prior paragraph. If such clauses are presented to Tenant, Tenant may request that such clauses have the caveats indicated below added to them:

*[Tenant agrees with Mortgagee that if Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be (x) liable for any action or omission of any prior Landlord under the Lease; provided, however, Tenant may give Mortgagee notice of any event of default that originated prior to, and continues to exist subsequent to, the succession of Mortgagee to the interest of "landlord" under the Lease (a "**Continuing Default**"), and Mortgagee shall have the same obligation to cure any such Continuing Default, and Tenant shall have the same rights and remedies, should Mortgagee fail to cure the Continuing Default, as if the Continuing Default had originated subsequent to the succession of Mortgagee to the interest of landlord under the Lease, or (y) subject to any offsets or defenses that Tenant might have against any prior Landlord except those offsets that arise after Tenant has notified Mortgagee and given Mortgagee an opportunity to cure as provided herein and that are for funds Tenant has expended to cure Landlord's default of Landlord's maintenance obligations that directly and materially affect the Premises after neither Landlord nor Mortgagee has cured any such default.]*

**SECTION 5
LEASE SUBJECT TO MORTGAGE**

The Lease is and shall be subject and subordinate to the Mortgage, except as otherwise provided herein and provided that Mortgagee shall permit Landlord to use all insurance proceeds arising from any loss or casualty to repair, rebuild and/or restore the Premises if the Lease is not terminated as a result of such loss or casualty.

**SECTION 6
CERTAIN DEFINITIONS**

The word “**Lease**” as used in this Agreement shall be deemed to be the Lease as originally executed by Landlord and Tenant, as amended or modified by any written agreements hereafter made, from time to time, between Landlord and Tenant that are 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. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Lease.

**SECTION 7
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 8
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 9
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 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]