

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-disturbance and Attornment Agreement (“Agreement”) is made as of _____, 2017, by and among _____, with an address at _____ (“Tenant”), _____, with an address at _____ (“Landlord”), and _____, with an address at _____ (“Lender”).

RECITALS:

A. Tenant entered into a certain lease dated _____ [, as amended _____] (the “Lease”) between Tenant, as lessee, and Landlord (or Landlord’s predecessor in interest), as lessor, pertaining to certain premises (the “Leased Premises”) commonly known as _____, and being all or part of the property legally described on attached Exhibit A.

B. Landlord has signed and delivered, or is about to sign and deliver, to Lender a certain mortgage encumbering, among other collateral, the Leased Premises, including without limit the entire interest of Landlord in the Lease. This mortgage and any other mortgage(s) in favor of Lender now or later in force against the Lease or the Leased Premises, as any of them may be renewed, modified, amended, consolidated, extended, substituted or replaced from time to time, are individually and collectively called the “Mortgage”.

C. Lender has required, as a condition to entering into or continuing certain financial arrangements with Landlord, that Tenant and Landlord enter into this Agreement and each is willing to do so.

In consideration of the mutual premises in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the following representations and agreements are made:

1. The above Recitals are deemed part of this Agreement.
2. Lender assumes no duty, liability, or obligation whatsoever under the Lease either by virtue of the Mortgage or by any subsequent receipt or collection of rents under it.
3. The Lease, and all amendments, modifications, renewals and extensions of it, and all rights and interests of Tenant under the Lease (including without limit all options, liens or charges created by the Lease, if any) and all rights and interests of Tenant in the Leased Premises shall be and are subject and subordinate to the lien(s) and the terms of the Mortgage, and to all advances made or to be made upon the security of the Mortgage, and to all renewals, modifications, amendments, consolidations, replacements, substitutions and extensions of the Mortgage. Without limiting the foregoing, the provisions of the Mortgage shall govern the priority, entitlement to and disposition of insurance proceeds and condemnation and eminent domain awards with respect to the Leased Premises or other Property (as later defined). At the option of Lender, any Mortgage from time to time shall become subject and subordinate, in whole or in part (but not with respect to priority, entitlement to or

disposition of insurance proceeds or any condemnation or eminent domain awards or any options, liens or charges created by the Lease) to the Lease upon the execution by Lender and recording, in the appropriate official records of the county where the Leased Premises are situated, of a unilateral declaration to that effect. At the option of Lender, any Mortgage so subordinated shall from time to time become superior to the Lease (and all amendments, modifications, renewals and extensions of it, and all rights and interests of Tenant under the Lease, including without limit all options, liens or charges created by the Lease, if any, and all rights and interests of Tenant in the Leased Premises) upon the execution by Lender and recording, in the appropriate official records of the county where the Leased Premises are situated, of a unilateral declaration to that effect. If there is any inconsistency between the terms and conditions of any Mortgage and the Lease, the terms and conditions of the Mortgage shall control.

4. As long as Tenant is not in default of any term, covenant or provision of the Lease, Tenant's possession of the Leased Premises and its rights and interests under the Lease shall not be disturbed by Lender (except as such rights and interests may be expressly modified in this Agreement) because of the exercise by Lender of any foreclosure under the Mortgage or the taking of a deed-in-lieu of foreclosure. Nothing in this Paragraph shall be deemed to modify or affect the subordination of the Lease (or the subordination of Tenant's rights under it) or the other provisions in Paragraph 3 above.

5. If Lender or another party acquires title to the Leased Premises or succeeds to the interests of Landlord under the Lease as a result of foreclosure, a deed-in-lieu of foreclosure, as a mortgagee in possession, through receivership or otherwise (Lender and such other party, and their successors and assigns, being called "Successor Landlord"), and if Lender (to the extent permitted in this Agreement) has not foreclosed on and terminated the Lease, then:

(a) Tenant shall be bound to Successor Landlord under all the terms, covenants, and conditions of the Lease for the balance of its term with the same force and effect as if Successor Landlord was the lessor under the Lease, except that Successor Landlord shall not be:

(i) liable for any act, default or omission of Landlord or any prior lessor;

(ii) subject to any claims, abatement, offsets, counterclaims or defenses that Tenant may have against Landlord or any prior lessor;

(iii) bound by any rent, additional rent or other charges that Tenant may have paid for more than the then current month to Landlord or any prior lessor;

(iv) bound by any amendment, modification, consensual or negotiated surrender or cancellation, or assignment of the Lease (or any sublease or other form of third party occupancy of the Leased Premises) made after the date of this Agreement without Lender's written consent (and the Lease, as may be amended or modified with Lender's written consent, will be automatically subject to this Agreement) or made prior to the date of this Agreement and not specified above or in a tenant estoppel certificate delivered along with this Agreement;

(v) bound by any consent, approval or waiver by Landlord with respect to the Lease made after the date of this Agreement without Lender's written consent;

(vi) liable for any obligation of Landlord or any prior lessor accruing prior to the date the Successor Landlord has title to, and possession of, the Property (the "Property") of which the Leased Premises are a part;

(vii) liable for any agreement to undertake or complete demolition, construction or installation of improvements in or with respect to the Leased Premises or any part of the Property;

(viii) liable for any payment to Tenant of any sums, or granting to Tenant any credit, with respect to the cost of preparing, altering, furnishing or moving into the Leased Premises or any part of the Property ;

(ix) liable for any repair or reconstruction following fire, other casualty or condemnation, except to the extent expressly provided in the Lease and then only to the extent of insurance, casualty or condemnation proceeds actually received by the Successor Landlord;

(x) in any way liable or responsible for any security or other deposit, except to the extent actually received by Successor Landlord;

(xi) liable to Tenant under the Lease for obligations of the lessor accruing after Successor Landlord ceases to own the Leased Premises;

(xii) liable for any indirect or consequential damages suffered by Tenant;

(xiii) liable for any representation or warranty given or made by Landlord or any prior lessor, including without limitation any warranty or representation with respect to environmental, construction, zoning, building code compliance or title matters; and/or

(xiv) personally liable to Tenant under the Lease for any judgment, award or other proceeding requiring the payment of money by Successor Landlord (it being agreed that Tenant must look solely to the estate and interest of Successor Landlord in the Property for the payment of any such judgment, award or proceeding); and

(b) Tenant shall attorn to (and agree to recognize) Successor Landlord as the lessor under the Lease. This attornment is to be effective and self-operative, without the execution or delivery of any other instruments on the part of Successor Landlord, Landlord or Tenant, immediately upon Successor Landlord acquiring title to the Leased Premises or succeeding to the interest of Landlord under the Lease under the above conditions. Tenant agrees, promptly upon written request from Successor Landlord, to execute and deliver to Successor Landlord (i) such instruments as may be requested by the Successor Landlord to confirm this attornment or (ii) a new lease with Successor Landlord, as landlord, for the remaining term of the Lease and otherwise on the same terms and conditions and with the same options, if any, then remaining under the Lease, except as those terms and conditions or options are modified in this Agreement. However, the failure of Successor Landlord to request, or of Tenant to execute or deliver, any such instrument shall not in any way impair or affect the automatic and self-operative attornment as provided above.

In addition, Lender, in its capacity as lender, shall be entitled to the rights, protections and benefits afforded to Successor Landlord by Paragraph 5(a)(i) through (xiv), inclusive, above, regardless of whether Lender or another party acquires title to the Leased Premises or succeeds to the interests of Landlord under the Lease.

6. Tenant shall pay all rent and other amounts due under the Lease to Lender upon receipt of written notice from Lender that a default has occurred under any Mortgage, notwithstanding that Lender may not have foreclosed such Mortgage, had a receiver appointed, exercised any assignment of rent under the Mortgage, or succeeded to the interest of Landlord under the Lease. Tenant shall have no duty to ascertain whether a default exists or such demand for rent is otherwise permitted. Landlord waives any rights or claims it may now or later have against Tenant by reason of such payment to Lender.

7. Tenant represents to, and agrees with, Lender as follows:

(a) The undersigned is the Tenant under the Lease, has accepted the Leased Premises, is in occupancy of the Leased Premises and is paying the full rent stipulated under the Lease without deduction, counter-claim or set-off.

(b) Tenant will notify Lender in writing of any default or breach by Landlord under the terms of the Lease. Tenant shall not (i) withhold, abate or offset rent, or (ii) consent to withholding, abating or offsetting rent, or (iii) cancel or terminate or consent to the cancellation or termination of the Lease, or (iv) surrender or consent to the surrender of the Leased Premises, because of a Landlord default or breach, without giving Lender sixty (60) days following written notice of default or breach within which to cure the default or breach. Lender is under no obligation to cure any default or breach. The sixty (60) day cure period granted to Lender will be extended by any period of time during which Lender is diligently pursuing the cure of a default or breach which cannot reasonably be expected to be cured within sixty (60) days. If Lender elects within this sixty (60) day cure period (as may be extended) to pursue acquisition of title to the Property through foreclosure or otherwise, this cure period shall be stayed during such pursuit of acquisition of title (including without limit any period of time or delay caused by a bankruptcy proceeding stay, an injunction or other legal proceeding, or any redemption rights) so that Lender shall have a reasonable period after it acquires title to and possession of the Property within which to cure said default or breach. If any default or breach by Landlord is cured within the time periods described above, Tenant shall have no right to withhold, abate or offset rent or terminate or cancel the Lease or surrender the Leased Premises by virtue of the default or breach, notwithstanding anything to the contrary in the Lease, at law, in equity or otherwise. Nothing in this paragraph is intended or shall be deemed to give Tenant (or to recognize Tenant as having) the right to withhold, abate or offset rent or to cancel or terminate the Lease or to surrender the Leased Premises because of Landlord's default or breach under the Lease, except to the extent expressly permitted in the Lease or by law or in equity, but in any event subject to the provisions of this Agreement.

(c) The Lease is in full force and effect and has not been modified, amended, renewed, extended, supplemented or assigned, and no part of the Lease Premises has been sublet, except as specifically referenced above. Tenant will not enter into any amendment, modification, consensual or negotiated surrender or cancellation, or assignment of the Lease (or any sublease or other form of third party occupancy of the Leased Premises) after the date of this Agreement without Lender's written consent.

(d) There are no defaults under the Lease (and no event has occurred that, with the giving of notice and/or the passage of time, would constitute a default under the Lease) and there are no grounds for cancellation thereof by Landlord or Tenant.

(e) Base rent has been paid to _____. The additional rent, if any, has been paid to _____.

(f) The Lease is for a term of _____ years, commencing on _____ and terminating on _____. There are no renewal or extension options under the Lease except _____.

(g) No monetary or other considerations, including but not limited to rental concessions by Landlord, Tenant improvements in excess of building standard, or Landlord's assumption of prior lease obligations of Tenant, have been granted to Tenant by Landlord for entering into the Lease and are outstanding except _____.

(h) The Lease contains no first right of refusal, right of first offer, option to purchase, option to expand, option to contract, option to relocate, or option to terminate early, except _____.

(i) Tenant has no interest in, or rights as to, the building or Property of which the Leased Premises are a part, except such interest or rights arising under the Lease.

If no exceptions are stated on the line following the word "except", it shall be deemed that there are no exceptions.

8. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail, return receipt requested, postage prepaid or nationally recognized overnight courier service that regularly maintains records of items delivered, delivery fee prepaid. The address for delivery of a notice or communication is at the top of the first page of this Agreement, which address may be changed by notice in accordance with this paragraph. Notice shall be effective two business days after being sent by certified mail as provided above or the next business day after being sent by overnight courier service as provided above.

9. This Agreement shall be binding upon the parties, any Successor Landlord and their respective successors and assigns; provided that nothing in this paragraph shall be deemed a consent to any assignment or transfer by Tenant of any interest in the Lease or the Leased Premises except as expressly permitted in the Lease and in this Agreement.

10. This Agreement constitutes the entire agreement between Lender and Tenant regarding subordination of the Lease to the Mortgage.

11. If this Agreement conflicts with the Lease, then this Agreement shall control as between the parties and any Successor Landlord.

12. Tenant agrees, from time to time, within fifteen (15) days after notice from Lender, to execute and deliver to Lender an estoppel certificate containing representations as to the then current rent and security deposit, those matters set forth in Paragraph 7 above, and such other related matters as Lender may reasonably request.

13. In the event of any legal action or proceeding is commenced to enforce the rights or obligations arising under this Agreement or to recover damages for the breach of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all court costs, legal expenses and reasonable attorneys fees. Attorney fees shall be deemed a reference to reasonable fees, charges, costs and expenses of both in-house and outside counsel and paralegals, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorney fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise.

14. If any provision contained in this Agreement is invalid, illegal or unenforceable for any reason, such provision shall not affect the validity, legality or enforceability of the remainder of the Agreement.

15. This Agreement may not be modified or amended, except in writing and signed by the parties hereto.

16. This Agreement may be signed in counterparts.

17. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

18. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.

[remainder of page intentionally left blank]

The parties have signed and delivered this Agreement as of the date first written above.

TENANT:

By: _____

Its: _____

LENDER:

By: _____

Its: _____

LANDLORD:

By: _____

Its: _____

Acknowledgment of Tenant

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by ____
_____, the _____ of _____
_____, a _____ on behalf of said entity.

Notary Public

Acting in _____ County, Michigan
My commission expires: _____

Acknowledgment of Lender

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by ____
_____, the _____ of _____
_____, a _____ on behalf of said entity.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

Acknowledgment of Landlord

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by ____
_____, the _____ of _____
_____, a _____ on behalf of said entity.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

Prepared by and When Recorded Return To:

EXHIBIT A

DESCRIPTION OF REAL ESTATE

Property situated in the County of _____, State of Michigan, described as follows:

[insert legal description]

Parcel Identification No(s): _____

Commonly Known As: _____