

**APPENDIX B**

**Subordination, Nondisturbance and Attornment Agreement**

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT**

AGREEMENT made this day of \_\_\_\_\_, \_\_\_\_\_, 19\_\_\_\_, by and among \_\_\_\_\_, a Michigan corporation, with an office at \_\_\_\_\_ Michigan (the "Mortgagee"), and \_\_\_\_\_, with an address at \_\_\_\_\_ (the "Tenant"), and \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (the "Borrower").

WITNESSETH:

WHEREAS, the Mortgagee is the holder of a mortgage from the Borrower dated \_\_\_\_\_, 19\_\_\_\_, recorded with the \_\_\_\_\_ Recorder of Deeds on \_\_\_\_\_, 19\_\_\_\_, at Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Mortgage"), which Mortgage covers certain property in \_\_\_\_\_ County, \_\_\_\_\_, as more fully described in Exhibit "A" attached hereto; and

WHEREAS, by virtue of that certain lease ("Lease") dated \_\_\_\_\_, 19\_\_\_\_, as amended \_\_\_\_\_ between the Borrower, as Landlord therein, and the Tenant, as Tenant therein, the Tenant has leased from the Borrower approximately \_\_\_\_\_ rentable square feet of space located in a (shopping center) (office building) at \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_, which premises are a portion of the property encumbered by the Mortgage;

WHEREAS, the Tenant desires to be assured of continued occupancy of the premises demised under the terms of the Lease and subject to the terms of the Mortgage;

NOW, THEREFORE, in consideration of the sum of one Dollar (\$1.00 by each party in hand paid to the other, receipt of which is hereby acknowledged), and in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

1. The Tenant hereby agrees:

- (a) subject to this Agreement, the Lease and the Tenant's leasehold estate and any and all estates, options, liens and charges therein contained or created thereby are, and shall be and remain subject and subordinate in all respects to the lien and effects of the Mortgage and to all of the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications, consolidations or replacements thereof, with the same force and effect as if the Mortgage had been executed, delivered and duly recorded at the above-mentioned Recorder of Deeds, prior to the execution and delivery of the Lease;
- (b) from time to time, upon request by the Mortgagee, it shall forthwith provide the Mortgagee within ten days of such request with an estoppel certificate certifying that no defaults, claims, offsets or events, or situations which, with the passage of time, could become a default or the

basis for a claim or offset against the Borrower by the Tenant, exist under the Lease or, if the same exist, certifying and describing such items as are in existence;

- (c) it will forward to the Mortgagee copies of any notice, claim or demand given or made by the Tenant to or on the Borrower, in all cases concurrently with forwarding same to the Borrower, such copies to be provided to the Mortgagee by the same method of mailing as the statement, notice, claim or demand was made or given to or on the Borrower;
- (d) without the prior written consent of the Mortgagee (i) no rent or other sums due under the Lease shall be paid more than thirty (30) days in advance of the due date therefor established by the Lease, except the security deposit, if any, (ii) no modifications shall be made in the provisions of the Lease nor shall the term be extended or renewed, except as provided therein, (iii) the Lease shall not be terminated by the Tenant except as provided therein nor shall the Tenant tender or accept a surrender of the Lease except incident to a termination provided for the said Lease, and (iv) it shall only sublet the premises demised by the Lease or assign the Tenant's interest in the Lease in accordance with the provisions of said Lease;
- (e) in the event of any act or omission by the Borrower which would give the Tenant the right to terminate the Lease or to claim a partial or total eviction, reduce rents or to credit or offset any amounts against future rents, the Tenant will not exercise such right (i) until it shall have given written notice of such act or omission to the Mortgagee, and (ii) until a reasonable time for remedying such act or omission shall have elapsed following such giving of notice; and if it so elects the Mortgagee shall have the right to cure any default by the Borrower under the Lease including, if necessary to cure such defaults, access to the premises demised by the Lease in accordance with the terms of the Lease;
- (f) notices required to be given to the Mortgagee under this Agreement will be given to any successor-in-interest of the Mortgagee under the Mortgage provided that, prior to the event for which notice is required to be given to the Mortgagee, such successor-in-interest of the Mortgagee shall have given written notice to the Tenant of its acquisition of the Mortgagee's interest therein, and designated the address to which such notice is to be directed;
- (g) in the event that the holder of the Mortgage (as now or hereafter constituted), or anyone claiming from or through any such holder, such enter into and lawfully become possessed of the premises encumbered by the Mortgage or the premises demised by the Lease, or shall succeed to the rights of the Borrower under the Lease, either through foreclosure of said Mortgage or otherwise howsoever, (i) the Tenant shall attorn to, and recognize, such holder or anyone claiming from or through such holder as its landlord under the Lease for the unexpired balance of the term of the Lease and any extension or renewal thereof, subject to all of the terms and conditions of the Lease, and (ii) the Tenant shall make all payments payable by the Tenant under the Lease directly to the holder of the Mortgage upon such holder's written instructions to the Tenant; and if, by operation of law or otherwise, the institution of any action or other proceedings by the Mortgagee under the Mortgage or the entry into and taking possession of the premises demised by the Lease shall result in the cancellation or termination of the Lease or the Tenant's obligation thereunder, the Tenant shall, upon request, execute and deliver a new lease of the premises leased by the Tenant pursuant to the Lease, containing the same terms and conditions as the Lease, except that the

term and any extension thereof shall be the unexpired term and unexpired extended term or terms of the Lease as of the date of execution and delivery of said new lease;

- (h) it has no right or option, whether under the Lease or otherwise, to purchase any portion of the property or any interest therein, and to the extent that Tenant has or hereafter acquires any such right or option, the same is hereby subordinated to the Mortgage;
- (i) the Mortgagee shall have no responsibility, liability or obligation to cure any defaults by the Borrower under the Lease, nor be subject to claims, defenses or offsets under the Lease or against the Borrower possessed by the Tenant and which arose or existed prior to actual foreclosure of the Mortgage or entry under and taking possession of the mortgaged property by the Mortgagee. If the Mortgagee forecloses the Mortgage and enters upon and takes actual possession of the property covered by the Mortgage, the Mortgagee shall do so free and clear of all such prior defaults, claims, or offsets and shall not be liable or responsible to the Tenant for any act or omission of any prior landlord (including the Borrower), or subject to any claims, defenses or offsets which the Tenant might have against any prior landlord (including the Borrower); and
- (j) the institution of any action or other proceedings by the Mortgagee under the Mortgage in order to realize upon the Borrower's interest in the property covered by the Mortgage shall not by operation of law, or otherwise, result in the cancellation or termination of the Lease or the Tenant's obligations thereunder.

2. The Mortgagee hereby agrees:

- (a) so long as the Tenant is not in default (beyond all applicable periods given the Tenant under the Lease to cure such default) and shall pay the rents and additional rents thereunder, and shall fully comply with and perform all the terms, covenants, conditions and provisions of the Lease on the part of the Tenant thereunder to be complied with and performed, (i) the Tenant's possession and occupancy of the premises demised by the Lease and the Tenant's rights and privileges under the Lease, or any extension or renewal thereof which may be affected in accordance with the terms of the Lease, shall not be disturbed by the Mortgagee or any successor-in-interest to the Mortgagee; (ii) the Mortgagee shall not join the Tenant as part to any action or proceeding brought as a result of a default under the Mortgage for the purposes of terminating the Tenant's interest and estate under the Lease, subject to paragraph 1(g) above and subject further to the conditions that the Mortgagee shall not be bound by any rent or other payment which the Tenant might have paid more than thirty (30) days in advance of the time stipulated for payment under the Lease or by any amendment or modification of the Lease made without its written consent;
- (b) in the event that the interest of the Borrower shall vest in the Mortgagee by reason of foreclosure or any other procedures brought by it, or in any other manner, the Mortgagee and its successors-in-interest agree to be bound by all of the undischarged obligations of Landlord under the Lease occurring after such foreclosure or other action.

3. The Tenant hereby represents and warrants that:

- (a) the Lease is in full force and effect;
- (b) the monthly rental due on the first of each month is \$ \_\_\_\_\_. The Lease terminates, excluding renewal options, on \_\_\_\_\_;
- (c) neither the Landlord nor the Tenant is in default in the performance of or compliance with any provision of the Lease;
- (d) the Tenant has not received any notice of default in the performance of or compliance with any provision of the Lease;
- (e) the Lease is a complete statement of the agreement of the parties thereto with respect to the leasing of the premises demised thereby; and
- (f) the Tenant has accepted possession of the premises demised by the Lease and is the sole owner of the leasehold estate created thereby.

4. Any notice, demand or consent hereunder shall be in writing and may be given or mailed by mailing the same by registered or certified mail, return receipt requested, addressed, or intended for the Mortgagee, to the Mortgagee at the address set forth on the first part of this Agreement, and if intended for the Tenant, addressed to the Tenant at the address also set forth on the first page of this Agreement with a copy to the Premises, and if intended for the Tenant, addressed to the Tenant at the address also set forth on the first page of this Agreement with a copy to the Premises, and if intended for the Borrower, addressed to the Borrower at the address also set forth on the first page of this Agreement. Either party may designate a new address by notice in writing to the other party. Any notice given in accordance herewith shall be effective upon deposit in the United States mails in accordance herewith.

5. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto. The term "Mortgagee" shall include the respective holders from time to time of the Mortgage (as now or hereafter constituted), the term "Borrower" shall be synonymous with the term "Landlord" during the term of the Mortgage and the terms "Landlord" and "Tenant" shall include the holder from time to time of the lessor interest, and the holder from time to time of the lessee interest, respectively, in the Lease.

6. Any claim by Tenant against Mortgagee under the Lease or this Agreement shall be satisfied solely out of the interest of the Mortgagee in the property and Tenant shall not seek recovery against or out of any other assets of Mortgagee.

This Agreement shall be governed by, and construed under the laws of the State of

\_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have caused the execution hereof as a sealed instrument as of the day and year first above written.

TENANT:

\_\_\_\_\_  
By: \_\_\_\_\_

MORTGAGEE:

\_\_\_\_\_ COMPANY,  
a Michigan Corporation

By: \_\_\_\_\_

LANDLORD/BORROWER:

\_\_\_\_\_  
By: \_\_\_\_\_

(F) SUBAT