

Record and return to:

Parcel Identification No. [*]

GROUND LEASE MORTGAGE PROTECTION AGREEMENT

Agreement (“Agreement”) made of _____, 20____, by and between _____, a _____ (“Landlord”); _____, a _____ (“Tenant”); and _____, a _____ (“Lender”). Landlord, Tenant and Lender agree as follows:

1. Facts. This Agreement is made with reference to the following facts:

(a) Landlord is the present owner and holder of all of the landlord’s rights, title and interest in and under that certain Lease, dated [*], and that certain [First Amendment of Lease dated [*], each] originally by and between [*], as landlord and [*], a [*], as evidenced by that certain [Memorandum of Lease], recorded [*], as [*] No. [*] of the [*] of [*] County, [*] (collectively, the “Lease”);

(b) [*,] a [*] (“[Original] Tenant”), is the present owner and holder of all of the lessee’s rights, title and interest in and under the Lease (“Leasehold Estate”);

(c) The land leased pursuant to the Lease is located in [*] County, [*] and is described on **Exhibit A** attached hereto (“Premises” or “Property”);

(d) [Pursuant to a lease assignment to be recorded in the [public records] of [*], [*], all of the tenant’s rights, title and interest in and under the Lease are being assigned to [Tenant]Tenant, making Tenant the current owner and holder of the Leasehold Estate;]

(e) [Simultaneously with the acquisition of the Leasehold Estate,] Tenant is obtaining a [purchase] money loan (“Loan”) in the original principal amount of \$[*].00], from [*] (together with its successors and assigns, “Lender”), evidenced by a [promissory note] [and loan agreement] (together with any amendments, modifications, extensions, renewals and replacements, collectively

referred to as the “Note” and “Loan Agreement” respectively), secured by, among other things, a first leasehold mortgage or deed of trust against the Leasehold Estate [and an assignment of rents and leases of the Leasehold Estate] (together with any amendments, modifications, extensions, renewals and replacements, collectively referred to as “Leasehold Mortgage”). The Note, Leasehold Mortgage, Note [Loan Agreement] and any other instruments or agreements securing or evidencing the Loan (together with any amendments, modifications, extensions, renewals and replacements), are collectively referred to as “Loan Documents”); and

(f) Lender is unwilling to make the Loan unless Landlord enters into this Agreement with Lender to establish Lender’s rights as the holder of the Leasehold Mortgage.

2. Lender Grace Periods.

2.1. Landlord shall give Lender a copy of any notice, demand, request, approval, consent and other communication (collectively “Notice”) given to the Tenant, at the same time the Notice is given to the Tenant, including without limitation intended, notices of payments due, breach, default, termination of the Lease, entry or re-entry by the Landlord, and commencement of any summary or other action or proceeding to recover possession of the Property, terminate the Lease or otherwise enforce the Lease. Landlord shall not: (i) terminate the Lease; (ii) recover possession of the Property; or (iii) exercise any other right or remedy arising out of any breach of the Tenant’s obligations, representations or warranties under the Lease (collectively “Breach”) or any Default; unless (w) the Landlord has given Tenant notice of the Breach in accordance with the Lease; (x) Tenant failed to cure the applicable Breach by the end of the applicable cure period in the Lease; (y) Landlord has given the Lender Default Notice; and (z) the Default is not cured by the end of the applicable Grace Period and is not waived or excused as provided for in this Section 2.1. “Default Notice” means notice given to the Lender following the end of any applicable cure period in the Lease (or if there is no applicable cure period in the Lease, following the occurrence of the Breach), specifying: (a) the Property; (b) the Leasehold Mortgage; (c) the Breach or Default that remains uncured; (d) the action required to be taken or averted to cure the Breach or Default; and (e) the period of time in the applicable Grace Period which is afforded the Lender following receipt of such notice, to cure the Breach or Default. “Default” means a Breach which remains uncured after the expiration of any applicable cure period afforded Tenant under the Lease. “Grace Period” means:

(A) if the Breach or Default consists of a failure to make any payment of money due under the Lease or maintain any insurance coverage required by the Lease, a period of 30 days beginning on the date the Default Notice is given to the Lender;

(B) if the Breach or Default consists of any other failure to fulfill any obligation, representation or warranty of the Tenant under the Lease, a period of 90 days beginning on the date the Default Notice is given to the Lender; provided, however, that (i) if the Breach or Default is of a character that the Breach or Default is not reasonably susceptible of cure by the Lender even if the Lender were to acquire actual possession the Property, then the Breach or Default shall be waived and excused; and (ii) if the Breach or Default is of a character that the Breach or Default is not reasonably susceptible of cure until the Lender is in actual possession of the Property, then the Grace Period shall automatically be extended for such period of time as may reasonably be required to enable the Lender to cure the Breach or Default after the Lender gains actual possession of the Property, provided the Lender commences and prosecutes a judicial or non-judicial foreclosure of

the Leasehold Mortgage with reasonable diligence and once the Lender acquires actual possession of the Property the Landlord prosecutes the cure of the Breach or Default with reasonable diligence until the cure of the Breach or Default is completed.

2.2. Landlord shall accept the Lender's (i) fulfillment of any or all of the Tenant's obligations, representations or warranties under the Lease, as fulfillment of the Tenant's obligations, representations and warranties; and (ii) the Lender's cure of any Breach or Default.

3. Limitations on Right to Terminate the Lease, Recover Possession and Surrender Property.

Without the Lender's prior consent which may be withheld in Lender's sole non-reviewable discretion: (i) Landlord shall not terminate the Lease or recover possession of the Property, nor accept a surrender of the Property, except after a material Default by the Tenant which is not cured by the expiration of the applicable Grace Period; (ii) Tenant shall not terminate the Lease or surrender the Property; and (iii) Landlord and Tenant shall not agree to terminate the Lease or effect the surrender of the Property. If effected in contravention of any of the prohibitions in the preceding sentence, the Lease termination, recovery of possession or surrender of the Property, shall be unenforceable against the Lender and its successors in interest; and at the election of the Lender, any such termination, recovery of possession or surrender of possession shall utterly be void and unenforceable. Landlord is not permitted, in the absence of an uncured Default of Tenant under the Lease that continues after the applicable Grace Period, to disturb the possession, interest or quiet enjoyment of Tenant or any subtenant of the Tenant, or in any manner, which would adversely affect the security provided in the Leasehold Mortgage.

4. Lease Amendments, Supplements and other Changes. Neither Landlord nor Tenant shall modify, amend, supplement or otherwise change the Lease or waive any provision of the Lease without the prior consent of the Lender. Landlord and Tenant shall give Lender prompt notice of: (i) any proposed Lease documents at the same time proposed Lease documents are furnished to or by the Tenant, which notice shall be accompanied by the proposed Lease documents; and (ii) any executed Lease documents at the same time executed by the Landlord or Tenant, which notice shall be accompanied by the executed Lease documents. No amendment, supplement, or other change of the Lease, or waiver of any provision of the Lease, which is made without the Lender's prior consent, shall be enforceable against the Lender; and at the election of the Lender, any such amendment, supplement, change or waiver shall be void and unenforceable.

5. Successor Liability. Despite the Loan Document, and the Lender's exercise of any right or remedy conferred by the Loan Documents or applicable law (including appointment of a receiver), the Lender shall not be deemed to have assumed and shall not be required to assume any of the obligations of the Tenant under the Lease unless the Lender physically occupies the Property, and under no circumstances shall the Lender be required to assume any of the obligations of the Tenant which arise after the Lender makes a bona fide assignment of the Tenant's estate in the Lease to an assignee who assumes the obligations of the Tenant under the Lease arising after the effective date of the assignment ("Lender Assignee"). Use of the Property pursuant to Section [6] of this Agreement shall not constitute actual occupancy.

6. Effect of Assumption. If Lender assumes obligations of the Tenant under the Lease as provided in Section 5, the original Tenant named in the first paragraph above and any successor to Tenant who did not hold the Lender's right, title and interest in the Loan Documents, shall not be released

from any liabilities or obligations under the Lease and if they were released previously, their liabilities and obligations shall be deemed reinstated.

6. Entry by Lender Without Occupancy. Landlord hereby authorizes the Lender, its agents, employees, prospective and actual purchasers of the Tenant's right, title and interest in the Lease and/or Collateral, to enter the Property at all hours without prior notice during the Lease term (including any extension or renewal terms) and thereafter for a period expiring on the third month anniversary of the date Lender is given notice the Lease has been rejected in bankruptcy or otherwise terminated, for the purpose of inspecting, testing, surveying, appraising, showing, auctioning, selling, maintaining, repairing and securing the Property, leasehold improvements, and any other collateral subject to the liens and security interests granted by the Loan Documents ("Collateral"); provided, however, that the Lender shall promptly repair any material damage to any improvements owned by the Landlord and located on the Property which results from the exercise of the rights conferred by this Section.

7. Assignments.

7.1. Tenant shall have the absolute right without the Landlord's consent or approval, to assign the Tenant's right, title and interest in the Lease to the Lender.

7.2. The Lease may be freely assigned in any of the following circumstances, without the need to obtain Landlord's consent or approval and it shall not constitute a Breach or Default under the Lease by the Tenant or Lender, nor constitute an event that terminates the Lease or entitles Landlord to terminate the Lease or re-enter and recover possession of the Property: (i) to Lender or Lender's nominee or designee; (ii) at or pursuant to any foreclosure sale, judicial or non-judicial; any bankruptcy, sheriff's or other involuntary sale, and (iii) by the Lender or its nominee or designee. Landlord further covenants and agrees that if Lender (its successor or assign, or their respective nominee or designee) shall succeed to the Leasehold Estate through a judicial or non-judicial foreclosure, assignment of the Lease in lieu of foreclosure or otherwise, or another person purchases the Leasehold Estate upon or following foreclosure of the Leasehold Mortgage (or assignment of the Lease in lieu of foreclosure), then, Lender (its successor or assign, or their respective nominee or designee) or such purchaser (Lender, its successor or assign, or their respective nominee or designee, and such purchaser, each being a "Successor Tenant"), shall be deemed to be Tenant's successor and assignee under the Lease and recognized and treated by Landlord as the Tenant for so long as the Leasehold Estate remains vested in the Successor Tenant (notwithstanding anything in the Lease prohibiting or restricting assignment by the Tenant or establishing conditions under which an assignment by the Tenant would be permitted) and shall be entitled to all rights, benefits and privileges of the Tenant under the Lease; and Landlord shall be bound to Successor Tenant under all of the terms, covenants and conditions of the Lease for the balance of the Lease term remaining and any renewal or extension periods duly exercised, all without the need to execute any further instrument or agreement on the part Landlord, Tenant or Successor Tenant.

7.3. No Successor Tenant shall have any personal liability for payment of any rents or other payments which were delinquent prior to the date the Successor Tenant acquired the Leasehold Estate; Landlord's sole recourse for such arrears being suit against the Tenant, lawful steps to terminate the Lease or re-enter and recover possession of the Property in accordance with the Lease and applicable law, subject to the provisions of this Agreement.

8. Lender's Right to Give Notices on Behalf of Tenant or Lender and Exercise Tenant's Rights. With or without the Lender assuming obligations of the Tenant under the Lease, Lender shall have the absolute right to give any Notice on behalf of Tenant in the name of Tenant or in the name of Landlord, to exercise any of the rights of the Tenant under the Lease and to enforce the rights and remedies of the Tenant under the Lease and applicable law for any Landlord breach or Landlord default under the Lease. Without limiting the application of the preceding sentence, Lender shall have the right: (i) at any time to exercise any option or right granted by the Lease to renew or extend the term of the Lease despite any limitations or conditions for the exercise that are provided for in the Lease; and (ii) if granted by the Lease, exercise at any time permitted by the Lease, any option or right to purchase the Property.

9. Recognition of Senior Security Interest and Priority; Waiver of Landlord's Lien.

9.1. Unless and until the debt either or both evidenced or secured by the Loan Documents ("Indebtedness") is indefeasibly paid in full and the Note has been cancelled by Lender, Landlord shall always recognize Lender, as the holder of a first priority perfected security interest in the Lease and Collateral, securing the entire Indebtedness ("Priority Security Interests"). Unless and until the Leasehold Mortgage has been satisfied of record and the Indebtedness indefeasibly paid in full, Landlord waives all right, title and interest (including all rights to assert any lien or security interest under the Lease or applicable law) in the Collateral. If for any reason the waiver granted by the Landlord in this Section 9.1 is invalid or otherwise unenforceable; then Landlord's right, title and interest in the Collateral, and Landlord's right to collect rents and other payments under the Lease, shall always be unconditionally and absolutely subject and subordinate to the Priority Security Interests, to the same extent as if the Priority Security Interests were created and perfected prior to date the right, title and interest of the Landlord in the Property were created. Without limiting the application of the preceding sentence, the Landlord's claim to any unpaid rent or other payment due under the Lease, shall remain subordinate to the Indebtedness, even if the Lender elects under [Bankruptcy Code Section 1111(b)] or any other law of similar import, to have the Indebtedness treated as being fully secured.

9.2. The Leasehold Estate, Leasehold Mortgage and any other Loan Security Instruments shall not be subject or subordinate to any mortgage, deed of trust, assignment of rents or other security instrument or agreement (each a "Security Instrument") encumbering the fee simple title to the Property, the reversionary interest of the Landlord in the Property or the landlord's rights, title and interest in the Lease. Any Security Instrument granted by the Landlord shall be subject and subordinate to the Leasehold Estate, the Leasehold Mortgage and any other Loan Security Instruments and the Priority Security Interests created thereunder. [If there is an existing Security Instrument which would encumber the Leasehold Estate, the holder must enter into a subordination agreement with Lender or release the liens and security interests against the Leasehold Estate.] Landlord shall not encumber the Property with any Security Instrument unless and until the secured party thereunder, executes and delivers, and there is recorded in the [name of recorder/registry office], [*] County, [*], and filed in the office of the [Secretary of State] of [*] an amendment of any existing financing statement, each reflecting the subordination agreement and each to be reasonably satisfactory to Lender and ensuring the continued priority of the Leasehold Mortgage and any other Loan Security Instruments consistent with this Agreement.

[*]. Lender Protection Against Certain Rent Increases. [If the based or fixed rent under the Lease is subject to increases which are not capped to Lender's satisfaction, negotiate and include a provision capping the base or fixed rent during any period of time Successor Lender is the tenant under the Lease; or providing for a waterfall to ensure that there are sufficient funds to pay ground rent, debt service and operating expenses before accruing and paying any excess to Landlord as increase in based or fixed rent]

12. Right to Replacement Lease. If under any circumstances the Lease is terminated without the prior consent of the Landlord (including by either or both Tenant or Landlord terminating the Lease, by agreement of Landlord and Tenant, as a result of a Breach or Default, by rejecting the Lease in a bankruptcy case filed by the Landlord or Tenant or under any other circumstances), Landlord shall give Lender notice of the termination of the Lease. Lender shall have a period of 45 days beginning on the date the Lender receives notice of the termination of the Lease ("Replacement Lease Exercise Period"), to give Landlord notice of Lender's election to enter or have the Lender's designee enter into a Replacement Lease ("Replacement Lease Exercise Notice"). If Lender gives Landlord Replacement Lease Exercise Notice by the expiration of the Replacement Lease Exercise Period, Landlord shall within 15 days after a the Replacement Lease Exercise Notice is given ("Replacement Lease Delivery Period"), execute and deliver a lease to the Lender containing very same provisions as the Lease except the Lender or its designee shall be the tenant under the new lease, and the term of the new lease (including any extension or renewal terms) shall expire on the same date(s) the term of the Lease (including any extension or renewal terms) would have expired ("Replacement Lease"). Lender shall have a period of at least 15 days after receipt of the Replacement Lease ("Replacement Lease Execution Period"), to deliver to Landlord the Replacement Lease, with Lender or its designee having signed the Replacement Lease as tenant. The Replacement Lease shall give Landlord or its designee credit for all rent and other payments previously made under the Lease.

13. Protection of Subleases. If the Lease is terminated in any manner by either Landlord or Tenant or both, all then existing bona fide subleases made by the Tenant in compliance with the Loan Documents or with the Lender's consent, shall remain in effect and the subtenants' possession of their leased premises and use of any common areas and facilities shall not be disturbed by Landlord or any person acting on behalf of or claiming through Landlord, until (i) the expiration of the Replacement Lease Exercise Period if Replacement Lease Exercise Notice is not given by Lender to Landlord by the end of the Replacement Lease Exercise Period; or (ii) until the expiration of the Replacement Lease Execution Period, if by the end of the Replacement Lease Execution Period, Lender has given Landlord a Replacement Lease Exercise Notice and Lender or its designee fails to execute and deliver the Replacement Lease to Landlord by the end of the Replacement Lease Execution Period; or (iii) until the end of the applicable sublease term including any extension or renewal terms, if during the Replacement Lease Exercise Period the Lender has given Landlord Replacement Lease Exercise Notice, and either (x) Lender executes and delivers the Replacement Lease to Landlord by the expiration of the Replacement Lease Execution Period, or (y) Landlord failed to deliver the Replacement Lease to Lender by the end of the Replacement Lease Delivery Period.

14. Miscellaneous Landlord Waivers. No action or inaction on the part of the Lender or the Tenant shall affect the priority of the Priority Security Interests, nor compromise any obligation imposed or

secured by the Loan Documents or waive any of the rights of the Lender. Without limiting the general application of the preceding sentence, all of the following actions and inactions are included within the scope of the preceding sentence:

- (a) any extension (regardless of the number or length of extensions) of the time for payment of the Indebtedness;
- (b) any indulgence or delay in exercising any right or remedy of the Lender;
- (c) any release of Collateral;
- (d) any release of any person obligated to pay and perform the obligations imposed by the Loan Documents;
- (e) any modification of the provisions of the Loan Documents including the amount of payments or interest required by or the debt secured by the Loan Documents;
- (f) any agreement to make the rights or remedies of the Lender inferior to the rights or remedies of any other person; and
- (g) any action on behalf of the Tenant or anyone else which establishes that the Tenant is not bound by the Loan Documents or the Lease or any provisions thereof.

15. Condemnation and Insurance Proceeds. Lender shall be entitled to participate in any settlement regarding insurance or condemnation proceeds or awards attributable to (i) the termination of the Leasehold Estate; (ii) damage to and the loss of the improvements and fixtures made and installed by or at the behest of the Tenant under the Lease, and (iii) the reduction in the area or usefulness of the Property, and to collect and hold any such proceeds or awards and to determine and direct whether any such proceeds or awards are made available for either or both the restoration of the Property or are applied to the payment of the Indebtedness. Lender shall have no obligation to ensure the proceeds are applied to the cost of repairs or restoration.

16. Pre-Emptive Rights to Purchase. If the (a) Lease grants the Tenant any right to purchase the Property, including any option to purchase, right of first refusal or right of first offer, and (b) Tenant exercises the right to purchase the Property, the Lease shall remain in full force even if: (i) the purchase and sale of the Property is not completed for any reason whatsoever, including a material default by Tenant in the course of purchasing the Property; or (ii) the purchase and sale of the Property is completed and under the doctrine of merger the fee simple title and Leasehold Estate would otherwise merge. If Tenant exercises any right to purchase the Property (1) notice of the exercise shall be given to Lender contemporaneously and (2) the closing of the sale of the Property shall not be completed unless and until Lender has consented to the completion of the closing, which consent may be conditioned upon Tenant's compliance with applicable requirements in the Loan Documents and any other requirement imposed by Lender to ensure that the conveyance of title to the Property does not adversely affect any of the rights, remedies and interests of the Lender and the Priority Security Interests.

17. Electronic Payments of Rent. Landlord shall at all times permit and provide Tenant and Lender

with all information requested by either to enable Tenant and Lender to make all payments of rent and any additional rent or other charge payable to Landlord, directly to an account maintained at an FDIC insured bank to which Tenant and Lender can make payments electronically by Direct Payment (“Landlord’s Account”). “Direct Payments” means transfers of U.S. dollars through Automated Clearing House transfers, Federal Reserve System wire transfers, or such other electronic methods of transferring U.S. dollars as are then commonly used by FDIC insured banks. “FDIC” means the Federal Deposit Insurance Corporation or any similar authority, agency or entity, public or private which at the time in question fulfills a role in the United States similar to the role fulfilled by the Federal Deposit Insurance Corporation as of the date of this Agreement. Landlord shall upon Landlord’s execution of this Amendment, give Tenant and Lender notice specifying the instructions for Direct Payments to Landlord’s Account. Landlord shall not close any Landlord’s Account without giving Tenant and Lender at least 30 days prior notice specifying the instructions for Direct Payments to the replacement Landlord’s Account and the date the Landlord’s Account shall be replaced for the purposes of the Lease.

18. Landlord’s and Tenant’s Representations and Warranties. To induce Lender to make the Loan, Landlord and Tenant (each a “Representing Party”) hereby severally represent and warrant to Lender that: (i) the Lease constitute a valid and enforceable agreement of the Representing Party, binding in accordance with the Lease provisions; (ii) there has been no prior assignment of the Lease [or sublease of the Property] of which Representing Party has notice or is aware of; (iii) neither Landlord nor Tenant is in default under the Lease or in breach of any of their respective obligations, representations or warranties; (iv) a true and complete copy of the Lease has been delivered to the Lender by the Representing Party; (v) the Lease as described in Section 1 and delivered to Lender by the Representing Party has not been amended, supplement or otherwise changed; (vi) the Lease as described in Section 1 and delivered to Lender constitutes the entire agreement between Landlord and Tenant; (vii) all conditions to the effectiveness of the Lease have been fully satisfied or waived; and (viii) all obligations in the Lease have been performed as required therein except those not due to be performed until after the date of this Agreement.

19. Estoppel Certificates. Not later than 30 days after a request by Lender, the Landlord shall complete, execute, acknowledge and deliver to the Lender or its designee, an [estoppel certificate in the form attached to this Agreement as **Exhibit “*”**][Estoppel Certificate] (as defined in Section [*] of the Lease) and any purchaser, subtenant, lender or other person to whom an Estoppel Certificate is delivered, shall be entitled to rely upon the contents, regardless of the name of the addressee, if any.

20. No Merger of Estates. Without the prior consent of Lender, there shall be no merger of any estate or interest in the Property (whether leasehold, fee, mortgage lien or otherwise) by reason of the fact that any such estate or interest may be owned or held, directly or indirectly, by or for the benefit of any person who now or hereafter owns or holds any one or more other estate or interest in all or part of the Property.

21. Imposition of Trust. If the Landlord receives or collects any payments from the sale or other disposition of the Collateral or the Tenant’s right, title and interest in the Lease, the payments shall be held by Landlord in trust for the exclusive benefit of the Lender and be immediately delivered to the Lender.

22. Preferences. The Note shall not be deemed paid unless the Lender has received payment which is indefeasible, in other words is not then or thereafter subject to rescission, restoration or return as a preference or for any other reason.

23. Further Assurances. At the request of the Lender, the Landlord and Tenant shall immediately execute and deliver such further agreements, instruments of subordination and other documents, as may assist the Lender in maintaining the seniority of either or both the Priority Security Interests and waiver or subordination of the Landlord's rights to payment to the extent of the Priority Security Interests, or otherwise implementing the provisions or purposes of this Agreement.

24. Partial Invalidity. If any provision of this Agreement or any application thereof is or becomes, to any extent, invalid or unenforceable, the remainder of this Agreement and any other application of such provision are not to be affected.

25. Successors and Assigns. This Agreement shall be binding upon and shall inure solely to the benefit of the parties hereto and their respective successors in interest. The term "Lender" includes all subsequent holders of the Note or any right, title and interest in the Note. The term "Landlord" includes all subsequent owners of the Property or any part thereof or interest therein, and all subsequent owners of the Landlord's right, title and interest in the Lease or any interest therein.

26. Waivers and Consents. Any waiver of a breach or provision under this Agreement must be in writing and does not constitute a waiver of any other breach or provision concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a complete and accurate disclosure of all material facts relevant to the waiver requested.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

28. Construction. This Agreement shall not be construed as if the Agreement had been prepared by one of the parties, but rather as if all parties had prepared the same. The parties acknowledge that this Agreement has been fully negotiated at arm's length and in good faith and that, if any ambiguity shall arise under this Agreement, there shall be no presumption that any party drafted this Agreement or shall have such ambiguity resolved against any party by virtue of its role in drafting or preparing this Agreement. Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. The

words "hereof", "herein" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" in this Agreement refers to any person recognized by applicable law, including any corporation, partnership, limited partnership, limited liability company, statutory trust, government or governmental authority. All references to any person shall include such person's heirs, executors, administrators, successors and assigns. All references to this Agreement shall be deemed to include any amendments, supplements, extensions, waivers, and modifications signed by the parties. The word "including" shall mean "including without limitation and by way of example only." The term "and/or" shall mean either or both or if more than two alternatives, any one or more of the alternatives. The words "will" and "shall" have the same meaning, namely a legally binding obligation, duty or requirement, as applicable.

29. Attorney's Fees. If there is ever any dispute arising out of or related to this Agreement, the prevailing party in any litigation including any appeal, arbitration or bankruptcy proceeding, shall be awarded their reasonable attorney's fees, costs and disbursements, including premiums for title insurance, costs of publication, costs of depositions and transcripts, witness fees including expert witness fees, and reasonable fees for support staff including paralegals.

30. Notices. Any Notice pursuant to or otherwise concerning this Agreement or any matter arising in connection with this Agreement, must be in writing and addressed as follows:

If to Lender to: _____

with a copy to: _____

If to Tenant to: _____

with a copy to: _____

If to Landlord to: _____

with a copy to: _____

Any Notice must be given by either (i) delivery by nationally recognized courier promising next or second business day delivery, such as FedEx, in which case it will be deemed given on the date of acceptance by the courier for next or second business day delivery as applicable, or (ii) certified mail return receipt requested or registered mail return receipt requested, in which case it will be deemed given three business days after the date deposited in the mail postage prepaid. Any person may change any address for the delivery of Notice to such person to any other location in the U.S. or Canada, by giving notice in accordance with the provisions of this Section. The attorneys for any Party may give any Notice.

31. No Third-Party Beneficiary. This Agreement will be enforceable only by the parties and their successors in interest.

32. Conflicts. To the extent the provisions of this Agreement conflict with the provisions of the Lease, the provisions of this Agreement shall govern and prevail.

33. Governing Law; Venue; Jurisdiction. This Agreement shall be governed by the internal law of [*], excluding [*] choice of law principles. The exclusive form and venue for any litigation arising out of this Agreement is the State or federal court of competent jurisdiction sitting for the [*] in which the Property is located; and any applicable bankruptcy court.

34. Application of Loan Proceeds. Lender has no obligation to see to the proper or intended application of Loan proceeds. Under no circumstances shall Lender have any liability to Landlord or any third party, if the Loan proceeds are used in any manner contrary to any understanding the Landlord may have.

35. **Waiver of Jury Trial.** If there ever is any litigation arising out of this Agreement, the matter shall be heard by a judge sitting without a jury. **The parties irrevocably and unconditionally waive their rights to a jury trial in any litigation arising out of this Agreement.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

LENDER:

[*]

LANDLORD:

[*]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

TENANT:

[*]

By: _____
Name: _____
Title: _____

[Insert applicable acknowledgments, any missing exhibits]

DRAFT

DRAFT