

DISTRICT OF COLUMBIA DEPARTMENT OF REAL ESTATE SERVICES	IN RESPONSE TO RFP / LEASE NO	DATED
FORM OF SUBORDINATION, NONDISTURBANCE, AND ATTORNMEN AGREEMENT		

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (this “**Agreement**”), made this ____ day of _____, 20__ (“**Effective Date**”), by and between [INSERT NAME OF LENDER], a [INSERT TYPE OF ENTITY], (“**Lender**”), [INSERT NAME OF LANDLORD], a [INSERT TYPE OF ENTITY] (“**Landlord**”) and the DISTRICT OF COLUMBIA, a municipal corporation, acting through its Office of Property Management (“**Tenant**”).

RECITALS:

WHEREAS, the improved real property located at [INSERT ADDRESS] in Washington, DC is known for tax and assessment purposes as Lot [INSERT] in Square [INSERT], as more particularly described in Exhibit A attached hereto (“**Property**”); and

WHEREAS, the Property is subject to a lease between Landlord and Tenant dated as of [INSERT DATE] (the “**Lease**”), wherein Prior Owner demised to Tenant a portion of the Property comprised of approximately [INSERT SQUARE FOOTAGE] square feet (“**Tenant’s Premises**”); and

WHEREAS, Tenant has requested that Landlord agree to recognize the Lease and the parties’ relative rights and obligations contained therein; and

WHEREAS, Lender has agreed to grant a loan to Landlord (the “**Loan**”) that will be secured by a first deed of trust or mortgage on the Property, including the Tenant’s Premises (the “**Mortgage**”), by an assignment of Landlord’s interest in all leases, rents, profits and contracts for such property (the “**Assignment of Leases**”) and other documents executed or to be executed in connection therewith; and

WHEREAS, Tenant has requested that Lender agree not to disturb Tenant’s possessory rights in the Tenant’s Premises if Lender should foreclose its Mortgage, provided that Tenant is not in default under the Lease and further provided that Tenant attorns to Lender or the purchaser at any foreclosure sale or to any party who takes a deed in lieu of foreclosure; and

WHEREAS, Landlord and Lender are willing so to agree on the terms and conditions hereafter provided.

NOW THEREFORE, in consideration of the mutual promises herein contained, to induce Lender to make the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Tenant and Lender covenant and agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the meanings below:
 - 1.1 A “Foreclosure Event” means (a) foreclosure under the Mortgage; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Mortgage, as a result of which Successor Landlord becomes owner of the Property or (c) delivery by Landlord to Lender of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.
 - 1.2 “Former Landlord” means Prior Landlord, Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.
 - 1.3 “Rent” means any fixed rent, base rent or additional rent under the Lease.
 - 1.4 “Successor Landlord” means any party that becomes owner of the Property as a result of a Foreclosure Event.
2. Landlord’s Acknowledgment. Landlord hereby acknowledges the Lease and Tenant’s possessory rights in the Tenant’s Premises and expressly agrees to assume all obligations as landlord thereunder.
3. Subordination of Lease. As of the Effective Date, the Lease and Tenant’s leasehold estate created thereby, including all rights under the Lease, shall be subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, and to all advances made to or to be made under the Mortgage.
4. Nondisturbance. As of the Effective Date, Lender is the sole and exclusive holder of the Mortgage and the promissory note secured thereunder. Neither Lender nor any Successor Landlord shall disturb Tenant’s possession of Tenant’s Premises under the Lease so long as Tenant is not in default (beyond applicable notice and cure periods) under any of the terms, covenants or conditions of the Lease. Further, Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease, except as otherwise provided in this Agreement.
5. Attornment. Upon a Foreclosure Event, Tenant agrees that it will attorn to and recognize any Successor Landlord as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease.
6. Liability of Successor Landlord. Any Successor Landlord shall not be:
 - a. Liable for any act or omission of Former Landlord, except to the extent that any such act or omission results in a landlord default under the Lease and remains uncured as of the date Successor Landlord takes title to the Property; or
 - b. Subject to any offsets that Tenant might have against Former Landlord; or

- c. Bound by any Rent that Tenant might have paid for more than the current month to Former Landlord; or
 - d. Bound by any previous amendment, modification, financial settlement or termination of the Lease made after the Effective Date of this Agreement, without Lender's written consent.
7. Tenant's Payment of Rent. Tenant shall not pay an installment of Rent or any part thereof more than thirty (30) days prior to the due date of such installment. After such time as Lender provides notice to Tenant that the Rent should be paid to Lender (as evidenced by appropriate documentation, such as the Assignment of Leases), Tenant shall pay to Lender, or in accordance with the directions of Lender, all Rent due and to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments.
8. Notice of Default to Lender. Tenant agrees to give Lender, by certified mail, a copy of any notice of default served upon the Landlord at the address designated in this Agreement. Lender shall have all cure rights provided to Landlord under the Lease. Notwithstanding the foregoing, prior to attornment to Lender, Lender shall have no obligation to correct any Landlord default and Tenant shall look only to Landlord to fulfill the terms, covenants and conditions of the Lease.
9. General Provisions.
- 9.1.1 This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender, and their respective heirs, personal representatives, successors and assigns provided that the interest of Tenant under this Agreement may not be transferred or assigned without Lender's written consent, such consent to not be unreasonably withheld, conditioned or delayed.
 - 9.1.2 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or enforceability shall, at the option of Lender, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
 - 9.1.3 The Recitals of this Agreement are hereby incorporated herein by this reference and made a substantive part of the agreements herein between the parties.
 - 9.1.4 No provision contained in this Agreement shall be construed to create a financial obligation, independent of the obligations contained in the Lease, on

the Tenant. In addition, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage.

- 9.1.5 This Agreement shall be governed by and construed according to the laws of the District of Columbia.
- 9.1.6 No modification, amendment, waiver or release of any provision of this Agreement or any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted. No party has relied upon any representation (either oral or in writing) of any other party in executing this Agreement.
- 9.1.7 Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage.
- 9.1.8 All notices or other correspondence required or permitted under this Agreement shall be in writing and given by certified mail, return receipt requested, or by nationally recognized overnight courier service that regularly maintains records of items delivered, to the parties as follows:

Lender:

Landlord:

Tenant: District of Columbia
Office of Property Management
2000 14th Street, N.W., Suite 800
Washington, D.C. 20009
Attn: Director

- 9.1.9 This Agreement shall be recorded by Landlord, at its sole cost and expense, in the Land Records of the District of Columbia promptly following execution.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned [INSERT NAME OF LENDER], a [INSERT TYPE OF ENTITY], has caused this instrument to be executed on its behalf by [INSERT OFFICER NAME], its [INSERT OFFICER TITLE] as of the date written below.

LENDER:

By: _____ [SEAL]
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

On the _____ day of _____, 20__, before me, a notary public in and for the State and County aforesaid, personally appeared [INSERT NAME], who acknowledged himself/herself to be the [INSERT TITLE] of [INSERT LENDER], [INSERT TYPE OF ENTITY], being authorized to do, executed the foregoing instrument for the purposes therein in the name and on behalf of [INSERT LENDER].

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned [INSERT NAME OF LANDLORD], a [INSERT TYPE OF ENTITY], has caused this instrument to be executed on its behalf by [INSERT OFFICER NAME], its [INSERT OFFICER TITLE] as of the date written below.

LANDLORD:

By: _____ [SEAL]
Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

On the _____ day of _____, 20____, before me, a notary public in and for the State and County aforesaid, personally appeared [INSERT NAME], who acknowledged himself/herself to be the [INSERT TITLE] of [INSERT LANDLORD], [INSERT TYPE OF ENTITY], being authorized to do, executed the foregoing instrument for the purposes therein in the name and on behalf of [INSERT LANDLORD].

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned District of Columbia, a municipal corporation, has caused this instrument to be executed on its behalf by _____, its Director, as of the date written below.

TENANT:
DISTRICT OF COLUMBIA, a municipal corporation, by its Office of Property Management

By: _____ [SEAL]

Name:

Title: Director

Date: _____

District of Columbia) ss

On the _____ day of _____, 20__, before me, a notary public in and for the District of Columbia, personally appeared _____, who acknowledged himself/herself to be the Director of the District of Columbia Department of Real Estate Services, and that he as such officer, being authorized to do, executed the foregoing instrument for the purposes therein contained by signing the name of the authorized agent of the District of Columbia by himself as such Director.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

Approved for legal sufficiency:
D.C. Office of the Attorney General

By: _____
Assistant Attorney General

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY