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**SHORT, BUT NOT SWEET:
THE LANDLORD'S SUBORDINATION AGREEMENT**

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Article 1: Introduction: A Landlord Subordination Agreement for personal property involves three parties: the Landlord, the Tenant, and the Tenant's Lender. The need for a Landlord Subordination Agreement arises when a Tenant wishes to use the personal property in which a Landlord already has a lien as Collateral for a loan. Most Landlords are more interested in a successful Tenant at their project than in a first lien position in that Tenant's personal property and so will agree to subordinate their lien position. The complications arise because the form Subordination Agreements proposed by Tenant Lenders do not take into account the legitimate interests of the Landlords.

Article 2: Negotiating Points: The easiest way for a Landlord to protect itself in negotiations is to require the Tenant's Lender to use the Landlord's form Subordination Agreement and to refuse to depart from it in any way. I have attached my own such form as Exhibit "C." Oftentimes, though, the Tenant's Lender will insist on using its own form. I have attached two examples of Tenant Lender forms as Exhibit "A" and Exhibit "B." If a Landlord is forced to use the Tenant's Lender's form or to negotiate its own form, then it is important to keep the following points in mind:

- 2.1 Carefully Consider What Needs to be Included in the Description of the Collateral. Before signing a subordination agreement, a Landlord should consider if it is really willing to subordinate its lien in every piece of Collateral.
- a. Most Tenant's Lender Forms will Cover Everything. The following excerpts from the Tenant Lender forms that are attached as Exhibit "A" and Exhibit "B" both demonstrate the broad sweep of the description of the Collateral:

Exhibit "A" (Tenant's Lender's Form): [T]he tangible and intangible personal property of such Company, including, without limitation, goods, inventory, machinery and equipment, together with all additions, substitutions, replacements and improvements to, and the products and proceeds of the foregoing (collectively, the "Collateral").... The Collateral may be stored, utilized and/or installed at the Premises and shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property, whether or not any of the Collateral becomes so related to the real estate that an interest therein arises under real estate law.

Exhibit "B" (Tenant's Lender's Form): "Collateral" means all of the following types of property, now owned and hereafter acquired by the Tenant: accounts, inventory, contract rights, letters of credit, chattel paper, instruments, notes, documents, documents of title, general intangibles, equipment, investment property, money, cash, cash equivalents, securities, deposit accounts, credits, books, records, account ledgers, data processing records, computer software, files (whether tangible or electronic data entry form), fixtures, and all other goods, merchandise or personal property, and all proceeds, accessions, replacements, and substitutions of any of the foregoing.

- b. Considerations for Landlords.
- i. HVAC system. The lease will usually provide that the heating, ventilation, and air-conditioning (“HVAC”) system stays with the premises and is the property of Landlord, which means it is not available to the Tenant to grant as Collateral. However, in many cases, the Tenant buys the HVAC equipment and owns it until the end of the lease term, with leases varying in their specificity about what happens to the HVAC system at that time. In that situation, the status of the HVAC equipment is not as clear and there is a good chance of a dispute between the Landlord and the Tenant’s Lender. It is better to exclude the HVAC system from the description of the Collateral in which Landlord is subordinating its lien. A Landlord might also want to review the Tenant’s Pledge and Security Agreement and UCC-1 to make sure that the HVAC system is specifically excluded from the Tenant’s Lender’s description of its Collateral.
 - ii. Other building systems. The analysis that applies to the HVAC system can also apply to other building systems, especially if they are relatively easy to remove. While it is not likely that a Tenant’s Lender will try to remove wiring, it might remove an alarm system or certain parts of the plumbing or lighting system. If the Landlord wants to be sure that those items stay with the premises, the Landlord should exclude those items from the description of the Collateral in which Landlord is subordinating its lien and ensure they are not included in Tenant’s loan documents.
 - iii. Certain “big” fixtures. Certain Tenants, particularly restaurants, have significant built-in fixtures. These are difficult to remove without damaging the premises, are valuable if the Landlord wants to lease the premises to another restaurant, and are almost valueless once they are removed. Therefore, the Landlord, not the Tenant’s Lender, should try to keep the walk-in refrigerators and freezers, the vent-a-hood, and similar items. Again, if the Landlord wants to be sure that those items stay with the premises, the Landlord should exclude those items from the description of the Collateral in which Landlord is subordinating its lien and ensure they are not included in Tenant’s loan documents.
- c. Landlord Form. The form of Landlord’s Subordination Agreement attached as Exhibit “C” requires a specific description of the Collateral in which the Landlord is subordinating its lien on Schedule 1 and a specific description of what is excluded from that Collateral on Schedule 2 (if there are no exceptions to the subordination, then Schedule 2 can be filled in with “none”). Most importantly, it states that the Agreement is not valid unless both Schedules are attached. The Secured Party is also required to execute the Landlord’s Subordination Agreement, which proves that they have consented to its terms.

2.2 It is Inappropriate to Require the Landlord to become the Enforcement Agent for the Tenant's Lender. Most Tenant Lender forms obligate the Landlord to give the Tenant's Lender access to its Collateral located in the Tenant's premises. The Tenant Lenders all believe that the excerpts from Exhibit "A" and Exhibit "B" set forth below obligate the Landlord to do so (while there is an argument that this language merely prohibits Landlord from preventing Tenant's Lender's access, it is unclear, and so the better approach is to clarify the agreement). But this is an inappropriate change to the relationship between a Landlord and its Tenant. A Landlord offers to let its Tenant occupy premises that the Landlord owns without interference from the Landlord. Unless the lease permits the Landlord to allow third parties to enter the Tenant's premises and remove the Tenant's personal property, the Landlord should not agree to open the Tenant's premises for the Tenant's Lender in order to allow them to do so.

(a) The Tenant's Lender Should Look to the Tenant, not the Landlord, for Access: The Tenant's Lender should look to the Tenant, not the Landlord, for access. Most Tenant Lender loan documents require the Tenant to give the Tenant's Lender access to the Collateral. It is true that the time when a Tenant's Lender most wants access to the Collateral is the time the Tenant is the least likely to cooperate. But the solution to the Tenant's Lender's difficulties lies in using the legal process to force the Tenant to comply with its obligations, not in forcing the Landlord to do what the Tenant will not.

(b) Be Careful about Proposed Protections for the Landlord: Because of the difficulties in working within the legal system to obtain access to the Collateral, Tenant Lenders sometimes include provisions in their documents that are designed to protect the Landlord if the Landlord agrees to take on the obligation to give the Tenant's Lender access to its borrower's Collateral. Unfortunately, these provisions give the illusion of protection more than actual protection. For example, a Tenant's Lender might try to have the Tenant pre-approve Landlord giving the Tenant's Lender access. But almost any Tenant or its crafty lawyer can dream up a reason why that consent does not apply in the circumstances presented, which puts the Landlord in the unenviable position of deciding which of two competing legal claims it should honor. The Landlord ought not to be forced to make that legal judgment. Other Tenant Lenders will offer to indemnify the Landlord for the Tenant's claim, but an indemnity is hardly reassuring since, by its nature, it means that the Tenant has sued the Landlord. And indemnities have their own problems with enforcement. Therefore, the better approach is to clarify, as the form attached as Exhibit "C" does, that Landlord will not agree to give the Tenant's Lender access without Tenant's consent.

<u>Exhibit "A" (Tenant's Lender's Form):</u> Lender or its representatives may enter upon the Premises at any time to inspect or remove the Collateral....
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Exhibit “B” (Tenant’s Lender’s Form): The Landlord consents and agrees that the Lender or the Lender’s representatives or agents may enter onto the Premises at any time to inspect the Collateral, or to take possession of or remove any or all of the Collateral from the Premises or to exhibit for sale and/or conduct one or more sales of the Collateral on the Premises, and the Landlord will not in any manner hinder, interfere with, or prevent any of the foregoing.

Exhibit “C” (Landlord’s Form): While the Lease is in effect or while any person or entity is in occupancy of the Demised Premises, Landlord will not give Secured Party access to the Demised Premises. However, if the Lease is terminated and no person or entity is occupying the Demised Premises, Landlord will grant Secured Party access to the Demised Premises in order to remove the Secured Property. Landlord may condition its obligation to grant Secured Party access upon Secured Party delivering to Landlord written consent by Tenant to Landlord granting Secured Party access to the Demised Premises....

2.3 The Landlord, not the Tenant’s Lender, Should Have Control of the Tenant’s Premises.

- a. There Should be a Quick Disposition of the Collateral, on Landlord’s Timetable. Most Tenant Lender forms require the Landlord to allow the Collateral to be left in the premises for extended or unspecified periods of time, as shown in the excerpts from Exhibit “A” and Exhibit “B.” While both of these excerpts require the Tenant’s Lender to pay rent, sometimes the forms do not. And the Tenant’s Lender is not required to cure any other defaults. No Landlord, but particularly not a retail Landlord, can tolerate having its premises used for storage, even if the rent is being paid (and especially if the rent is *not* being paid). As required by the excerpt from Exhibit “C” set forth below, the Tenant’s Lender should be required to remove the Collateral quickly, so that the Landlord can return the premises to its proper use. And the Landlord should have the ability to enforce that obligation by being entitled to remove and dispose of the Collateral if the Lender does not do so within the required time period. The terms of this provision impose obligations on the Tenant’s Lender and therefore, the Tenant’s Lender (called the “Secured Party” in the form) must execute the Landlord’s Subordination Agreement.

Exhibit “A” (Tenant’s Lender’s Form): Landlord will permit Lender to remain on the Premises for a period of up to one hundred eighty (180) days following receipt by Lender of written notice from Landlord that Landlord is in possession and control of the Premises, has terminated the Lease and is directing removal of the Collateral, subject, however, to the payment to Landlord by Lender of the basic rent due under the Lease for the period of occupancy by Lender, pro-rated on per diem basis determined on a 30 day month. Lender’s right to occupy the Premises under the preceding sentence shall be extended for the time period Tenant’s Lender is prohibited from selling the Collateral due to the imposition of the automatic stay by the filing of bankruptcy proceedings by or against any Company. Lender shall not assume nor be liable for any unperformed or unpaid obligations of Borrower under the Lease.

Exhibit “B” (Tenant’s Lender’s Form): The Landlord consents and agrees that the Lender or the Lender’s representatives or agents may enter onto the Premises at any time to inspect the Collateral, or to take possession of or remove any or all of the Collateral from the Premises or to exhibit for sale and/or conduct one or more sales of the Collateral on the Premises, and the Landlord will not in any manner hinder, interfere with, or prevent any of the foregoing. During any possession and occupancy of the Premises by the Lender, the Lender’s obligation to the Landlord shall be limited to the obligation to pay the rental that accrues during such period of possession and occupancy under the terms of the Lease. The Lender shall have no obligation to cure any defaults of the Tenant under the Lease.

Exhibit “C” (Landlord’s Form): Secured Party must remove the Secured Property within 10 days after Landlord delivers notice to Secured Party demanding that removal. Failure to remove the Secured Property within that 10-day period will terminate this subordination and give Landlord the right to remove the Secured Property and dispose of it as Landlord wishes without being obligated in any way to account to Secured Party or to Tenant.

- b. Move Liquidation Sales Off-Site. Most Tenant Lenders want the right to perform auctions at the premises, as shown in the excerpts from Exhibit “A” and Exhibit “B” set forth below. Such an activity is so disruptive that the Landlord ought not to allow it, except in unusual circumstances, such as a truly stand-alone building on its own property. The excerpt from Exhibit “C” below specifically prohibits an on-site auction.

Exhibit “A” (Tenant’s Lender’s Form): Lender or its representatives may enter upon the Premises at any time to inspect or remove the Collateral, and may advertise and conduct public auctions or private sales of the Collateral at the Premises,... Landlord shall not interfere with any sale of the Collateral, by public auction or otherwise, conducted by or on behalf of Lender on the Premises.

Exhibit “B” (Tenant’s Lender’s Form): The Landlord consents and agrees that the Lender or the Lender’s representatives or agents may enter onto the Premises at any time to inspect the Collateral, or to take possession of or remove any or all of the Collateral from the Premises or to exhibit for sale and/or conduct one or more sales of the Collateral on the Premises, and the Landlord will not in any manner hinder, interfere with, or prevent any of the foregoing. During any possession and occupancy of the Premises by the Lender, the Lender’s obligation to the Landlord shall be limited to the obligation to pay the rental that accrues during such period of possession and occupancy under the terms of the Lease. The Lender shall have no obligation to cure any defaults of the Tenant under the Lease.

Exhibit “C” (Landlord’s Form): Secured Party may not conduct an auction or any other sale within the Demised Premises.

- 2.4 The Landlord Should Not Be Involved with the Tenant’s Lender. Many Tenant Lender forms presume that there is an on-going relationship between the Landlord and the Tenant’s Lender or that one may occur in the future. But once the Landlord has subordinated its lien, there are no on-going rights or obligations between the Landlord and the Tenant’s Lender. If the Tenant defaults under its loan, the Tenant’s Lender will foreclose on the personal property, take it away, and never be heard from again. The

Tenant's Lender does not have any claim to the premises and the value of the Landlord's subordinated claims in the Collateral is probably nil. This confusion appears to have arisen because certain other subordination agreements between Landlords, Tenants, and their Lenders contain them. But these agreements, such as SNDAs and Landlord Subordination Agreements for leasehold mortgages, all relate to an interest in real estate, not personal property. In those circumstances, the parties may actually end up having an on-going relationship and so these types of provisions are appropriate. But they are not appropriate for a Landlord's Subordination Agreement for personal property.

- a. The Landlord Should Not Give an Estoppel. Most Tenant Lender forms of Landlord Subordination Agreements contain estoppels, including the two attached as Exhibit "A" and Exhibit "B." But neither purpose for which this language could be used is appropriate and thus estoppels should be deleted. The form Landlord Subordination Agreement attached as Exhibit "C" does not contain any estoppels.
 - (i) One Purpose is as a True Estoppel: The true purpose of an estoppel is to prevent one party rights from asserting fact-based claims against another party unless they disclose those claims. In order for an estoppel to have value, it must prevent the Landlord from making a factual claim that would injure the Tenant's Lender. But that can never happen. The Tenant's Lender doesn't have any rights to the Tenant's premises and their rights against the Collateral are not affected at all by the matters covered by an estoppel.
 - (ii) Another Purpose is as Representations: Alternatively, the "estoppels" may actually constitute representations that impose a lot of liability on the Landlord that it never intended to assume. If at all possible, these types of estoppels should be deleted. If that's not possible, then they should be rendered toothless by the addition of the following sentence, "Landlord is exercising this estoppel for the sole purpose of estopping itself, as to Tenant's Lender only, from claiming that the facts are other than as set forth in this estoppel."

<p><u>Exhibit "B" (Tenant's Lender's Form):</u> A true and correct copy of the Lease is attached hereto as <u>Exhibit A.</u> The Lease is in full force and effect and Landlord is not aware of any existing default under the Lease.</p>

Exhibit “B” (Tenant’s Lender’s Form): The Landlord is the owner of the Premises. The Landlord hereby represents that: (a) the Landlord has not transferred its right, title, or interest in and to the Lease; (b) as of the date hereof a true and correct copy of the Lease is attached hereto as Exhibit B, and except as may be set forth in Exhibit B, the Lease has not been amended, modified, supplemented, or assigned by the Landlord in any manner; (c) the Lease is in full force and effect; (d) all amounts due to the Landlord under the terms of the Lease have been paid in full through and including _____; (e) to the Landlord’s knowledge, the Landlord is not in default under the terms of the Lease; and (f) the Landlord has not issued any notice of an event of default under the Lease.

Exhibit “C” (Landlord’s Form): No estoppel language at all.

- b. The Tenant’s Lender Should Not Have any Notice or Cure Rights. Many Tenant Lender forms, such as those attached as Exhibit “A” and Exhibit “B,” obligate the Landlord to give the Tenant’s Lender notice of the Tenant’s default under the Lease and some, such as the form attached as Exhibit “A,” give the Tenant’s Lender a time period in which to cure the default. But no Tenant’s Lender would pay the rent or cure the default since they do not have any right to the Tenant’s premises. They might want to know if anything is going poorly with their borrower, but their own payment history should tell them that and the Landlord should not accept the liability that might arise from its failure to send the notice to the Tenant’s Lender. The Landlord receives nothing of value in a subordination and should not be burdened by this obligation. Therefore, the Landlord should resist accepting this obligation, which is why the form attached as Exhibit “C” does not include it.

Exhibit “A” (Tenant’s Lender’s Form): Landlord agrees to provide Lender with written notice of any default or claimed default by Borrower under the Lease, and prior to the termination of the Lease, to permit Lender the same opportunity to cure or cause to be cured such default as is granted Borrower under the Lease, provided, however that Lender shall have at least ten (10) days following receipt of said notice to cure such default.

Exhibit “B” (Tenant’s Lender’s Form): The Landlord shall promptly notify the Lender at the address for the Lender set forth herein of the giving or delivering of any notice or demand to the Tenant in connection with any default by the Tenant, or the retaking of possession, or giving of notice or the commencement of any action to retake possession, of the Premises, whether by judicial process or otherwise.

Exhibit “C” (Landlord’s Form): No notice or cure right at all.

- c. The Tenant’s Lender Should Not Have the Right to Operate in the Premises. Although such a provision is less common than the others discussed in this paper, some Tenant Lender forms give the Tenant’s Lender the right to operate in the Tenant’s premises. This provision is commonly found in a Landlord Subordination Agreement for a *leasehold mortgage* because the security for a leasehold mortgage is the Tenant’s leasehold estate. It is not appropriate in a Landlord’s Subordination Agreement for *personal property*. It should always be

deleted. And because enough Tenant Lenders believe that such a right is automatically granted when a Landlord subordinates its lien, the Landlord should affirmatively state that such a right is not part of the Landlord's Subordination Agreement and that Landlord will not permit the Tenant's Lender to operate the Tenant's business in the premises. This provision is found in Exhibit "C," as shown in the excerpt below.

(Tenant's Lender's Form, not attached): Landlord hereby agrees that Lender or the receiver appointed under subparagraph (B) above has the right to enter and take possession of the Leasehold, to manage and operate the same, to collect the subrentals, issues and profits therefrom and any other income generated by the Leasehold or the operation thereof and to cure any default under the Leasehold Mortgage or any default by Tenant under the Lease.

Exhibit "C" (Landlord's Form): Secured Party may not assign the Lease or allow any other person or entity to operate within the Demised Premises.

- d. The Tenant's Lender Should Not Have the Right to Assign the Tenant's Interest in the Lease. Another provision sometimes found in Tenant Lender forms gives the Tenant's Lender the right to assign the Tenant's Lease. As with the right to operate, some Tenant Lenders believe that such a right is automatically granted when a Landlord subordinates its lien. Again, this provision is not appropriate for a Landlord Subordination Agreement for *personal property*. The Tenant's Lender simply does not have that kind of interest in the Tenant's premises. In order to avoid claims in the future that that it is "part" of subordination, the Landlord should specifically state that it is not allowed, which is provided for in Exhibit "C," as shown in the excerpt below.

(Tenant's Lender's Form, not attached): Notwithstanding anything stated to the contrary in the Lease, the following transfer is permitted and does not require the approval or consent of Landlord: Any subsequent transfer by Lender or its nominee or designee if Lender, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure. Any such transferee shall be liable to perform the obligations of Tenant under the Lease only so long as transferee expressly assumes and agrees to perform all of the obligations under the Lease; provided further, that the liability of any Lender that obtains title to the Leasehold shall be limited to Lender's interest in the Leasehold. Following the transfer, if any, described in Paragraph 7(e)(i) above, all non-curable defaults existing under the Lease prior to such transfer shall be deemed waived without further notice or action of any party.

Exhibit "C" (Landlord's Form): Secured Party may not assign the Lease or allow any other person or entity to operate within the Demised Premises.

EXHIBIT "A"

LANDLORD'S WAIVER AND CONSENT

NAME OF RECORD OWNER OF REAL PROPERTY: _____ ("Landlord")

ADDRESS OF REAL PROPERTY: _____ (the "Premises")

WHEREAS, Landlord is the owner of the Premises, and represents that Landlord has or is about to enter into a lease transaction (the "Lease") with _____ ("Borrower") pursuant to which Borrower has or will acquire a leasehold interest in all or a portion of the Premises; and

WHEREAS, _____ ("Lender") has or is about to enter into a financing transaction with Borrower and related companies (collectively with Borrower, individually and collectively, the "Company"); to secure such financing, each Company has granted to Lender a security interest and lien in the tangible and intangible personal property of such Company, including, without limitation, goods, inventory, machinery and equipment, together with all additions, substitutions, replacements and improvements to, and the products and proceeds of the foregoing (collectively, the "Collateral"); and

WHEREAS, all or a portion of the Collateral may from time to time be located at the Premises or may become wholly or partially affixed to the Premises;

NOW THEREFORE, in consideration of any financial accommodation extended by Lender to Company at any time, and other good and valuable consideration the receipt and sufficiency of which Landlord hereby acknowledges, Landlord hereby agrees as follows:

1. A true and correct copy of the Lease is attached hereto as Exhibit A. The Lease is in full force and effect and Landlord is not aware of any existing default under the Lease.

2. The Collateral may be stored, utilized and/or installed at the Premises and shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property, whether or not any of the Collateral becomes so related to the real estate that an interest therein arises under real estate law.

3. Until such time as the obligations of Company to Lender are paid in full, Landlord disclaims any interest in the Collateral, and agrees not to distraint or levy upon any of the Collateral or to assert any claim against the Collateral for any reason.

4. Lender or its representatives may enter upon the Premises at any time to inspect or remove the Collateral, and may advertise and conduct public auctions or private sales of the Collateral at the Premises, in each case without liability of Lender to Landlord; provided however, that Lender shall promptly repair, at Lender's expense, any physical damage to the Premises actually caused by said removal by Lender. Lender shall not be liable for any diminution in value of the Premises caused by the absence of Collateral actually removed or by any necessity of replacing the Collateral.

5. Landlord shall not interfere with any sale of the Collateral, by public auction or otherwise, conducted by or on behalf of Lender on the Premises.

6. Landlord agrees to provide Lender with written notice of any default or claimed default by Borrower under the Lease, and prior to the termination of the Lease, to permit Lender the same opportunity to cure or cause to be cured such default as is granted Borrower under the Lease, provided, however that Lender shall have at least ten (10) days following receipt of said notice to cure such default. Landlord will permit Lender to remain on the Premises for a period of up to one hundred eighty (180) days following receipt by Lender of written notice from Landlord that Landlord is in possession and control of the Premises, has terminated the Lease and is directing removal of the Collateral, subject, however, to the payment to Landlord by Lender of the basic rent due under the Lease for the period of occupancy by Lender, pro-rated on per diem basis determined on a 30 day month. Lender's right to occupy the Premises under the preceding sentence shall be extended for the time period Lender is prohibited from selling the Collateral due to the imposition of the automatic stay by the filing of bankruptcy proceedings by or against any Company. Lender shall not assume nor be liable for any unperformed or unpaid obligations of Borrower under the Lease.

7. This waiver shall inure to the benefit of Lender, its successors and assigns and shall be binding upon Landlord, its heirs, assigns, representatives and successors. Landlord agrees and consents to the filing of this document for recording on the Land Records.

8. All notices to Lender hereunder shall be in writing, sent by certified mail, and shall be addressed to Lender at the following address: _____, _____, Attention: _____.

Dated this ____ day of _____, 200__.

Witnessed By:

LANDLORD: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____)
: ss.:
COUNTY OF _____)

On the _____ day of _____, 200__, before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he is the _____ of _____, the corporation and landlord described in and which executed the above instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

Notary Public

“Tenant” means _____, a _____, and its successors and assigns.

FOR VALUE RECEIVED, the Landlord hereby represents, covenants, and agrees as follows:

1. The Landlord is the owner of the Premises. The Landlord hereby represents that: (a) the Landlord has not transferred its right, title, or interest in and to the Lease; (b) as of the date hereof a true and correct copy of the Lease is attached hereto as Exhibit B, and except as may be set forth in Exhibit B, the Lease has not been amended, modified, supplemented, or assigned by the Landlord in any manner; (c) the Lease is in full force and effect; (d) all amounts due to the Landlord under the terms of the Lease have been paid in full through and including _____; (e) to the Landlord’s knowledge, the Landlord is not in default under the terms of the Lease; and (f) the Landlord has not issued any notice of an event of default under the Lease.

2. The Tenant is occupying the Premises under the Lease. As of the date hereof, the Tenant is not in default under the Lease, and to the Landlord’s knowledge no event or circumstance has occurred which, with the giving of notice or lapse of time or both, would constitute a default under the Lease.

3. The Lender hereby notifies the Landlord, and the Landlord hereby acknowledges, that the Tenant has granted to the Lender a continuing security interest, collateral assignment, and lien in and to the Collateral.

4. The Landlord hereby expressly waives and disclaims any and all rights, if any, to maintain or enforce any landlord’s lien, whether statutory, contractual, or otherwise, or any other liens or claims which the Landlord now has or may hereafter have against the Collateral, or any interest therein, and hereby releases the Collateral from any and all sales, process, levy, execution, garnishment, attachment, judgment, or distraint and lien, whether given by operation of law, by the Lease, or by other agreement, for rent due or to become due, and for any and all other claims or demands, present or future, which the Landlord may have therein.

5. The Landlord consents and agrees that the Lender or the Lender’s representatives or agents may enter onto the Premises at any time to inspect the Collateral, or to take possession of or remove any or all of the Collateral from the Premises or to exhibit for sale and/or conduct one or more sales of the Collateral on the Premises, and the Landlord will not in any manner hinder, interfere with, or prevent any of the foregoing. During any possession and occupancy of the Premises by the Lender, the Lender’s obligation to the Landlord shall be limited to the obligation to pay the rental that accrues during such period of possession and occupancy under the terms of the Lease. The Lender shall have no obligation to cure any defaults of the Tenant under the Lease.

6. If at any time, from time to time, the Landlord ever comes into possession or control of any proceeds of any of the Collateral, such proceeds shall be held by the Landlord for

the benefit of the Lender, to the extent of the Lender's interest therein on behalf of the Lenders and the same shall forthwith be paid and delivered to the Lender.

7. The Landlord shall promptly notify the Lender at the address for the Lender set forth herein of the giving or delivering of any notice or demand to the Tenant in connection with any default by the Tenant, or the retaking of possession, or giving of notice or the commencement of any action to retake possession, of the Premises, whether by judicial process or otherwise. After any retaking of possession of the Premises (or any part thereof) by the Landlord, the Landlord shall store, maintain, and protect any Collateral then remaining on or about the Premises. In the event the Lender has not removed the Collateral from the Premises within 60 days (plus one additional day for each day during such 60 day period during which the Lender is denied access to the Premises as a result of the filing of a petition in bankruptcy, an act of God, or any other event beyond the reasonable control of the Lender) after the Lender receives written notice of the Landlord's retaking of possession of the Premises, the Lender shall reimburse the Landlord for the reasonable costs thereafter incurred by the Landlord in storing, maintaining, and protecting such Collateral. The address for notice to the Lender is as follows:

Mailing address: _____

Attention: _____
Telecopy number: _____

with a copy to: _____

Attention: _____
Telecopy number: _____

8. The Landlord acknowledges that the Lender shall rely on the representations and agreements of the Landlord herein.

9. This Landlord's Waiver and Consent shall be binding upon the Landlord and its successors and assigns, and shall inure to the benefit of the Lender and its successors and assigns.

[Remainder of page intentionally left blank]

EXECUTED this ____ day of _____, 2005.

Address for the Landlord:

THE LANDLORD:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said _____, and executed for the purposes and consideration therein expressed and in the capacity therein stated.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My Commission Expires:

EXHIBIT "C"

SUBORDINATION OF LANDLORD'S LIEN

This Subordination Agreement is executed effective the _____ day of _____, 20__, by and between Landlord (as defined below) and Secured Party (as defined below).

DEFINITIONS:

"Landlord": _____

Landlord's address: _____

"Secured Party": _____

Secured Party's address: _____

"Tenant": _____

Tenant's address: _____

Tenant's trade name: _____

"Lease": Shopping Center Lease by and between Landlord and Tenant, as amended.

"Demised Premises": Suite _____ in _____ Shopping Center (hereinafter referred to as the "Shopping Center") in the City of _____, _____ County, Texas.

"Secured Indebtedness": \$ _____ due from Tenant to Secured Party.

"Secured Property": All items described on Schedule 1, but excluding all items described on Schedule 2.

"Security Agreement": Instrument executed by Tenant pledging the Secured Property to Secured Party to secure the Secured Indebtedness and for no other purpose.

AGREEMENTS:

1. Landlord subordinates Landlord’s lien on the Secured Property to the lien of the Secured Party, but only to the extent of the Secured Indebtedness. Landlord does not subordinate its lien on the items described on Schedule 2. Landlord's subordination will not be deemed applicable to, and will terminate upon, any refinancing or extension of the Secured Indebtedness or additional financing without Landlord's prior written consent. This subordination does not apply to any judgment lien to which Landlord may become entitled.

2. While the Lease is in effect or while any person or entity is in occupancy of the Demised Premises, Landlord will not give Secured Party access to the Demised Premises. However, if the Lease is terminated and no person or entity is occupying the Demised Premises, Landlord will grant Secured Party access to the Demised Premises in order to remove the Secured Property. Landlord may condition its obligation to grant Secured Party access upon Secured Party delivering to Landlord written consent by Tenant to Landlord granting Secured Party access to the Demised Premises and to Secured Party’s removal of the Secured Property from the Demised Premises. Secured Party may not enter the Demised Premises for any other purpose. Specifically, but not in limitation, Secured Party may not enter the Demised Premises to operate within the Demised Premises, Secured Party may not assign the Lease or allow any other person or entity to operate within the Demised Premises, and Secured Party may not conduct an auction or any other sale within the Demised Premises.

3. Secured Party must remove the Secured Property within 10 days after Landlord delivers notice to Secured Party demanding that removal. Failure to remove the Secured Property within that 10-day period will terminate this subordination and give Landlord the right to remove the Secured Property and dispose of it as Landlord wishes without being obligated in any way to account to Secured Party or to Tenant.

4. Before Secured Party will be entitled to enter the Demised Premises, Secured Party must deposit with Landlord an amount equal to Landlord’s estimate of the cost to repair any damage to the Demised Premises arising from the removal of the Secured Property, although that deposit will only be an estimate and Secured Party will be liable for all repairs resulting from that removal.

5. This Subordination of Landlord’s Lien is not valid unless signed by both Landlord and Secured Party within 30 days of each other.

LANDLORD

By: _____
Name: _____
Title: _____
Date of Signature: _____

SECURED PARTY

By: _____

Name: _____

Title: _____

Date of Signature: _____

NOT VALID UNLESS SCHEDULES 1 & 2 ARE ATTACHED.