

Financing Considerations for Lease Negotiations

- I. General considerations
 - A. Landlord perspective
 - 1. Retain control of Premises
 - 2. Do not concede more than is set forth in Lease
 - 3. Maintain income stream
 - B. Tenant perspective
 - 1. Flexibility to obtain financing (for improvements or otherwise)
 - 2. Preserve rights under Lease in the event of foreclosure
 - C. Lender perspective
 - 1. Ability to remove collateral (in connection with equipment loans)
 - 2. Attornment by Tenant in connection with assumption of lease
 - 3. General concerns in the event of assumption of lease by Lender
- II. Landlord Waivers and Consents in Connection with Tenant Financing
- III. Subordination, Non-Disturbance and Attornment Agreements
- IV. Financing Issues from Lender's Perspective

Landlord Waivers and Consents – Tenant Financing

- I. Who requires Landlord to waive its right to collateral?
 - A. Equipment Lender
 1. Most common with “Mom and Pop” Tenants who need funds to finance equipment in Premises
 2. Courtesy to Tenant by Landlord
- II. What lien right does Landlord have to collateral anyway?
- III. Form of Landlord Waiver [*Attachment 1*]
 - A. Subordination of Landlord’s Lien
 1. Affixed collateral – any different?
 - a. Readily detached without material damage to Premises
 2. Does not apply to collateral that becomes real property
 - B. Removal of Collateral by Lender (License to enter Premises)
 1. Landlord’s concerns
 - a. Reasonable notice and at reasonable times
 - b. Lender to demonstrate legal right to take possession of collateral
 - c. Lender to repair damage caused by removal
 - d. Lender to indemnify, defend and hold harmless Landlord from any claims in connection with Lender’s exercise of rights under Waiver
 - (i) Personal injury and/or property damage
 - (ii) Alleged right in or to the collateral
 - C. Termination/Expiration of License
 1. Earlier of (i) 30 days after termination of Tenant’s right of possession of Premises, or (ii) the last date for claiming abandoned personal property under applicable code after notice to Lender
 2. Upon termination Landlord may remove and store collateral at Lender’s expense

- a. Should Lender be required to pay for storage of collateral?
- D. Notice to Lender of Termination of Lease on Account of Tenant Default
 - 1. “Endeavor” to deliver notice to Lender (Lender will definitely want notice)
- E. Tenant Consent
 - 1. No liability to Landlord
 - 2. No duty of Landlord to inquire as to validity of Lender’s right, title or interest in collateral

Subordination, Non-Disturbance and Attornment Agreements

- I. What is an SNDA?
 - A. Subordination, Non-Disturbance and Attornment Agreement [*Attachment 2*]
 - 1. Rearranges the order of priority between Lease and Deed of Trust/Mortgage
 - 2. Lender can provide that its rights under its Deed of Trust/Mortgage are prior to the Lease (**subordination**)
 - 3. Tenant's lease is preserved (Lender receives rents as net cash flow and Tenant keeps its Lease) (**non-disturbance**)
 - 4. Creates privity between Lender and Tenant (Tenant recognizes Lender as successor-in-interest to Landlord) (**attornment**)
 - B. Landlord's/Borrower's Role
 - 1. Facilitate negotiations between Lender and Tenant
- II. Lender's Concerns
 - A. Tenant's attornment to Lender if Lender forecloses
 - 1. What is "attornment" – Tenant's agreement to recognize a third party (usually a Lender who has foreclosed) as a permissible successor-in-interest to the Landlord under the Lease
 - B. Use of Premises in compliance with applicable environmental law
 - 1. Lender usually imposes this requirement in loan documents
 - C. Lender not bound by obligations or defaults of prior landlord
 - D. Lender not obligated to construct improvements
 - E. Lender not responsible for security deposits and/or prepaid rent that have not been received by Lender
 - F. Lease cannot be amended, terminated, assigned, or supplemented without Lender's consent
 - G. No right of first refusal triggered if Lender forecloses
 - 1. Any options to purchase subordinate to Deed of Trust/Mortgage

- H. Receipt of notice of default under Lease and time to cure
- III. Tenant's Concerns
- A. Lease will not be affected or wiped out if there is a foreclosure (so long as Tenant is not in default)
 - B. Tenant can look to Lender if the prior Landlord defaults
 - C. Tenant can look to Lender for continuing obligations on the part of Landlord
- IV. Hot Buttons – Heavily Negotiated Provisions
- A. Only material terms cannot be amended or modified without Lender's prior written consent
 - B. What obligations is Lender responsible for if it takes ownership of the Premises
 - C. Lender being responsible for defaults of prior Landlord
 - 1. Tenant exercising rights of offset from prior Landlord against Lender
 - D. Insurance and condemnation proceeds to be handled according to Lease instead of Deed of Trust/Mortgage
 - E. Lender's obligations limited solely to Lender's rights to the Premises
 - F. Amount of time for Lender to cure
 - G. Recordation of SNDA

Financing Issues

- I. Lender making loan which is secured by Project/Leases
 - A. Make sure Key Provisions negotiated in Landlord's favor
- II. Key provisions
 - A. Unaffected rental stream (used to pay down loan)
 - 1. Rights of Tenant to withhold rent/offset
 - 2. Ability of Tenant to pay modified rent
 - a. Violations of Co-Tenancy provisions/Exclusive Use provisions
 - B. Tenant termination rights (ultimate impact on rental stream)
 - 1. Early termination rights (for a particular reason or for no reason)
 - a. Kick-out rights
 - 2. Violations of Co-Tenancy provisions/Exclusive Use provisions
 - 3. Other termination rights
 - C. Condemnation/Casualty
 - 1. Who gets proceeds?
 - 2. Is there an obligation to rebuild?
 - D. Others

Attachment 1

LANDLORD WAIVER

THIS LANDLORD WAIVER (this "Landlord Waiver") is made and entered into as of the ___ day of _____, 20___, by and among _____ ("Landlord"), _____, a _____ ("Lender"), and _____, a _____ ("Tenant").

RECITALS

A. Landlord and Tenant have entered or will enter into that certain Lease (the "Lease") dated as of _____, 20___, for certain "Premises" (as more particularly described in the Lease).

B. Lender has made or is about to make one or more loans, advances and/or other financial accommodations (collectively, the "Financing") to Tenant to be secured in whole or in part by security agreements granting a lien or security interest (the "Security Interest") covering, among other things, items of the tangible personal property of Tenant which may be kept and/or installed at the Premises (the "Collateral").

C. As a courtesy to Tenant, Landlord is willing to facilitate the Financing by agreeing to subordinate some or all of its interest, if any, in the Collateral, subject to the terms and conditions herein.

NOW, THEREFORE, subject to all the terms and conditions herein, Landlord, Lender and Tenant agree as follows:

AGREEMENT

1. Subordination of Landlord Liens. To the extent that Lender obtains a valid and perfected security interest in the Collateral, Landlord hereby subordinates all right, title and interest Landlord may have or obtain in the Collateral pursuant to the Lease or other agreements to the Financing and to the Security Interest; provided, however, that this subordination shall not extend to any portion of the Collateral which is or becomes affixed to the Premises, unless the affixed Collateral can be readily detached and removed from the Premises without material damage to the Premises; and provided, further, that this subordination shall not extend to any portion of the Collateral which is or becomes real property, or is or becomes regarded as part of the Premises in accordance with the customs or practices of the marketplace or by operation of law.

2. Removal of Collateral by Lender. Subject to the terms and conditions hereof, and subject to the rights of Tenant and other authorized occupants of the Premises and associated common areas, Lender is hereby granted a limited license (the "License") to enter the Premises, at reasonable times and upon reasonable advance written notice to Landlord, solely for the purpose of removing the Collateral from the Premises. Prior to exercising its rights under this License, upon Landlord's request, Lender shall demonstrate, to Landlord's reasonable

satisfaction, that Lender has the legal right to take possession of the Collateral. Lender shall repair any damage to the Premises arising out of or relating to its acts or omissions in connection with the exercise or attempted exercise of its rights under this License. Lender shall indemnify, defend and hold harmless Landlord from and against any and all claims, demands, causes of action, or liabilities arising from or relating to the acts or omissions of Lender in connection with the exercise or attempted exercise of its rights under this License, which may be asserted by or incurred in favor of any person or entity (including, without limitation, Tenant), including, without limitation, claims, demands, causes of action, or liabilities (a) for personal injury or property damage, and/or (b) relating to any alleged right, title or interest in or to the Collateral.

3. Termination of License. The License granted to Lender herein shall terminate and expire upon the earlier to occur of the following: (a) thirty (30) days written notice of the lawful termination of Tenant's right of possession of the Premises by reason of passage of time, new agreement between Landlord and Tenant, default by Tenant under the Lease, or any other reason; or (b) the last date for claiming abandoned personal property set forth in any statutory notice of abandonment of personal property which is delivered to Lender. Upon termination or expiration of the License, Landlord may, at its option, remove the Collateral from the Premises and store the Collateral. Such removal and storage shall be at Lender's sole cost and expense, and Lender shall reimburse Landlord for such expense within ten (10) days of Lender's receipt of documentation therefor. Landlord shall not be liable for any damages, losses or claims resulting from the removal and storage of the Collateral.

4. Notice to Lender of Termination of Lease on Account of Tenant Default. As a courtesy to Lender, in the event Landlord terminates the Lease on account of a default by Tenant, Landlord shall endeavor to deliver a prompt notice of the termination to Lender. However, Landlord shall not have any liability for failure or delay in delivery of such notice.

5. Obligations of Landlord. Except as expressly provided herein, Landlord shall not have any duties or obligations to Lender with respect to the Premises, the Lease, or the Collateral. Lender shall not be a third party beneficiary with respect to the Lease. Any exercise by Lender of its rights under the License shall be solely at its own risk.

6. Assigns. This Landlord Waiver shall be binding upon, and shall inure to the benefit of, the successors and assigns of Lender and Tenant with respect to the Financing, and the successors and assigns of Landlord and Tenant with respect to the Lease.

7. Tenant Consent. Tenant consents to this Landlord Waiver, to the granting of the License to Lender, and to the exercise by Lender of its rights hereunder. Landlord shall not have any liability to Tenant arising out of or relating to the acts or omissions of Lender in connection with the exercise by Lender of its rights hereunder. Landlord shall not have any duty to inquire as to the validity of Lender's right, title or interest in the Collateral, or as to the authority of any person who purports to act on behalf of Lender.

8. Notices. Notices hereunder shall be effective when actually received, or on the date of attempted delivery, when delivered to the addresses set forth below, or to any other notice address specified in a notice delivered in accordance with this Section.

to Landlord:

to Lender:

to Tenant:

Actual receipt or attempted delivery may be evidenced by a U.S. Post Office return receipt, by the records of the Post Office or any delivery service, or by any other credible evidence.

9. Attorneys' Fees. In the event any party(ies) to this Landlord Waiver shall institute any action or proceeding against the other party(ies) relating to this Landlord Waiver, the unsuccessful party(ies) in such action or proceeding shall reimburse the successful party(ies) for its(their) disbursements incurred in connection therewith and for its(their) reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party(ies), the successful party(ies) in any lawsuit on this Landlord Waiver shall be entitled to its(their) attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Landlord Waiver into any judgment on this Landlord Waiver.

10. This Landlord Waiver shall be governed by, and construed in accordance with, the internal laws of the State of California, without reference to the conflicts of laws principles of the State of California.

11. This Landlord Waiver may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Landlord Waiver as of the date first written above.

LANDLORD:

TENANT:

_____,
a _____

_____,
a _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

LENDER:

_____,
a _____

By: _____

Print Name: _____

Its: _____

Attachment 2

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
)
)
)
)
)
)
)
) Space above for Recorder's Use

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is entered into as of the ___ day of ___, 20___, by and among ___ ("Tenant"), ___ ("Borrower") and ___ ("Bank").

Factual Background

- A. Borrower is the owner of certain real property located in the City of ___, County of ___, State of ___, commonly known as ___, and more particularly described in the attached Exhibit A. As used here, the term "Property" means that real property, together with all improvements (the "Improvements") located on it.
B. Bank has made, or will make, a loan to Borrower in the principal amount of ___ (\$___) (the "Loan"), as provided in that certain Credit Agreement dated ___, 20___, as amended, restated or supplemented from time to time (the "Loan Agreement"). The Loan is or is to be evidenced by a promissory note (the "Note") which is or is to be secured by a deed of trust encumbering the Property (the "Deed of Trust"). The Loan Agreement, the Note, the Deed of Trust, and all other documents and instruments identified in the Loan Agreement as "Loan Documents," including this Agreement, shall be collectively referred to here as the "Loan Documents."
C. Tenant and Borrower (as Landlord) entered into a lease dated ___, ___ (the "Lease"), under which Borrower leased to Tenant a portion of the Improvements located within the Property, commonly known as ___, and more particularly described in the Lease (the "Premises").

D. Bank is willing to make or continue the Loan to Borrower, provided that Tenant agrees, among other things, to subordinate Tenant's rights under the Lease to the lien or charge of the Loan Documents and to attorn to Bank on the terms and conditions of this Agreement. Tenant is willing to agree to such subordination and attornment and other conditions, provided that Bank agrees not to disturb Tenant's possession under the Lease, all as set forth more fully below.

Agreement

Therefore, the parties agree as follows:

1. Subordination. The Loan Documents, and all supplements, amendments, modifications, renewals, replacements and extensions of and to them, shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of Tenant under it. That Lease and leasehold estate, together with all rights and privileges of Tenant under that Lease, are hereby unconditionally subjected and made subordinate to the lien or charge of the Loan Documents in favor of Bank. Tenant consents to Borrower's and Bank's entering into the Deed of Trust and the other Loan Documents. Tenant further declares, agrees and acknowledges that, in making disbursements under the Loan Documents, Bank has no obligation or duty to, nor has Bank represented that it will, see to the application of such proceeds by the person or persons to whom they are disbursed by Bank, and any application or use of such proceeds for purposes other than those provided for in the Loan Documents shall not defeat the subordination made in this Agreement, in whole or in part.

2. Definitions of "Transfer of the Property" and "Purchaser." As used here, the term "Transfer of the Property" means any transfer of Borrower's interest in the Property by foreclosure, trustee's sale or other action or proceeding for the enforcement of the Deed of Trust or by deed in lieu thereof. The term "Purchaser," as used here, means any transferee, including Bank, of the interest of Borrower as a result of any such Transfer of the Property, and also includes any and all successors and assigns, including Bank, of such transferee.

3. Nondisturbance. So long as Tenant is not in default in the performance of the terms, provisions and conditions contained in the Lease and so long as Tenant observes the provisions of this Agreement:

(a) Tenant shall not be named or joined in any foreclosure, trustee's sale or other proceeding to enforce the Deed of Trust unless the joinder is required by law in order to perfect such foreclosure, trustee's sale or other proceeding;

(b) The enforcement of the Deed of Trust shall not terminate the Lease or disturb Tenant in the possession and use of the Premises; and

(c) The leasehold estate granted by the Lease shall not be affected in any manner by any Transfer of the Property or any other proceeding instituted or action taken under or in connection with the Deed of Trust, or by Bank's taking possession of the Property or the Premises in accordance with any provision of the Deed of Trust; provided that Bank, if it

becomes the Purchaser or if it takes possession under the Deed of Trust, and any other Purchaser shall not:

- (i) be liable for any damages or other relief attributable to any act or omission of any prior landlord under the Lease (including Borrower);
- (ii) be liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property;
- (iii) be liable for any consequential damages attributable to any act or omission of Purchaser;
- (iv) be liable for any damage or other relief attributable to any breach of any representation or warranty contained in the Lease by Purchaser or any prior landlord under the Lease;
- (v) be subject to any offsets or defense not specifically provided for in the Lease and which Tenant may have against any prior landlord under the Lease;
- (vi) be liable for any unfunded tenant improvement allowance; or
- (vii) be bound by any prepayment by Tenant of more than one month's installment of rent or for any security deposit not actually delivered to Purchaser or by any modification or amendment of or to the Lease unless the prepayment, amendment or modification shall have been approved in writing by Bank or by any subsequent beneficiary under the Deed of Trust.

4. Attornment. If any Transfer of the Property should occur, and if Tenant is not in default under the Lease, Purchaser shall be bound to Tenant and Tenant shall be bound to Purchaser under all of the terms, covenants and conditions of the Lease (except as provided in Section 6 below) for the balance of the Lease term and any extensions or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Lease, all with the same force and effect as if Purchaser had been the original landlord under the Lease. Tenant does hereby attorn to Purchaser, including Bank if it should become the Purchaser, as the landlord under the Lease. This attornment shall be effective and self-operative without the execution of any further instruments, upon Purchaser's succeeding to the interest of the landlord under the Lease.

5. Tenant's Waiver of Option Rights. In the event of any Transfer of the Property, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any option which remains unexercised at the time of such transfer, to:

- (a) purchase the Premises or the Property, or any interest or portion in or of either of them; or
- (b) expand into other space in the Improvements.

The foregoing waiver does not apply to any option to extend or renew the Lease term which is set forth in the Lease as of the date of this Agreement; Tenant does not waive any right to exercise any such option following a Transfer of the Property. If, after the date of this Agreement, Tenant acquires any purchase option, option to expand into other space in the Improvements, or option to extend or renew the term of the Lease, Tenant agrees that such option shall be subject and subordinate to the lien or charge of the Loan Documents and shall be null and void upon any Transfer of the Property.

6. Lease Following Transfer. Upon Bank's written request following any such Transfer of the Property, Tenant agrees to execute a new lease of the Premises with Purchaser for the remaining term of the Lease, upon the same terms and conditions as are set forth in the Lease between Borrower and Tenant.

7. Default By Borrower. In the event of a default by Borrower in its performance of the terms, provisions and conditions of the Loan Documents, Borrower directs Tenant and Tenant agrees to recognize the assignment of rents made by Borrower to Bank in the Deed of Trust, and to pay to Bank as assignee all rents due under the Lease, upon Tenant's receipt of written notice from Bank that Borrower is in default under the terms of the Loan Documents. Borrower hereby authorizes Tenant to accept such direction from Bank and waives all claims against Tenant for any sums so paid at Bank's direction. Such payments of rents by Tenant to Bank by reason of that assignment and of Borrower's default shall continue until the first to occur of the following:

- (a) No further rent is due or payable under the Lease;
- (b) Bank gives Tenant notice that the default of Borrower under the Loan Documents has been cured and instructs Tenant that the rents shall thereafter be payable to Borrower; or
- (c) A Transfer of the Property occurs and Purchaser gives Tenant notice of such transfer. Purchaser shall thereupon succeed to the interest of Borrower under the Lease as provided in Sections 3 and 4 above, after which time the rents and other benefits of Borrower under the Lease shall be payable to Purchaser as the owner of them.

8. Limitation on Bank's Performance. Nothing in this Agreement shall be deemed or construed to be an agreement by Bank to perform any covenant of Borrower as landlord under the Lease unless and until Bank obtains title to the Property as Purchaser or obtains possession of the Property under the terms of the Deed of Trust, and then only during the time when Bank holds title to the Property.

9. Tenant's Covenants. Tenant agrees that during the term of the Lease, without Bank's prior written consent, Tenant shall not:

- (a) pay any rent or additional rent more than one month in advance to any landlord (including Borrower); or
- (b) cancel, terminate or surrender the Lease, except at the normal expiration of the Lease term; or

- (c) enter into any amendment, modification or other agreement relating to the Lease;
- or
- (d) assign or sublet any portion of the Lease or the Premises, except as expressly provided in the Lease.

10. No Merger. Borrower, Tenant and Bank agree that unless Bank shall otherwise consent in writing, Borrower's estate in and to the Property and the leasehold estate created by the Lease shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Borrower or Tenant or any third party by purchase, assignment or otherwise.

11. Notices of Default; Material Notices. Tenant, from and after the date of this Agreement, shall send a copy of any notice of default or similar statement under the Lease to Bank at the same time such notice or statement is sent to Borrower under the Lease. Borrower and Tenant shall send copies of all material notices given under the Lease to Bank. Such notices shall be delivered to Bank in the manner and at the addresses set forth below.

12. Limitation on Liability. Regardless of anything in the Lease or this Agreement to the contrary, no Purchaser who acquires title to the Property shall have any obligation or liability beyond its interest in the Property. Tenant shall look exclusively to Purchaser's interest in the Property for payment and discharge of any of Purchaser's obligations under this Agreement or under the Lease. Tenant shall not collect or attempt to collect any judgment based upon such obligations out of any other assets of Purchaser. By executing this Agreement, Borrower specifically acknowledges and agrees that nothing contained in this Section shall impair, affect, lessen, abrogate or otherwise modify the obligations of Borrower to Tenant under the Lease.

13. Bank's Rights to Cure Default. In the event of any act or omission by Borrower which would give Tenant the right to terminate the Lease or to claim a partial or total eviction, Tenant shall not exercise any such right or make any such claim until it has given Bank written notice of such act or omission and has given Bank either thirty (30) days to cure the default, if the default is monetary, or a reasonable time for Bank to obtain possession of the Property and cure the default, if the default is nonmonetary. Nothing in this Agreement shall, however, be construed as a promise or undertaking by Bank to cure any default of Borrower's.

14. Integration. This Agreement integrates all of the terms and conditions of the parties' agreement regarding the subjection and subordination of the Lease and the leasehold estate created by it, together with all rights and privileges of Tenant under it, to the lien or charge of the Loan Documents. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to such subjection and subordination (only to such extent, however, as would affect the priority between the Lease and the Loan Documents), including any provisions of the Lease which provide for the subjection or subordination of the Lease and the leasehold estate thereby created to a deed or deeds of trust or to a mortgage or mortgages. This Agreement is intended by the parties as the final expression of the agreement, and as the complete and exclusive statement of the terms agreed to by the parties, with respect to such subordination and subjection, to the extent specified in the foregoing sentence. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any of the Loan Documents, the terms, conditions and

provisions of the Loan Documents shall prevail. This Agreement may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

15. Notices. All notices given under this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier, or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt or when proper delivery is refused. Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Borrower shall be effective service on Borrower for all purposes.

To Bank: _____

To Borrower: _____

To Tenant: _____

16. Reference; Arbitration. Any controversy or claim between or among the parties which arises out of or relates to this Agreement, including any claim based on or arising from an alleged tort, shall be determined by reference or arbitration as provided in the Loan Documents.

17. Attorneys' Fees. If any lawsuit, reference or arbitration is commenced which arises out of or relates to this Agreement, the prevailing party shall be entitled to recover from each other party such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees in the action, reference or arbitration, including the allocated costs for services of in-house counsel, in addition to costs and expenses otherwise allowed by law.

18. Miscellaneous Provisions. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. This Agreement is governed by the laws of the State of California, without regard to the choice of law rules of that State. As used here, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." Bank may but shall not be obligated to record this Agreement, at Bank's sole discretion.

19. Counterparts. This Agreement may be executed in multiple counterparts, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart, all of which shall constitute one agreement and shall be deemed an original.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.

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

TENANT:

_____,
a _____

By: _____
Name: _____
Title: _____

BORROWER:

_____,
a _____

By: _____
Name: _____
Title: _____

BANK:

_____,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT A

PROPERTY DESCRIPTION

ACKNOWLEDGMENTS

State of _____)
)
County of _____)

On _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of _____)
)
County of _____)

On _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of _____)

)

County of _____)

On _____, 20____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)