

**This document prepared by and after
recording return to:**

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of this ____ day of _____, _____, between _____ (the "Lender"), _____ ("Tenant"), and _____ ("Borrower" or "Landlord").

RECITALS

A. Pursuant to the Lease Agreement dated _____, _____ (as amended, restated, supplemented, and otherwise modified from time to time, "Lease"), by and between Tenant and Landlord whereby Landlord leased to Tenant and Tenant leased from Landlord the building (the "Premises") located at _____ ("Property"). The Property is more particularly described and shown on Exhibit A attached hereto and made a part hereof.

B. Lender has agreed to make a loan to Landlord as evidenced by a certain Promissory Note from Landlord to lender in the original principal amount of \$ _____ ("Note"), said loan to be secured by a Mortgage dated _____ from Landlord to Lender on property ("Property"), including but not limited to the Premises (said mortgage, herein "Mortgage") (the Note and Mortgage hereinafter collectively referred to as the "Loan Documents"). Said Property described on Exhibit A attached hereto and made a part hereof; and

C. Tenant has agreed to subordinate the Lease to the lien of the Mortgage and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subordination.

The Lease (and all subsequent amendments and supplements thereto, and restatements and modifications thereof) is and shall be subject and subordinate to the lien of (but not the terms and conditions of) the Mortgage, to the full extent of any and all amounts from time to time secured thereby and interest thereon, all with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease, provided Tenant's rights and obligations under the Lease are not disturbed or diminished as provided herein.

2. Non-Disturbance.

Lender, on behalf of itself and any transferee who acquires the Property by foreclosure or by deed in lieu thereof or otherwise in connection with the Mortgage and/or the other Loan Documents, and the successors and assigns of such purchaser or transferee (such purchaser or transferee and their successors and assigns, herein "New Landlord"), hereby covenants and agrees with Tenant that if Lender or other New Landlord shall commence any proceedings to foreclose the Mortgage for any reason whatsoever or shall succeed to the interest of Landlord by foreclosure of the Mortgage, deed in lieu thereof or otherwise in connection with the Mortgage and/or the other Loan Documents, provided Tenant is not then in default (after expiration of any applicable cure period) under the Lease, Lender or other New Landlord shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage or the other Loan Documents or otherwise available to Lender at law or in equity:

(i) disturb Tenant's possession, enjoyment, use or occupancy of the Premises and Tenant's rights under the Lease shall not be diminished, interfered with or disturbed (including any extensions, renewal, or modification thereof) by Secured Party or New Landlord. Tenant shall peaceably and quietly have, hold and enjoy the Premises and the rights of Tenant appurtenant thereto for the term of the Lease as the same may be extended, subject to the terms, covenants, conditions, provisions and agreements of the Lease; or

(ii) join or name Tenant as a party to any foreclosure or other proceeding instituted by Secured Party to enforce the terms of the Mortgage or the other Loan Documents against Landlord unless required by law.

3. Attornment.

In the event Lender or other New Landlord comes into possession of or acquires title to all or any portion of the Property as a result of foreclosure or other enforcement of the Mortgage or the other Loan Documents, or as a result of any other means, Lender or any New Landlord agrees to recognize Tenant's possession of the Premises and Tenant agrees to attorn to and accept Lender or such other New Landlord as landlord under the Lease for the balance then remaining of the term of the Lease, subject to all of the terms and conditions of the Lease.

Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and Lender or such other New Landlord (as the case may be) and Lender or New Landlord will assume and perform all of Landlord's obligations under the Lease except that Lender or New Landlord shall not be:

(a) liable for any damages for any breach, act or omission of any prior landlord including Landlord under the Lease except for acts or omissions of a continuing nature which continue after such time as Lender or New Landlord come into possession of or acquire title to all or any portion of the Property (including any outstanding Landlord Work); or

(b) subject to any credits, offsets, defenses, claims or counterclaims which Tenant might have against any prior landlord including Landlord except to the extent such right of offset or defense is specifically set forth in the Lease, or unless Lender was previously notified of the act or event giving rise to such offset or defense; or

(c) bound by any rent or additional rent due after the date of attornment which Tenant shall have paid more than one (1) month in advance to any prior landlord (including Landlord) except prepayments expressly permitted under the Lease such as prepayments of additional rent, with annual reconciliation, made pursuant to the terms of the Lease; or

(d) bound by any amendment or modification to the Lease which has the effect of decreasing the rent payable under the Lease, or decreasing the term of the Lease made without Secured Party's written consent which consent shall not be unreasonably withheld, conditioned or delayed (Landlord shall be responsible for obtaining and providing Secured Party's written consent to any such amendment); and

(e) liable for the return of any security deposit made by Tenant to Landlord unless such Secured Party or New Landlord shall have actually received such security deposit from Landlord, provided said Secured Party or New Landlord agrees to make reasonable efforts to obtain such security deposit from Landlord.

For the avoidance of doubt, this Section 3 is for the express benefit of Lender or any transferee who acquires the Property by foreclosure or by deed in lieu thereof or otherwise in connection a foreclosure sale and shall not benefit any other party to whom Landlord voluntarily sells the Property pursuant to a negotiated purchase and sale agreement.

Tenant shall look solely to the Property (including but not limited to, insurance and rental proceeds in connection with the Property) for recovery of any judgement or damages from Lender or such other New Landlord for a claim or legal action related to the Lease, and neither Lender, nor any successor or assign or any of the forgoing shall have any personal liability in connection with the recovery of any judgement or damages from a claim or legal action related to the Lease. Further, Lender shall have no liability or responsibility under or pursuant to the terms of the Lease or this Agreement from and after the date it ceases to own Landlord's interest (or any interest of the Lessor) in the Lease.

4. Payment of Rent.

Landlord hereby advises Tenant that the Mortgage provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Mortgage without Lender taking possession of the Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. After written notice is given to Tenant by Lender in form reasonably acceptable to Tenant along with a relevant W-9, that Lender is entitled to all rents under the Loan Documents and that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the direction of Lender all rentals and other monies due and to become due to the Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments as directed by Lender and hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the other Loan Documents or the Mortgage. Furthermore, in connection with the aforesaid, and notwithstanding anything to the contrary contained elsewhere, Landlord, its successor and/or assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses, or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors or assigns that such rental payments should not have been, or cannot be, made to Lender or the like.

5. Default Notices to Lender.

So long as the Mortgage/Loan Documents are in force and effect, Tenant agrees not to terminate the Lease by reason of default by Landlord under the Lease without giving prior written notice thereof to Lender and Lender shall have the right (but not the obligation until Lender comes into possession of or acquires title to all or any part of the Property) to cure any of Landlord's defaults under the Lease within the same time period as is available to Landlord for the curing thereof under the Lease after receipt of such notice except Tenant shall have the right to exercise its enumerated termination rights set forth in the Lease for

reasons other than a Landlord default which do not require a notice and cure period in favor of Landlord without giving Lender notice or the opportunity to cure.

6. Notice.

All notices and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as UPS, Federal Express or Airborne Express, and shall be deemed given when received and addressed as noted below, or to such other address or addresses as shall from time to time be designated by notice by any party to the others as herein provided.

Lenders Notice Address: _____

Tenant's Notice Address: c/o Fresenius Medical Care North America
Attn: Legal Department
920 Winter Street
Waltham, MA 02451- 1457

Landlord's Notice Address: _____

7. Successors and Assigns.

As used in this Agreement, the term "Tenant" shall mean Tenant and any subsequent holder or holders of an interest of the lessee under the Lease, and the term "Lender" shall mean Secured Party or any other subsequent holder or holders of the Mortgage or any party becoming a mortgagee in possession or acquiring title to the Property or the Premises by purchase at a foreclosure sale, deed in lieu of foreclosure, other enforcement of the Mortgage or the other Loan Documents, by deed of the Lender or otherwise. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The terms Lease, Mortgage, and the other Loan Documents shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto. 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 unenforceable shall 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.

8. Authority.

The individuals executing this Agreement hereby represent and warrant they are empowered and duly authorized to so execute this Agreement on behalf of the parties they represent.

9. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

10. Recording.

Lender agrees to record this agreement promptly upon full execution of the same. Upon recorded satisfaction of the Mortgage or the other Loan Documents, this Agreement shall become null and void and be of no further effect.

11. Counterparts.

This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterparts shall be deemed to be an original counterpart, and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the day and year first above written.

***** Signature Lines on the Following Page*****

Lender

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT OF LENDER (required)

STATE OF _____)

COUNTY OF _____)

On this, the _____ day of _____, _____, before me, the undersigned officer, a Notary Public, personally appeared _____, who acknowledged herself to be the Duly Authorized Signatory of _____, and that he/she as such Duly Authorized Signatory being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of _____ for himself/herself as such Duly Authorized Signatory.

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

Notary Public
My Commission Expires: _____

(Stamp or seal)

Tenant:

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT OF TENANT

COMMONWEALTH OF MASSACHUSETTS)

) ss.

COUNTY OF MIDDLESEX)

On this the ___ day of _____, _____, before me, the undersigned notary public, personally appeared _____ as _____ of _____

proved to me through satisfactory evidence, which was personally known to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Signature of Notary

Printed name of Notary

Place Notary Seal and/or Any Stamp
Above

Landlord:

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT OF LANDLORD (required)

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that
_____ (*name of person*) is the person who before me, and
said person acknowledged that (he/she) signed this instrument, on oath stated that
(he/she) was authorized to execute the instrument and acknowledged it as the
_____ (*type of authority, e.g. officer, trustee, etc.*) of
_____ (*name of party on behalf of whom
instrument was executed*) to be the free and voluntary act of such party for the uses and
purposes mentioned in the instrument.

Dated: _____

(Stamp or seal)

Notary Public for the State of

Name: _____

My Commission Expires: _____

EXHIBIT A

Legal Description