

GROUND LEASE ESTOPPEL CERTIFICATE AND AGREEMENT

Date: _____, 20____

Landlord: CITY OF CORPUS CHRISTI

Landlord's Mailing Address: 1000 International Drive, Corpus Christi, TX 78406

Tenant: DLUGOSCH III, LLC, DBA THE TEXAN STORES

Tenant's Mailing Address: PO Box 338, Yorktown, TX 78164

Lender: REGIONS BANK, an Alabama state banking corporation

Lender's Mailing Address: 3773 Richmond Ave., Suite 1000, Houston, Texas 77046

Leased Premises: _____ and being further described in the attached **Exhibit "A"**

RECITALS:

A. Landlord is the owner of the Leased Premises which are now occupied by Tenant under a lease from Landlord (the "Lease").

B. Tenant has applied to Lender for a loan in the principal amount of \$ _____ (the "Loan").

C. The Loan is to be secured by, among other instruments, a Leasehold Deed of Trust and Security Agreement executed by Tenant (the "Security Instrument"), covering, among other property, (i) an assignment of all of Tenant's right, title, and interest in and to the Lease, and (ii) all of Tenant's interest in the building, improvements, equipment, inventory, removable fixtures, and other assets of Tenant located in the Leased Premises (collectively, the "Collateral").

D. Recognizing that this Ground Lease Estoppel Certificate and Agreement ("Agreement") is a condition of the Loan, Landlord and Tenant desire to confirm their understanding with Lender with respect to the Lease and the Loan.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained as follows:

1. **The Lease.** A true and complete copy of the Lease, and all amendments has been delivered to Lender. Landlord and Tenant covenant and represent to Lender and to each other that (a) the Lease is in good standing, and in full force and effect, (b) the Lease shall not be amended that (i) results in an increase of the rent or the sums due and payable pursuant to the Lease, (ii) reduces the term of the Lease, or (iii) modifies the terms of the Lease regarding surrendering of possession of the Leased Premises, without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned, or delayed, (c) there are no defaults by either Landlord or Tenant under the Lease and each party has fully complied with all obligations under the Lease, and (d) the Lease shall not be terminated or cancelled except as expressly provided in the Lease and as permitted under the terms of this Agreement.

2. **Consent to Assignment.** Landlord acknowledges and agrees that pursuant to the terms of the Security Instrument, Tenant has assigned all of its interest in the Collateral to Lender as security for the Loan; provided, however, in no event shall Landlord's fee interest or estate in the Leased Premises be subject to the Security Instrument.

3. **Subordination.** Any and all liens, rights, or claims, whether contractual, statutory, or otherwise, now or hereafter held or claimed by Landlord in and to the Collateral shall be and are hereby subordinated to the liens of Lender securing payment of the Loan, together with all interest, fees, expenses, and charges related thereto, along with all increases, renewals, extensions, and modifications of the Loan. Notwithstanding the above, the Loan and Security Instrument will at all times be and remain inferior and subordinate to all of the conditions, covenants, and obligations of the Lease, except as specifically provided in this Agreement.

4. **Condemnation and Insurance Proceeds.** Notwithstanding anything in the Lease to the contrary, the provisions of the Security Instrument shall govern and control the use and application of the proceeds of any condemnation award or casualty insurance policy payable with regard to condemnation or casualty related to the leasehold improvements and Tenant's lease estate in the Leased Premises. If Lender should cause a foreclosure of the liens and security interests of the Security Instrument, or if Landlord and Lender enter into a new Lease pursuant to the terms of Section 9 hereof, the Lease shall automatically be deemed modified to provide, or such new Lease shall provide, as the case may be, that any proceeds of any condemnation award or casualty insurance policy payable with respect to any improvements constructed by Borrower under the Lease, the Loan, and the other loan documents (excluding any amounts applied as a result of such foreclosure), shall be applied to the restoration, repair, and rebuilding of the improvements to the Leased Premises.

5. **Tenant's Personal Property.** Landlord agrees that Borrower's personal property is and will remain personal property and shall not be or become fixtures even though it may be affixed to or placed on the Leased Premises except that Borrower's personal property may become fixtures once, (a) Lender is paid in full for amounts owned under the Loan, and (b) the Lease is terminated or expires. Landlord further agrees that Lender has the right to remove Borrower's personal property from the Leased Premises at any time permitted by the loan documents; provided, that Lender shall repair any damage arising from such removal. Landlord further agrees

that, to the extent permitted by applicable law, it will not hinder Lender's removal of Borrower's personal property from the Leased Premises. Lender shall not be liable for any diminution in value of the Leased Premises caused by the absence of Borrower's personal property removed or by the need to replace Borrower's personal property after such removal. Landlord acknowledges that Lender shall have no obligation to remove Borrower's personal property from the Leased Premises. Landlord will permit Lender and its representatives and invitees to occupy and remain on the Leased Premises provided that such period of occupation (the "Disposition Period") shall not exceed 180 calendar days following Lender's receipt of written notice of expiration or termination of the Lease. For the actual period of occupancy by Lender, Lender will pay to Landlord the base rent due under the Lease monthly in advance for each such calendar month period of the Disposition Period, and shall provide and retain liability and property insurance coverage as required of Borrower in the Lease. Amounts paid by Lender to Landlord shall exclude any holdover rent escalation or past due rent penalty or default rate provision, it being agreed that the rents payable shall be at the base rent rate last in effect before the Disposition Period and shall exclude any indemnity payments or similar amounts for which Borrower remains liable under the Lease. If any injunction or stay is issued that prohibits Lender from removing Borrower's personal property, the commencement of the Disposition Period will be deferred until such injunction or stay is lifted or removed but Lender shall be required to pay rent to Landlord and maintain liability and property insurance as provided above during such injunctive or stay period. During the Disposition Period, provided that rent payment is made and the liability and property insurance coverage is maintained as required above, (i) Lender and its representatives and invitees may inspect, repossess, remove, and otherwise deal with Borrower's personal property, (ii) Lender may advertise and conduct public auctions or private sales of Borrower's personal property at the Leased Premises, and (iii) Lender shall make the Leased Premises available for inspection by Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts (subject to such limitation on that duty as is provided for in the Lease) to re-lease the Leased Premises.

6. **Tenant's Default Under Lease.** Landlord shall furnish to Lender copies of all default notices which Tenant is entitled to receive under the Lease. Landlord shall not terminate the Lease or terminate Tenant's right to possession of the Leased Premises thereunder or the right to the enjoyment of any of the rights and benefits therefrom, unless a notice specifying the event of default has been given to Lender. Lender may, at its option, at any time within 30 days after the giving of such notice of default, pay any of the rents or other sums of money stipulated to be paid by Tenant, or to do any other act or thing required of Tenant by the terms of the Lease, so as to cure such event of default. If Lender cures any such event of default by Tenant under the Lease within such 30 day period (other than defaults which by their nature are not reasonably susceptible of being cured by Lender within such time period), or, with respect to defaults which are reasonably susceptible of being cured, but not within such 30 day period, Lender commences promptly (in any event within such 30 day period) and proceeds diligently and with continuity to cure such default, then any payments made and any and all things done by Lender to affect such cure shall be effective to prevent the termination of the Lease or the termination of Tenant's right to possession thereunder as if timely done by Tenant. Those events of default which, by their nature, are not reasonably susceptible to being cured by Lender (e.g., the bankruptcy of Tenant) shall not constitute grounds for termination of the Lease or termination of Tenant's right to

possession thereunder by Landlord, if Lender performs or causes to be performed all obligations thereunder reasonably capable of being performed by Lender and thereafter continues to comply with those provisions with which, by their nature, Lender can comply.

7. **Tenant's Default Under Loan.** In the event Tenant shall be in default under the terms of the Loan or under the terms of any instrument securing the Loan, or in the event for any reason Lender shall be entitled to take possession of any or all the Collateral, Landlord agrees to provide Lender, its agents, attorneys, or representatives, such access and entrance to the Leased Premises as may be necessary to enable Lender to remove and take possession of the Collateral. This consent is conditioned upon Landlord being in possession and control of the Leased Premises, it being understood that if the Lease is in full force and effect, Landlord shall not be in possession or control of the Leased Premises. Tenant agrees that a written statement from Lender to Landlord stating that Tenant is in default under the terms of the Loan or the instruments securing the Loan, or that Lender is entitled to possession of any or all of the Collateral, shall be sufficient to authorize and permit Lender's access to the Leased Premises and Collateral. Tenant releases Landlord and Lender from any and all claims or causes of action resulting directly or indirectly from Lender's entry on the Leased Premises and/or the removal of the Collateral.

8. **Enforcement by Lender.** In the event Tenant shall be in default under the terms of the Loan or under the terms of any instrument securing the Loan, Lender may exercise its rights to sell at public or private sale the Collateral. In such event, Landlord consents to Lender's conveyance of the Collateral to the purchaser thereof, including title to Tenant's interest in the Lease. Upon such conveyance, Lender, Landlord and the purchaser of Tenant's interest in the Lease shall execute such documentation as shall be reasonably required to evidence such transfer and to establish a direct landlord - tenant relationship covering the Leased Premises. Lender shall not be or become liable to Landlord as an assignee of the Lease until such time as Lender shall, by foreclosure or other appropriate proceedings in a nature thereof, or as a result of any other action or remedy provided to Lender, under the Security Instrument, or proper conveyance from Tenant, either acquires Tenant's interest in the Lease or take actual possession of the Leased Premises. In the event Lender forecloses upon the Collateral and is the purchaser thereof, then Lender, upon any subsequent assignment thereof, will be released from any and all liabilities arising thereafter under the Lease, except such liabilities as may have arisen subsequent to such foreclosure and prior to such assignment.

9. **New Lease Following Termination.** In the event of the termination of the Lease for any reason other than the expiration of the stated Lease term, or by reason of either eminent domain or condemnation pursuant to the terms of the Lease, Landlord will serve upon Lender notice that the Lease has been terminated, together with a statement of any or all sums which would have, at the time, been due under the Lease but for such termination, and of all other defaults, if any, under the Lease then known to Landlord. Lender may have the option, only upon written approval by Landlord, such approval not to be unreasonably conditioned, withheld, or delayed, to elect to receive from Landlord a new lease of the Leased Premises for the unexpired balance of the term of the Lease and otherwise on the same terms and conditions set forth in the Lease. Such request must be submitted in writing by Lender to Landlord within 30 calendar days after giving notice of termination by Landlord to Lender. Landlord reserves the right to seek acceptance of such request by City Council. Within 30 days after the giving of such notice by

Landlord of the approval of the request for a new lease, Landlord, as landlord, and Lender, as tenant, shall execute a new lease agreement provided that, no later than the execution date of the new lease agreement, Lender shall have paid to Landlord all rents and other sums of money then due and owing under the Lease and remedy any default by Tenant under the Lease (other than defaults which by their nature are not reasonably susceptible of being remedied by Lender), or, if, with respect to defaults which are reasonably susceptible of being remedied, but not within such time period, Lender shall have promptly commenced (in any event no later than the date of such execution of the new lease agreement) and thereafter shall proceed diligently and with continuity to remedy such default. If Lender shall become a tenant of Landlord under such new lease agreement and subsequently assign the new lease agreement, then Lender shall thereupon be relieved of further liability under the lease agreement for all obligations not theretofore accrued, so long as such assignment has been approved in writing by Landlord, such approval not to be unreasonably conditioned, withheld, or delayed.

10. Miscellaneous.

A. The term "Lender," for the purpose of this Agreement, shall be deemed to include any party that acquires title to the Collateral pursuant to any foreclosure sale resulting from the foreclosure of the Loan, or a deed in lieu of foreclosure of the Loan.

B. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the maximum extent permitted by applicable law.

C. This Agreement may not be modified verbally or in any other manner other than by an agreement in writing signed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns. Whenever used in this document, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the pronouns of any gender shall include all other genders, and either the singular or plural shall include the other.

All notices, demands, requests or replies provided for or permitted under this Lease by either party must be in writing and must be delivered by one of the following methods: (i) by personal delivery; (ii) by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid; or (iii) placement of notice to Lessee on the front door of the Premises. Notice by (i) and (iii) will be deemed effective upon delivery or placement and (ii) will be deemed effective 2 business days after deposit with the United States Postal service.

D.

E. This Agreement contains the sole and entire agreement and understanding between the parties with respect to the subject matter hereof and shall supersede any and all other verbal or written agreements between the parties with respect to the subject matter hereof.

F. THE LAWS OF THE STATE OF TEXAS SHALL APPLY TO THIS AGREEMENT AND ITS CONSTRUCTION AND INTERPRETATION SHALL BE ENFORCEABLE IN _____ COUNTY, _____.

G. This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument, all of which will constitute one and the same agreement.

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**SIGNATURE PAGE TO LEASE ESTOPPEL CERTIFICATE AND AGREEMENT
[LENDER]**

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the dates of the acknowledgments set forth below, to be effective for all purposes, however, as of the date first above written.

Address:
3773 Richmond Ave., Suite 1000
Houston, Texas 77046

LENDER:
REGIONS BANK

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This was acknowledged before me by the said _____,
_____ of REGIONS BANK, an Alabama state banking corporation, on this the
____ day of _____, 20____.

NOTARY PUBLIC, STATE OF TEXAS

**SIGNATURE PAGE TO GROUND LEASE ESTOPPEL CERTIFICATE
AND AGREEMENT
[LANDLORD]**

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the dates of the acknowledgments set forth below, to be effective for all purposes, however, as of the date first above written.

Address:

LANDLORD:

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

§

COUNTY OF HARRIS §

This was acknowledged before me by the said _____,
_____ of _____, on this the ____ day of
_____, 20_____.

NOTARY PUBLIC, STATE OF TEXAS

**SIGNATURE PAGE TO GROUND LEASE ESTOPPEL CERTIFICATE
AND AGREEMENT
[TENANT]**

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the dates of the acknowledgments set forth below, to be effective for all purposes, however, as of the date first above written.

Address:

TENANT:

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This was acknowledged before me by the said _____,
_____ of _____, on this the ____ day of
_____, 20_____.

NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:

Attn: _____