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2000-08-16 10:48:01
Cook County Recorder 75.00

WHEN RECORDED, RETURN TO: _____

TENANT: HMH RESTAURANTS LLC

LOAN NO: _____



SUBORDINATION,
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into by and among HMH RESTAURANTS LLC, a Delaware limited liability corporation ("Tenant"), whose address is 10400 Fernwood Road, Bethesda, MD 20817-1109, and AMALGAMATED BANK OF CHICAGO, under Trust Agreement dated June 21, 1984 and known as Trust No. 4951 ("Landlord"), whose address is c/o 415 North LaSalle Street, Suite 200, Chicago, Illinois 60610, and MERRILL LYNCH CREDIT CORPORATION, a Delaware corporation ("Lender"), whose address is 4802 Deer Lake Drive East, Jacksonville, Florida 32246-6484.

WITNESSETH:

WHEREAS, Landlord is the owner in fee simple of the real property located at 16851 Torrance Ave., Lansing, Illinois, described in Exhibit A attached hereto, together with the improvements thereon (the "Property");

WHEREAS, Landlord or its predecessor and Tenant or its predecessor have entered into a certain lease dated January 21, 1988, (as the same may hereafter be amended, modified, renewed, extended or replaced, collectively, the "Lease"). Amendments: Amended and Restated Memorandum of Lease dated January 21, 1988 and recorded September 23, 1988; Assignment and Assumption of Lease and Sublease dated March 25, 1995, by and between Marriott Family Restaurants, Inc., as Assignor and HMH Restaurants, Inc. as Assignee leasing to Tenant a portion of the Property (the "Premises").

WHEREAS, Lender has agreed to make a certain mortgage loan to Landlord (the "Loan"), which will be evidenced by Landlord's Promissory Note in such amount (the "Note") and secured by, among other things, a certain Mortgage Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (as the same may hereafter be amended, modified, extended or recast, the "Mortgage") and a certain Assignment of Leases and Rents (the "Assignment of Leases") encumbering the Property, which Mortgage and Assignment of Leases are to be recorded simultaneously herewith;

WHEREAS, Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

BOX 333-CTI

Call
785-2992
DIV 1
(1w)

Handwritten initials/signature

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NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Subordination. The Lease, including all of the terms thereof, is and shall be subject and subordinate to the lien and all and all of the terms of the Mortgage to the full extent of all amounts secured by the Mortgage and interest thereon.

Attornment. Tenant agrees that it will attorn to and recognize any purchaser of the Property at a Mortgage foreclosure sale or any transferee who acquires the Property by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage (in any such case, the "New Owner") and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if exercised) of the term of said Lease upon the same terms and conditions set forth in said Lease.

Non-Disturbance. Provided there is no default under the Lease after any applicable grace period, such New Owner will not terminate the Lease or disturb Tenant's possession of the Premises under the Lease or the right to quiet enjoyment thereof, but the Lease shall continue in accordance with its terms as a direct lease between Tenant and New Owner.

Cure by Lender of Landlord Defaults. Tenant will endeavor to give Lender or any other New Owner a copy of any notice of default served upon Landlord which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease, provided that prior to such notice Tenant has been notified in writing of the address of the New Owner, or its agent, servicer or designee. Tenant shall not be liable in the event Lender or other New Owner does not receive such notice.

Payments to Lender and Exculpation of Tenant. Tenant is hereby notified that the Lease and the rent and all other sums due thereunder have been assigned to Lender as security for the Loan. In the event that Lender notifies Tenant of a default under the Mortgage and directs that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such direction without inquiry and pay its rent and all other sums due under the Lease in accordance with such notice. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord as if such notice were given at the direction of Landlord and Lender agrees to indemnify Tenant in the event Landlord initiates an action in eviction or an action to recover sums otherwise paid to the Lender. Tenant is hereby instructed to disregard any notice to the contrary received from or at the behest of Landlord.

Estoppel. Tenant hereby states, declares, represents and warrants, that as of the date hereof:

- a. The Lease, as described above, contains the complete agreement between Landlord and Tenant in connection with the premises leased by Tenant at the Property and has not been otherwise amended, supplemented or modified.

- b. All payments, including additional rent for taxes, insurance and other charges, due and payable by Tenant under the Lease are current as of the date hereof.
- c. The current base rent payable by Tenant under the Lease is \$4,162.50. Additional rent for taxes, insurance and other charges not payable monthly, if any, have been paid through May 31, 2000.
- d. The commencement date of the initial term of the Lease is September 12, 1988 and the expiration date is September 30, 2008. The current term of the lease or extension option expires September 30, 2028.
- e. Tenant has no extension options, right of first refusal, option to purchase or other interest in or claim to the Property, or any part thereof, except as set forth in the Lease.
- f. Percentage rent is payable by Tenant in the amount of
 - 5% in excess of: \$2,135,000 Years 1-10
 - 5% in excess of: \$2,234,000 Years 11-20
 - 5% in excess of: \$2,343,800 Years 21-25
 - 5% in excess of: \$2,465,860 Years 26-30
 - 5% in excess of: \$2,615,000 Years 31-40per annum.

If requested by Lender, Tenant shall execute and deliver to Lender a written confirmation that the representations contained in this paragraph remain correct and complete (or specifying any matter to the contrary).

Limitation of Liability. If the New Owner or Lender acquires the interest of Landlord under the Lease, the New Owner shall be:

- (a) liable for any act or omission of any prior landlord (including Landlord);
- (b) subject to any claims, offsets, defenses or counterclaims which Tenant might have against any prior landlord (including Landlord) arising prior to the date upon which the New Owner shall succeed to the interests of Landlord under the Lease;
- (c) bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including Landlord);
- (d) liable for the return of any security deposit whether or not actually received by New Owner;
- (e) bound by any amendment or modification of the Lease;
- (f) bound by any covenant to undertake or complete any improvement to or restoration of the Premises or the Property, except to the extent insurance proceeds or condemnation awards are made available to New Owner to cover the cost of the improvement.

Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement. In the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom lender's interest is assigned or transferred.

Notice. Any notice, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing the same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses first set forth above and if to Lender, with a copy to Merrill Lynch Credit Corporation at 4802 Deer Lake Drive East, Jacksonville, Florida 32246-6484, Attention: Commercial Mortgage Servicing. Notice shall be deemed given when delivered personally, or four (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party can change its address or party to receive notice by giving at least fifteen (15) days prior written notice to the other parties hereto in accordance with this provision.

Miscellaneous.

Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

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Non-disturbance. Landlord, Tenant and Lender agree that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Mortgage.

Date: 8/7, 2000

TENANT: HHMH Restaurants LLC

By: [Signature]
Name: Christopher G. Townsend
Title: Executive Vice President

Date: 6/19, 2000

LANDLORD: AMALGAMATED BANK OF CHICAGO

By: [Signature]
Name: IRVING B. POLAKOW
Title: SR. VICE PRESIDENT

Date: _____, 2000

LENDER: MERRILL LYNCH CREDIT CORPORATION

By: [Signature]
Name: _____
Title: James P. Hensley
Vice President

NOTARIZATION FORMS FOR SIGNATURES

Form of Notarial Acknowledgement

STATE OF Maryland

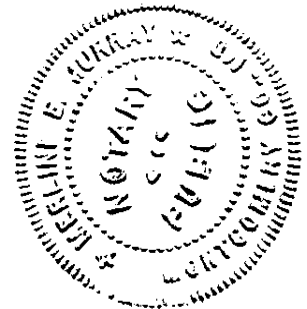
COUNTY OF Montgomery

On August 7, 2000, before me, Merline E. Murray, the undersigned, a notary public for the state, personally appeared Christopher G. Townsend personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

Signature Merline E. Murray
My Commission Expires July 13, 2002

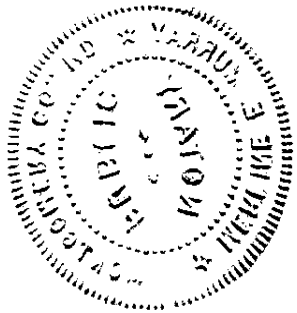
(SEAL)



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NOTARIZATION FORMS FOR SIGNATURES

Form of Notarial Acknowledgement

STATE OF Illinois §
§ § §
COUNTY OF Cook §

On 6/29/00, before me, Ann T Hartley, the undersigned, a notary public for the state, personally appeared Irving B Polster 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 *Ann T Hartley*



NOTARIZATION FORMS FOR SIGNATURES

Form of Notarial Acknowledgement

STATE OF Florida §
§ § §
COUNTY OF Duval §

On June 28, 2000, before me, Terril Croft, the undersigned, a notary public for the state, personally appeared James P. Hensley 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 *Terril Croft*

(SEAL)



EXHIBIT A

Legal Description

PARCEL 1:

LOT 3 (except the Southwesterly 1.04 feet thereof);

LOT 7;

That part of Lot 8 described as follows:

Beginning at the Northeast corner of Lot 10; thence North 0 Degrees 15 Minutes 50 Seconds East on the East line of Lot 10 extended North a distance of 6.5 feet; thence North 89 Degrees 44 Minutes 10 Seconds West a distance of 15 feet to the West line of Lot 8; thence South 0 Degrees 15 Minutes 50 Seconds West a distance of 6.5 feet to the North line of Lot 10; thence South 89 Degrees 44 Minutes 10 Seconds East a distance of 15.0 feet to the point of beginning.

LOT 9 (except the South 8.5 feet of the East 18.25 feet of the West 33.0 feet thereof, also except the North 1.00 feet of the South 9.5 feet of the East 18.25 feet of the West 33.0 feet thereof, also except the South 1.00 feet of the East 241 feet thereof);

LOTS 10 through 17, both inclusive, and

Outlots A & B.

All of the above in the Landings Planned Unit Development, a Subdivision of part of the Southwest 1/4 of Section 19, Township 36 North, Range 15 East of the Third Principal Meridian, according to the plat thereof recorded on August 15, 1985 as Document No. 85,148,127 in Cook County, Illinois.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED EXCEPTION PARCELS A, B, C, D, E AND F:

EXCEPTION PARCEL A:

A North and South 30 foot wide roadway of uniform width being a tract of land with its East and Southeasterly line described as follows, said 30 foot wide roadway lying to the West and Northwest of that part of Outlot A in the Landings Planned Unit Development being a subdivision of part of the Southwest 1/4 of Section 19, Township 36 North, Range 15 East of the Third Principal Meridian described as beginning at a point on the North line of Outlot A, said point being at the Northeast corner of said Outlot A; thence South 0 Degrees 15 Minutes 50 Seconds West on the East line of said Outlot A, a distance of 794.45 feet to a point on the Northwesterly right of way line of the Public Service Company of Northern Illinois, said point being on the Southeasterly line of Outlot A; thence South 25 Degrees 22 Minutes 17 Seconds West on the last described line, a distance of 226.44 feet to a bend point in Outlot A; the following 3 courses being on the Southeasterly line of Outlot A; thence South 25 Degrees 14 Minutes 34 Seconds West a distance of 894.67 feet; thence South 0 Degrees 03 Minutes 26 Seconds West a distance of 7.18 feet; thence South 25 Degrees 29 Minutes 28 Seconds West, a distance of 499.73 feet to the most Southeasterly corner of Outlot A, said point being on the North line of 170th Street in Cook County, Illinois.

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EXCEPTION PARCEL B:

That part of Outlot A and Outlot B in the Landings Planned Unit Development being a subdivision of part of the Southwest 1/4 of Section 19, Township 36 North, Range 15 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the point of intersection of the North line of Outlot A, said North line being a line 2319.72 feet North of and parallel with the South line of said Southwest 1/4, and the East right of way line of Torrence Avenue, being the Westerly line of said Outlot A extended Northerly; thence South 89 Degrees 44 Minutes 10 Seconds East on the North line of Outlot A and B a distance of 1285.31 feet; thence South 64 Degrees 37 Minutes 43 Seconds East a distance of 287.48 feet to the Southeasterly line of Outlot B, being the Northwesterly right of way line of Public Service Company of Northern Illinois; thence South 25 Degrees 22 Minutes 17 Seconds West on the last described line a distance of 66.0 feet; thence North 64 Degrees 37 Minutes 43 Seconds West a distance of 291.10 feet to a point of curve; thence Northwesterly on the arc of a circle convex to the Northeast, having a radius of 267.0 feet and an arc distance of 117.00 feet to a point of tangent; thence North 89 Degrees 44 Minutes 10 Seconds West parallel to the North line of Outlot A, a distance of 1142.69 feet (the last described line being 33.0 feet South of and parallel with the North line of Outlot A) to the Easterly right of way line of Torrence Avenue aforesaid; thence North 3 Degrees 40 Minutes 10 Seconds East on said Easterly right of way and said line extended a distance of 33.06 feet to the point of beginning, all in Cook County, Illinois.

EXCEPTION PARCEL C:

That part of Outlot A in the Landings Planned Unit Development being a subdivision of part of the Southwest 1/4 of Section 19, Township 36 North, Range 15 East of the Third Principal Meridian, described as follows:

Commencing at the point of intersection of the North line of Outlot A, said North line being a line 2319.72 feet North of and parallel with the South line of said Southwest 1/4, and the East right of way line of Torrence Avenue being the Westerly line of said Outlot A extended Northerly; thence South 3 Degrees 40 Minutes 10 Seconds West on the Westerly line of said Outlot A, a distance of 436.88 feet; thence South 3 Degrees 12 Minutes 32 Seconds West on the Westerly line of said Outlot A, a distance of 383.14 feet to a point on a line 18.75 feet South of and parallel to the North line of said Outlot A for the point of beginning of the center line of a 50 foot wide roadway, 25 feet on either side of the following described line; thence North 86 Degrees 44 Minutes 21 Seconds East a distance of 386.31 feet; thence South 89 Degrees 44 Minutes 10 Seconds East a distance of 545.06 feet to the Easterly end of said 50 foot roadway, in Cook County, Illinois.

EXCEPTION PARCEL D:

That part of Outlot A in the Landings Planned Unit Development bounded and described as follows:

Beginning at the most Southeasterly corner of Lot 1 aforesaid, thence South 25 Degrees 14 Minutes 34 Seconds West on the Southwesterly prolongation of the Easterly line of said Lot 1, a distance of 50.0 feet; thence North 64 Degrees 45 Minutes 26 Seconds West a distance of 93.0 feet; thence South 25 Degrees 14 Minutes 34 Seconds West a distance of 82.32 feet; thence North 37 Degrees 48 Minutes 25 Seconds West a distance of 5.61 feet to an angle point of said Lot 1; thence North 25 Degrees 14 Minutes 34 Seconds East on a line of said Lot 1, a distance of 129.78 feet to an angle point of said Lot 1; thence South 64 Degrees 45

Minutes 26 Seconds East on a line of said Lot 1, a distance of 98.0 feet to the point of beginning.

EXCEPTION PARCEL E:

That part of Outlot A in the Landings Planned Unit Development bounded and described as follows:

Beginning at the Northwesterly corner of Lot 1 aforesaid, thence North 64 Degrees 45 Minutes 26 Seconds West on the Northwesterly prolongation of the Northerly line of said Lot 1 a distance of 7.0 feet; thence South 25 Degrees 14 Minutes 34 Seconds West a distance of 180.0 feet to a point on a line of said Lot 1; thence South 64 Degrees 45 Minutes 26 Seconds East on a line of said Lot 1 a distance of 7.0 feet to an angle point of said Lot 1; thence North 25 Degrees 14 Minutes 34 Seconds East on a line of said Lot 1 a distance of 180.0 feet to the point of beginning.

EXCEPTION PARCEL F:

That part of Outlot A described as follows:

Commencing at the most Southwesterly corner of Lot 9; thence South 89 Degrees 44 Minutes 10 Seconds East in the South line of Lot 9 a distance of 14.75 feet to the point of beginning, thence continuing South 89 Degrees 44 Minutes 10 Seconds East a distance of 3.25 feet to the West line of Lot 8; thence South 0 Degrees 15 Minutes 50 Seconds West a distance of 168.5 feet; thence North 89 Degrees 44 Minutes 10 Seconds West a distance of 3.25 feet; thence North 0 Degrees 15 Minutes 50 Seconds East a distance of 168.5 feet to the point of beginning, all in the Landings Planned Unit Development, being a Subdivision of part of the Southwest Quarter of Section 19, Township 36 North, Range 15 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Easements appurtenant to and for the benefit of Parcel 1 for the purposes of parking, ingress and egress, passage and accommodation of pedestrians, "Common Utility Facilities" and for "Common Area Improvements", as set forth, defined and limited in Section 2.2(a), 2.2(b), 2.2(c), 2.3 and 2.5 of that certain Declaration of Reciprocal Easements and Operating Covenants recorded August 16, 1985 as Document No. 85,149,087, as amended by First Amendment to said Declaration, recorded December 18, 1985 as Document No. 85,329,731, and as further amended by Second Amendment to said Declaration, recorded March 11, 1988 as Document No. 88,103,519, and as modified by Assumption Agreements recorded October 2, 1985 as Document 85,216,669, October 15, 1985 as Document No. 85,235,392, October 15, 1985 as Document No. 85,235,395, August 16, 1985 as Document No. 85,149,097 and August 16, 1985 as Document No. 85,149,098, over and across "Common Areas" as that term is defined and limited therein, excepting from said "Common Areas" those portions thereof falling within Parcel 1 hereinabove.

PARCEL 3:

Easements appurtenant to and for the benefit of Parcel 1 for all "construction", as defined in Section 4.1; maintenance and repair of Parcel 1 improvements and for storage of materials and equipment as set forth, defined and limited in Section 4.5 of the Declaration set forth in Parcel 2 hereinabove, as amended and assumed, over and across "Common Areas" as that term is defined and limited therein, excepting from said "Common Areas" those portions thereof falling within Parcel 1 hereinabove and/or falling within Lots 4 or 5 in said Landings Planned Unit Development.