



Loan No. 157392

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 16th day of October, 2000 by and among LASALLE BANK NATIONAL ASSOCIATION f/k/a LaSalle National Bank as successor Trustee to LaSalle National Trust, not personally, but as Trustee U/T/A dated October 1, 1961 and known as Trust No. 28684, with an address C/O Joseph Freed and Associates LLC, 1400 South Wolf Road, Building 100, Wheeling, Illinois 60090-6524 ("Landlord"), Maggiaros/Corner Bakery, Inc., an Illinois corporation ("Tenant"), and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation, with an address c/o Lincoln Investment Management, Inc., 200 East Berry Street, P. O. Box 2390, Fort Wayne, IN 46801, Attention: Financial Services ("Lender").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a Lease dated October 16, 2000 (the "Lease") whereby Tenant leases from Landlord those certain premises located in the Village of Arlington Heights, County of Cook, and State of Illinois, more particularly described in Exhibit A attached hereto and made a part hereof (the "Leased Premises"); and

WHEREAS Landlord, for the purposes of securing a loan (the "Loan") from Lender, has executed (or will execute) a Promissory Note or Notes (the "Note") in favor of Lender, and for the purpose of securing the Note, Landlord has executed (or will execute) a Mortgage and Security Agreement or a Deed of Trust and Security Agreement (as applicable) (the "Mortgage") creating a first and superior lien upon the real property legally described in Exhibit A; and

WHEREAS Landlord, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Mortgage and to subordinate the Lease to the Mortgage;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and to induce Lender to proceed with the closing of the Loan, Landlord, Tenant and Lender hereby agree and covenant as follows:

1. Tenant agrees that the Lease (and its estate created thereunder) as well as all of its rights and options thereunder shall be subject and subordinate to the lien of the Mortgage. Notwithstanding the foregoing, Tenant agrees that Lender may at any time, at its election, execute and file in Cook County, Illinois, a notice of subordination reciting that the Lease shall be superior to the lien of the Mortgage. From and after the recordation of such notice of subordination, the Lease shall be superior to the lien of the Mortgage and shall not be extinguished by any foreclosure or sale thereunder.
2. Landlord agrees to all matters contained in this Agreement insofar as same affect its interests, and also agrees to furnish Lender, immediately upon receipt or dispatch of same, with copies of all notices which either Tenant or Landlord send to each other.

DEC T0690CC Accommodation 10F1

UNOFFICIAL COPY

3. During the term of the Lease or any extensions or renewals thereof, so long as Tenant is not in default (after giving effect to any applicable grace period) in the payment of basic rent or percentage rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender agrees that it will not (i) take any action designed to disturb Tenant's possession and occupancy of the Premises nor to diminish or interfere with any of Tenant's rights and privileges under the Lease, or (ii) join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.
4. In the event any proceedings are brought for the foreclosure of the Mortgage or if the Premises are conveyed to the Lender by deed in lieu of foreclosure, Tenant shall attorn to Lender or the purchaser upon any such conveyance or foreclosure sale or trustee's sale and shall recognize Lender or such purchaser as landlord (landlord) under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Landlord or Lender or any such purchaser (a) any instrument or certificate which, in the reasonable judgment of Landlord or Lender or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true, (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time or notice would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of percentage rentals (if any) are due under the terms of the Lease.
5. If Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Premises upon any foreclosure of the Mortgage or any trustee's sale (or similar sale) under the Mortgage, Lender or such purchaser, as the case may be, in the event of attornment shall have the same remedies by entry, action or otherwise in the event of a default by Tenant in the payment of rent or additional rent or in the performance of any of the terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of Landlord. From and after any such attornment, Lender or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after the succession to the interest of Landlord under the Lease by Lender or such purchaser have the same remedies against Lender or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against the Landlord if Lender or such purchaser had not succeeded to the interest of Landlord; provided further, however, that Lender or such purchaser shall not be subject to any liability or obligation under the Lease of otherwise until Lender or such purchaser shall have acquired the interest of Landlord in the Premises by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Lender or such purchaser has acquired the interest of Landlord; in furtherance of the foregoing, neither Lender or such purchaser shall be
 - (a) liable for any action or omission of any prior landlord (including Landlord); or

00980407

UNOFFICIAL COPY

- (b) liable for the return of any security deposits (except such as have been delivered to it); or
 - (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) except for offsets and defenses which arise subsequent to the date that Lender or such purchase acquires the interest of Landlord; or
 - (d) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
 - (e) bound by any amendment or modification of the Lease made without its written consent; or
 - (f) bound by the consent of any prior landlord (including Landlord), if required by the terms of the Lease, to any assignment or sublease of Tenant's interest in the Lease made without also obtained Lender's prior written consent; or
 - (g) personally liable for any default under the Lease or any covenant on its part to be performed thereunder as landlord, it being acknowledged that Tenant's sole remedy in the event of such default shall be to proceed against Lender's interest as mortgagee in the Premises.
6. Tenant agrees to give Lender notice of any default by Landlord under the Lease at the same time as Tenant gives notice to the Landlord. Lender shall be entitled, but shall not be obligated, upon notice of a default by Landlord under the Lease to remedy the default of the Landlord or provided that Lender promptly commences action to correct the default within thirty (30) days, and Lender proceeds with due diligence and without interruption to complete the action necessary to cure the default. Lender shall in no event be obliged to cure a default which is personal to Landlord and, therefore, not reasonably susceptible of cure by Lender.
7. In the event Tenant receives written notice from Lender that there has been a default under the Loan and that rentals due under the Lease are to be paid to Lender pursuant to the terms of an Assignment, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender, or as otherwise directed by Lender, and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments.
8. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant in the payment of any rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed.

00980407

UNOFFICIAL COPY

9. Any notice or communication required or permitted hereunder shall be given in writing, sent by United States mail, postage prepaid, registered or certified mail, or by facsimile transmission (provided that such facsimile is confirmed by mail in the manner previously described), addressed to the recipient party at its address set forth above, or to such other address or in the care of such other person as hereafter shall be designated in writing by the applicable party and shall be deemed to have been given as of the date of receipt.
10. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successor and assigns, and any purchaser or purchasers at foreclosure of the Premises, and their respective heirs, personal representatives, successors and assigns.
11. This Agreement is executed by LaSalle Bank National Association, formerly known as LaSalle National Bank, as successor trustee to LaSalle National Trust, N.A., not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and under the express direction of the beneficiaries of a certain Trust Agreement dated October 1, 1961 and known as Trust No. 28684. It is expressly understood and agreed that nothing herein contained shall be construed as creating any liability whatsoever against said Trustee or beneficiaries personally, or against any successor or assign of the foregoing, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve or sequester any property of said Trust, and that all personal liability of the Trustee or beneficiaries of every sort if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder; and that so far as the Trustee or beneficiaries or any successor or assign of the foregoing are concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Leased Premises, as the same is from time to time encumbered, for the payment thereof. It is further understood and agreed that the Trustee merely holds naked legal title to the property herein described; that the Trustee has no control over, and under this Amendment, assumes no responsibility for, (1) the management or control of such property, (2) the upkeep, inspection, maintenance or repair of such property, (3) the collection of rents or the rental of such property, or (4) the conduct of any business which is carried on upon such premises.

It is further agreed by the parties hereto that whenever and wherever the provisions of this Amendment contain any reference to the right of the Tenant to be indemnified, saved harmless, or reimbursed by Landlord, for any costs, claims, loss, fines, penalties, damages or expenses of any nature, including without limitation, attorney's fees, arising in any way out of the execution of this instrument or the relationship of Tenant/Landlord under this instrument, then such obligation, if any, on the part of the Landlord shall be construed to be only a right of reimbursement in favor of Tenant out of the trust estate held under Trust No. 28684, from time to time, so far as the same may reach; and in no case shall any

00980407

UNOFFICIAL COPY

claim of liability or right of reimbursement be asserted against the LaSalle Bank National Association, formerly known as LaSalle National Bank, as successor trustee to LaSalle National Trust, N.A., individually, all such personal liability, if any, being hereby expressly waived; and this agreement shall extend to and inure for the benefit of the parties hereto, their respective successors and assigns, and all parties claiming by, through and under them. In event of any question of apparent or claimed liability or obligation resting upon the said trustee, these exculpatory provisions shall be controlling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

“LANDLORD”

LASALLE BANK NATIONAL ASSOCIATION,
not personally, but solely as Trustee aforesaid

By: David Greenfield

Title: AVP

“TENANT”

Maggiaroni's Corner Bakery, Inc.

By: J. L. Jahn

Title: Vice President

“LENDER”

THE LINCOLN NATIONAL LIFE INSURANCE
COMPANY

By: LINCOLN INVESTMENT MANAGEMENT
INC.,
its Attorney in Fact

By: Karen J. Sanguin

Title: Vice President

00980407

UNOFFICIAL COPY

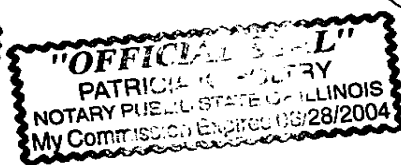
State of Illinois)
) SS.
County of Cook)

The undersigned, a Notary Public, in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that DAVID S. ROSENFELD, and _____ of LASALLE BANK NATIONAL ASSOCIATION, formerly known as LASALLE NATIONAL BANK, as successor trustee to LASALLE NATIONAL TRUST N.A., the AVP and _____ of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, as such _____ and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee of Trust No. 28684, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this NOV 08 2000 day of _____, 2000.

Patricia K. Holtry
NOTARY PUBLIC

My Commission Expires: _____



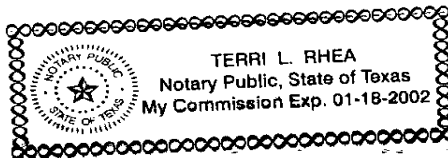
State of Texas)
) SS.
County of Dallas)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Jay L. Tobin, personally known to me to be the Vice President of Maggiolo's Corner Bakery, Inc. an Illinois corporation, duly licensed to transact business in the State of Illinois, and _____, personally known to me to be the _____ Secretary of said corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as Vice President and _____ Secretary of said corporation.

GIVEN under my hand and notarial seal this 19th day of October, 2000.

TERRI L. RHEA
NOTARY PUBLIC

My Commission Expires: _____



00980407

UNOFFICIAL COPY

STATE OF _____)
) SS.
COUNTY OF _____)

On this the _____ day of _____, 200____, before me personally appeared _____, the duly authorized officer of LINCOLN INVESTMENT MANAGEMENT, INC., attorney in fact of THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledge that (she) (he) executed the same as (her) (his) free act and deed and the free act and deed of said LINCOLN INVESTMENT MANAGEMENT, INC., as attorney in fact of THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

Notary Public
My Commission Expires:

Property of Cook County Clerk's Office

00980407

UNOFFICIAL COPY

EXHIBIT A

NORTHPOINT

LEGAL DESCRIPTION OF DEVELOPER PARCEL

LOT 1 OF NORTHGATE SHOPPING CENTER SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THE PART DESCRIBED AS FOLLOWS:

THAT PART OF LOT 1 DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1 THENCE SOUTHWARD ALONG THE WESTERLY LINE OF SAID LOT 1, BEING THE EASTERLY LINE OF ARLINGTON HEIGHTS ROAD, SOUTH 1 DEGREE, 50 MINUTES, 41 SECONDS EAST, A DISTANCE OF 73.57 FEET; THENCE SOUTH 00 DEGREES, 17 MINUTES, 45 SECONDS EAST, A DISTANCE OF 470.00 FEET; THENCE SOUTH 13 DEGREES, 57 MINUTES, 59 SECONDS EAST, A DISTANCE OF 40.00 FEET; THENCE SOUTH 33 DEGREES, 05 MINUTES, 01 SECOND EAST, A DISTANCE OF 37.43 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 33 DEGREES, 05 MINUTES, 01 SECOND EAST, A DISTANCE OF 7.57 FEET; THENCE SOUTHEASTERLY ALONG A LINE BEING 50.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE CENTER LINE OF RAND ROAD, SOUTH 48 DEGREES, 24 MINUTES, 05 SECONDS, EAST A DISTANCE OF 387.47 FEET; THENCE SOUTH 50 DEGREES, 47 MINUTES, 20 SECONDS, EAST A DISTANCE OF 48.01 FEET; THENCE NORTH 48 DEGREES, 24 MINUTES, 05 SECONDS WEST, A DISTANCE OF 444.74 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

TAX No # 03-17-301-017
13-17-301-019
03-17-301-020
03-17-301-021
03-17-301-022

00980407