



00140334

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

New Century Bank
Attn: Loan Administration
363 W. Ontario
Chicago, Il. 60610



.....SPACE ABOVE THIS LINE FOR RECORDERS ONLY.....

SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made and entered into as of the 25 ^{Feb. 25} day of ~~November~~, 1999, by and between Third Dunkin' Donuts Realty, Inc. successor to Dunkin' Donuts of Illinois, Inc. a Corporation, ("Tenant"), and New Century Bank, and Dennis Lapidus ("Landlord"), is made and entered into with reference to the following.

A. Tenant has heretofore entered into a Lease dated June 3, 1985, between Landlord, as Lessor, and Tenant, as Lessee, relating to certain real property (the "Demised Premises") located at 2658 Greenbay Road, Evanston, IL, and as more particularly described on Exhibit "B" attached hereto and made a part hereof.

B. Mortgagee has made a loan to Landlord which is evidenced by a Note Secured by Mortgage of even date herewith ("the Note"), payable to the order of Mortgagee in the original principal amount of \$624,750.00 and secured by, among other things, a Mortgage and Security Agreement of even date herewith ("the Mortgage"), made by Landlord to Mortgagee, covering Landlord's interest in the Demised Premises, being recorded concurrently herewith.

C. In connection with the loan referred to above, Mortgagee has required that Tenant subordinate Tenant's interests in the Demised Premises under the Lease to the Mortgage and agree to attorn to the purchaser at any foreclosure sale of the Demised Premises held under the Mortgage.

D. Tenant has agreed to subordinate Tenant's interests in the Demised Premises under the Lease to the Mortgagee and to attorn to any purchaser at a foreclosure sale of the Demised Premises held under the Mortgage, provided that Mortgagee agrees, on behalf of itself and any purchaser of the Demised Premises at such a foreclosure sale, not to disturb Tenant's

possession of the Demised Premises under the Lease upon such foreclosure so long as Tenant is not in default under the Lease at that time.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Mortgagee hereby agree as follows:

1. The Lease and all of Tenant's right, title and interest in and to the Demised Premises thereunder shall be, and hereby are, expressly made subject and subordinate to the Mortgage and to any renewal, substitution, extension, modification or replacement thereof. The Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Demised Premises other than as provided under the Lease and other than to the extent Landlord acquires any interest therein.

2. In the event that the Mortgage is foreclosed for any reason whatsoever, Tenant shall attorn to and accept the person or persons purchasing Landlord's interest in the Demised Premises at the foreclosure sale as Lessor under the Lease for the balance then remaining of the term thereof, subject to all of the terms and conditions of the Lease, and the provisions of this Agreement. Tenant shall execute and deliver, at any time and from time to time, whether upon the request of Landlord or upon the request of Mortgagee or the purchaser at such foreclosure sale, any instrument which, in the reasonable opinion of the requesting party, is necessary to evidence such attornment. Upon the written request of the purchaser at such foreclosure sale, Tenant shall enter into a new lease of the Demised Premises with such purchaser for the balance of the then remaining term of the Lease and upon the same terms and conditions as are then contained in the Lease. Notwithstanding any contrary provision, from and after any foreclosure (or deed in lieu of foreclosure) of the Mortgage, Tenant shall, within fifteen (15) days after written request by Landlord's successor, execute and deliver an estoppel certificate with respect to such information, as Landlord's successor may reasonably request, the foregoing may be conclusively relied upon by Landlord's successor or any prospective purchaser or lender on the project of which the Demised Premises are a part.

Notwithstanding anything to the contrary contained herein or in the Lease, Mortgagee or the purchaser at such foreclosure sale shall not be (a) liable for any act or omission of any prior landlord (including Landlord), (b) liable for the return of any security deposit not actually received by Mortgagee or such purchaser, (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), (d) bound by any advance payment of rent or additional rent made by Tenant to Landlord except for rent or additional rent applicable to the then current month, ~~or (e) bound by any amendment or modification of the Lease made without the written consent of Mortgagee or such purchaser.~~

Notwithstanding anything to the contrary contained herein or in the Lease, in the event Mortgagee or any of Mortgagee's affiliates or subsidiaries (a "Mortgage Entity") shall acquire title to the Demised Premises, the liability of Mortgagee and any Mortgagee Entity under the Lease shall be limited to such entity's interest in the Demised Premises, and Tenant shall

look exclusively to such interests, if any, for payment and discharge of any liability imposed upon Mortgagee or any Mortgagee Entity with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee or any Mortgagee Entity other than claims relating to such Mortgagee or Mortgagee Entity's willful misconduct or gross negligence. Tenant agrees that it may not collect or attempt to collect any such judgement out of any other assets, of Mortgagee or any Mortgagee Entity.

3. In the event of a foreclosure of the Mortgage for any reason whatsoever, the person or persons purchasing Landlord's interest in the Demised Premises at the foreclosure sale shall accept the attornment of Tenant and accept Tenant as lessee of the Demised Premises under the terms and conditions of the Lease or, if such purchaser so elects, shall enter into a new lease of the Demised Premises with Tenant for the balance then remaining of the term of the Lease and upon the same terms and conditions as are then contained in the Lease. The obligation of the purchaser at such foreclosure sale to accept the attornment of Tenant and not to disturb Tenant's possession of the Demised Premises under the Lease, as set forth above in this Paragraph 3, is expressly subject to the satisfaction of the following conditions at the time of such foreclosure sale.

(a) Tenant shall not then be in default in the performance of any of Tenant's obligations under the Lease beyond any applicable cure period;

~~(b) Neither the rent nor any other charges or expenses payable by Tenant under the Lease shall have been reduced in any way (other than as expressly permitted by the terms of the Lease) without Mortgagee's prior written consent;~~

~~(c) The Lease shall not have been otherwise modified or amended in any way without Mortgagee's prior written consent;~~

(d) Tenant shall pay to such purchaser all rental payments payable by Tenant under the Lease from and after the date Tenant receives written notice of the foreclosure sale in the amounts and at the times set forth in the Lease, notwithstanding any prepayment of rent theretofore made by Tenant to Landlord under the Lease for any period beyond the month in which the foreclosure sale occurs. Landlord hereby directs Tenant to make such payment and indemnifies and holds Tenant harmless from claims relating to Tenant's compliance with such written direction from such purchaser; and

(e) Tenant shall duly confirm its attornment to such purchaser by an appropriate written instrument.

~~4. Tenant shall promptly deliver to Mortgagee, at the address set forth above, a copy of any notice which Tenant elects to serve upon Landlord as a result of any default by Landlord in the performance of Landlord's obligations under the Lease. Tenant shall also give a copy of such notice to any successor to Mortgagee's interest under the Mortgage, provided that prior to any such default of Landlord either Mortgagee or such successor in interest shall have given written notice to Tenant at the address set forth above (or at such other address of which Tenant~~

~~gives Mortgagee written notice), of the assignment of Mortgagee's interest under the Mortgage and shall have designated the address to which such notice of default is to be transmitted by Tenant. Notwithstanding any contrary provision of the Lease, Landlord shall not be in default under the Lease unless Mortgagee has received the notice aforesaid and has failed within thirty (30) days thereafter to cure or, if the default is a non-monetary default which cannot reasonably be cured within such thirty (30)-day period, Mortgagee has failed to commence such cure within such period or to thereafter diligently pursue same to completion.~~

5. Tenant hereby represents and warrants to Mortgagee as follows:

(a) The Lease is in full force and effect and has not been modified, supplemented, altered or superseded in any way.

(b) To Tenant's knowledge, ^{the best of} Landlord is not in default in any respect under any of the provisions of the Lease; ^{without specific investigation,}

(c) To Tenant's knowledge, Tenant has no existing defenses or offsets or credits against any monies due under the Lease or against the enforcement of the Lease by Landlord except as set forth below: _____

6. Tenant hereby agrees that during the term of the Lease, it shall execute and deliver to Lender, within fifteen (15) days following Lender's request, an estoppel certificate in form and substance acceptable to Lender and reasonably acceptable to Tenant.

7. The covenants and agreements herein contained shall bind and inure to the benefit of the successors and assigns of the parties hereto and, without limiting the generality of the foregoing, the covenants and agreements of Mortgagee herein contained shall specifically be binding upon any purchaser of Landlord's interest in the Demised Premises at a foreclosure sale held under the Mortgage.

8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Subordination, Non-Disturbance and Attornment Agreement to be executed as of the day and year first above written.

“Tenant”

Third Dunkin’ Donuts Realty, Inc. successor to Dunkin’ Donuts of Illinois, Inc., a Corporation

By: Jennie Wilson
Name: **JENNIE WILSON**
Title: **VP FINANCE & TREASURER**

“Landlord”

Dennis Lapidus

Dennis Lapidus

“Mortgagee”

New Century Bank

By: [Signature]
Its: Vice President

Property of Cook County Clerk's Office

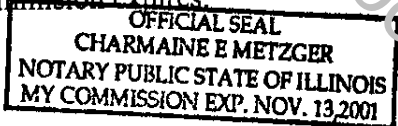
LANDLORD'S ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, Charmaine E. Metzger a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that Dennis Lapidus personally known to me to be the same person whose name is subscribed to the foregoing instrument as such appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25 day of Feb, ~~1999~~ ²⁰⁰⁰.

My commission expires:



Charmaine E. Metzger
Notary Public

TENANT'S ACKNOWLEDGEMENT

STATE OF ~~ILLINOIS~~ ^{Massachusetts}
)SS.
COUNTY OF ~~COOK~~ ^{Norfolk}

I, Tracy A. Giuffrida, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Jennie Wilson personally known to me to be the VP Finance & Treasury of Third Dunkin' Donuts Realty, Inc., a corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officer and 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 corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15 day of ~~xxxxxxx~~ ^{February}, ~~1999~~ ²⁰⁰⁰.

My commission expires:

Tracy A. Giuffrida
Notary Public TRACY A. GIUFFRIDA
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 2, 2004

BANK'S ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, Charmaine E. Metzger a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that JoAnn Wong, the VP of New Century Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VP, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25th day of Feb., ²⁰⁰⁰1999.

My commission expires
OFFICIAL SEAL
CHARMAINE E METZGER
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. NOV. 13, 2001

Charmaine E Metzger
Notary Public

EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1: LOT 11 IN BLOCK 39 IN NORTH EVANSTON BEING A SUBDIVISION OF LOTS 11 TO 16 AND THE WEST 4 3/10 ACRES OF LOT 17 IN SMITHS SUBDIVISION OF THE SOUTH PART OF QUILMETTE RESERVE ALSO OF LOTS 1 AND 3 AND THAT PART OF LOT 2 LYING BETWEEN CHICAGO AND MILWAUKEE RAILWAY AND THE WEST LINE OF LOT 3 PRODUCED TO THE NORTH LINE OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ASSESSORS PLAT OF EVANSTON, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 17, 1868 AS DOCUMENT 18783 IN BOOK 168 OF MAPS, PAGE 35, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 1 IN GREEN BAY AUTO CONSOLIDATION OF LOTS 2 AND 3 IN BLOCK 20 IN NORTH EVANSTON IN TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF CONSOLIDATION RECORDED SEPTEMBER 26, 1985 AS DOCUMENT 85207038, IN COOK COUNTY, ILLINOIS.

P.I.N. No.: 05-34-423-028-0000, 05-34-423-029-0000

Common Address: 2650 Greenbay Rd., Evanston, Illinois