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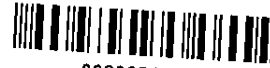
2002-06-18 15:26:29

Cook County Recorder

35.00

Recordation Requested By
and After Recorded Mail To:

Eric M. Roberson
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603



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SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

**MORTGAGEE'S NON-DISTURBANCE AGREEMENT
AND
LESSEE'S SUBORDINATION AND AGREEMENT TO ATTORN**

THIS AGREEMENT, made this 12TH day of JUNE, 2002 by and between THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, c/o Delaware Lincoln Investment Advisers, 200 East Berry Street, Fort Wayne, Indiana 46802 (hereinafter referred to as "Mortgagee") and KOCH FOODS INCORPORATED, an Illinois corporation having its address at 1300 Higgins Road, Park Ridge, Illinois (hereinafter referred to as "Lessee").

WHEREAS, Lessee has entered into a certain lease, dated October 18, 2001, between Lessee and ROSE FP LLC, as landlord, covering certain space (hereinafter referred to as the "Demised Premises") at 2155 North Rose Street, Franklin Park, Illinois and located on the property described on Schedule I attached hereto and made a part hereof (the said lease being hereinafter referred to as the "Lease"); and

WHEREAS, Mortgagee is or will be the holder of a certain Mortgage and Security Agreement dated as of JUNE 12, 2002 (hereinafter the "Mortgage") to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois, which covers the building and land of which the Demised Premises form a part which is legally described on Schedule I attached hereto; and

WHEREAS, Mortgagee has requested that Lessee subordinate the Lease to the lien of the Mortgage; and

WHEREAS, Lessee has requested that Mortgagee agree not to disturb Lessee's possessory rights in the Demised Premises in the event Mortgagee should foreclose the Mortgage provided that Lessee is not in default under the Lease and provided that Lessee attorns to Mortgagee or the purchaser at the foreclosure sale; and

WHEREAS, Lessee and Mortgagee are willing to so agree on the terms and conditions hereinafter provided;

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NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and TEN DOLLARS (\$10.00) and other good and valuable consideration each to the other in hand paid, receipt of which is hereby acknowledged, Mortgagee and Lessee hereby agree as follows:

1. The Lease is and shall be subject and subordinate in all respects to the lien of the Mortgage and to any renewal, modification, replacement or extension of the same.

2. (i) Provided Lessee complies with this Agreement and is not in default (subject to any applicable notice and cure periods) under the terms of the Lease in the payment of rent, additional or percentage rent or any other payment to be made under the Lease or the performance of any of the terms, conditions, covenants, clauses or agreements on its part to be performed under the Lease, as of the date Mortgagee files a lis pendens in, or otherwise commences a foreclosure action, or at any time thereafter, no default under the Mortgage, as modified, extended or increased, and no proceeding to foreclose the same will disturb Lessee's possession under said Lease and the Lease will not be affected or cut off thereby (except to the extent that Lessee's right to receive or set off any monies or obligations owed or to be performed by the Mortgagee's predecessors in title shall not be enforceable thereafter against Mortgagee or any subsequent owner), and notwithstanding any such foreclosure or other acquisition of the Demised Premises by Mortgagee, the Lease will be recognized as a direct lease from Mortgagee or any other party acquiring the Demised Premises upon the foreclosure sale, except that the Mortgagee, or any subsequent owner, shall not (a) be liable for any previous act or omission of landlord under the Lease, (b) be subject to any offset which shall theretofore have accrued to Lessee against landlord, (c) have any obligation with respect to any security deposited under the Lease unless such security has been physically delivered to Mortgagee, or (d) be bound by any previous modification of the Lease or by any previous prepayment of fixed rent for a period greater than one (1) month, unless such modification or prepayment shall have been expressly approved in writing by the Mortgagee.

(ii) Mortgagee agrees that, subject to the terms and conditions of this Agreement, if any action or proceeding is commenced by Mortgagee or at Mortgagee's behest for the foreclosure of the Mortgage or the sale of the Demised Premises or other realization under any other loan document, whether by foreclosure, deed in lieu of foreclosure or in any other proceedings made or brought to enforce the rights of Mortgagee, or by any successor to Mortgagee, Lessee shall not be named as a party therein (unless required by law to properly foreclose upon the Mortgage) and the sale of the Demised Premises in any such action or proceeding and the exercise by Mortgagee of any such action or proceeding or its other rights under the Mortgage shall be made subject to all rights of Lessee under the Lease (subject to Section 2(i), (a), (b), (c) and (d) above).

3. Any provision of this Agreement to the contrary notwithstanding, Mortgagee shall have no obligation, or incur any liability, with respect to the erection and completion of any improvements for Lessee's use and occupancy.

4. If Mortgagee elects to accept from the then Mortgagor a deed in lieu of foreclosure, Lessee's right to receive or set off any monies or obligations owed or to be performed by the then landlord shall not be enforceable thereafter against Mortgagee or any subsequent owner.

5. Lessee will upon request by Mortgagee, or any subsequent owner, execute a written agreement whereunder Lessee does attorn to Mortgagee or any such subsequent owner and affirm Lessee's obligations under the Lease and agree to pay all rentals and charges then due or to become due as they become due to Mortgagee or such subsequent owner.

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6. Lessee from and after the date hereof shall send a copy of any notice or statement under the Lease to Mortgagee at the same time such notice or statement is sent to the landlord under the Lease.

7. Lessee hereby agrees for the benefit of Mortgagee that it shall notify Mortgagee of any default on the part of landlord under the Lease that would entitle Lessee to terminate the Lease, or to abate the rent payable thereunder and further agrees that, notwithstanding any provision of the Lease, no notice of cancellation thereof shall be effective unless Mortgagee has received the notice aforesaid by registered mail, return receipt requested or by Federal Express or any other reputable overnight courier service, addressed to the Mortgagee, at the address as given herein (Attention: Law Department) or at the last address furnished to Lessee in writing, has failed within thirty (30) days of the date thereof to cure, or if the default cannot be cured within thirty (30) days has failed to commence and to diligently prosecute the cure of landlord's default described in such notice; *provided, however*, that in no event shall any such period to cure any default exceed sixty (60) days after the date of Tenant's notice to Mortgagee.

8. Lessee will neither offer nor make prepayment of rent (for a period in excess of one month) nor further change the terms, covenants, conditions and agreements of the Lease in any manner without the express consent in writing of the Mortgagee.

9. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage, except as specifically set forth herein.

10. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

11. This Agreement shall inure to the benefit of the parties hereto, their successors and assigns; *provided, however*, that in the event of the assignment or transfer of the interest of the Mortgagee, all obligations and liabilities of the Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Mortgagee's interest is assigned or transferred; and *provided, further*, that the interest of Lessee under this Agreement may not be assigned or transferred, except as may otherwise be permitted under the Lease.

12. Lessee agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

13. Lessee acknowledges that it has notice that the Lease and the rent and all other sums due thereunder have been collaterally assigned to the Mortgagee as part of the security for the obligations secured by the Mortgage. In the event that the Mortgagee notifies Lessee of a default under the Mortgage and demands in writing that Lessee pay rent and all other sums due under the Lease to the Mortgagee, Lessee agrees that it will honor such demand and pay rent and all other sums due under the Lease to the Mortgagee as directed by the Mortgagee commencing with the next monthly rental period in which such payments are due (unless Lessee has paid one month's rent in advance, in which case such payments will commence in the subsequent monthly rental period in which such payments are due).

14. This Agreement may be executed in any number of counterparts and by separate parties hereto on separate counterparts, all of such counterparts taken together to constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have respectively signed and sealed this Agreement as of the day and year first above written.

THE LINCOLN NATIONAL LIFE INSURANCE
COMPANY, an Indiana corporation

By: Delaware Lincoln Investment Advisers,
Its Attorney in Fact

By Karen L. Surguine
Printed Name: Karen L. Surguine
Its: Vice President

KOCH FOODS INCORPORATED

By _____
Printed Name: _____
Its: _____

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have respectively signed and sealed this Agreement as of the day and year first above written.

THE LINCOLN NATIONAL LIFE INSURANCE
COMPANY, an Indiana corporation

By: Delaware Lincoln Investment Advisers,
Its Attorney in Fact

By _____
Printed Name: _____
Its: _____

KOCH FOODS INCORPORATED

By Mark Kaminsky
Printed Name: Mark J. Kaminsky
Its: Chief Financial Officer

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STATE OF INDIANA)
) SS.
COUNTY OF ALLEN)

I, Richelle K. Reeves, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Karen L. Surguine, Vice President of Delaware/^{Lincoln} Investment Advisers, as attorney in fact for The Lincoln National Life Insurance Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 7th day of June, 2002.

Richelle K. Reeves

Notary Public

Richelle K. Reeves
(TYPE OR PRINT NAME)

(SEAL)

Commission Expires:

RICHELLE K. REEVES
Notary Public
Resident of Allen County
My Commission Expires 03-19-2009

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, IRINE FREGEL ^{LFO M&K}, a Notary Public in and for said County in the State aforesaid, do hereby certify that Mark J Kaminsky ^{M&K}, ~~President~~ of Koch Foods Incorporated an Illinois corporation who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ~~President~~ ^{M&K}, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16TH day of JUNE, 2002.

Irine Fregel
Notary Public

IRINE FREGEL
(TYPE OR PRINT NAME)



Commission Expires:

09-21-2004

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SCHEDULE I

LEGAL DESCRIPTION

Lot 1 in Koch Poultry Subdivision, being a subdivision of the North Three-Quarters of the West Half of the West Half of the Northwest 1/4 of Section 34, Township 40 North, Range 12 East of the Third Principal Meridian According to the Plat thereof recorded November 8, 2001 as Document No. 0011050901, in Cook County, Illinois.

Property of Cook County Clerk's Office

ADDRESS: 2155 North Rose Street
Franklin Park, Illinois

PIN(s): 12-34-100-023
12-34-100-024

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