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Cook County Recorder of Deeds
Date: 10/25/2004 10:22 AM Pg: 1 of 11

Property of Cook County Clerk's Office

**SUBORDINATION, ATTORNMENT AND
NON-DISTURBANCE/ESTOPPEL AGREEMENT**

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THIS INSTRUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

Tenant Trade Name: Einstein Bros. Bagels
Suite/Floor/Space No.: 682 Vernon Avenue

KATTEN MUCHIN ZAVIS ROSENMAN
Phillip M. Estaver, Esq.
525 West Monroe Street, Suite 1600
Chicago, Illinois 60661

Near North National Title Corp
222 North LaSalle Street
Chicago, Illinois 60601

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE/ESTOPPEL AGREEMENT

Einstein and Noah Corp.
(f/k/a)

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE/ESTOPPEL AGREEMENT (this "Agreement"), dated this 10th day of October 2004, between **Einstein Acquisition Corp.**, a Delaware corporation ("Tenant"), and **LaSalle Bank National Association**, a national banking association, its successors and assigns ("Mortgagee"), having its principal place of business at 135 S. LaSalle, Suite 3410, Chicago, IL 60603, Attention: Real Estate Capital Markets.

RECITALS:

I. Tenant is the lessee under that certain lease executed between Tenant's predecessor-in-interest and **Weinecke Court, LLC**, an Illinois limited liability company ("Landlord"), dated October 23, 1996 (the lease and all amendments thereto are hereinafter referred to as the "Lease"), covering all or a portion of property legally described in Schedule I attached hereto and made a part hereof (the "Property").

II. Mortgagee is making a loan (the "Loan") to Landlord which is secured, in part, by the lien of a mortgage or deed of trust executed and delivered by Landlord to Mortgagee encumbering the Property (the "Mortgage") and an assignment of leases and rents from the Property.

III. As a condition to making the Loan, Mortgagee requires that Tenant enter into this Agreement.

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

A. Tenant hereby represents, acknowledges and agrees as follows:

1. The Lease has not been amended, modified or extended except as follows: Lease Amendment dated June 6, 2000 and Notice to Exercise Option to Renew by Letter dated November 2, 2001, and assigned by that certain Assignment and Assumption Agreement, dated June 19, 2001.
2. The Lease does not contain any options to purchase and/or lease additional space, rights of set off, rights of first refusal to purchase and/or lease additional space or any similar provisions regarding acquisition of

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ownership interests or additional leased space in the building except as follows:

NONE

3. The term of the Lease commenced on March 1, 1997 and will terminate on January 31, 2007.
4. The current monthly rent payment under the Lease is \$3,105.00. Rent has been paid through October, 2004. No advance rents have been prepaid except for the current month.
5. In addition to monthly rent payments, the following amounts are also payable on a monthly basis for the following purposes: \$580.00 for Real Estate Taxes and \$443.00 for Operating Expenses.
6. The improvements described in the Lease have been completed and accepted by Tenant.
7. The security deposit under the Lease is currently \$0.00.
8. Tenant has not sublet any portion of the leased premises or assigned any of its rights under the Lease.
9. Tenant is in full and complete possession of the premises demised under the Lease, such possession having been delivered by the Landlord pursuant to the Lease and having been accepted by the Tenant.
10. The Lease is in full force and effect, Tenant has no existing claims, defenses or offsets under the Lease against Landlord, no uncured default exists under the Lease, and no event has occurred that would, except for the lapse of time, the giving of notice or both, constitute a default.
11. No cancellation, modification, amendment, extension, or assignment of the Lease, and no subletting or prepayment of more than one month's rent shall be made without Mortgagee's prior written consent.
12. All rent payments shall be paid as provided under the Lease until Tenant has been otherwise notified by Mortgagee or its successor and assign. Tenant agrees that, upon receipt of a notice from Mortgagee or its successor or assign that there has been a default by Landlord under the Loan Documents, Tenant shall make all subsequent rent payments directly to Mortgagee (or its successor or assign), or at the direction of Mortgagee (or its successor or assign). All prepayments of more than one month's rent and any and all termination fees paid by Tenant, or at Tenant's direction, shall be payable jointly to Mortgagee and Landlord.

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13. Tenant will not look to Mortgagee for the return of the security deposit, if any, under the Lease, except to the extent that such funds are delivered to Mortgagee.
 14. The guaranty of the Lease, if any, is in full force and effect.
 15. Tenant will deliver to Mortgagee a copy of all notices Tenant delivers to or receives from Landlord in accordance with the notice provision set forth herein.
- B. The Lease and all terms thereof, including, without limitation, any options to purchase, rights of first refusal, rights of set off, and any similar rights, are and shall be subject and subordinate to the Mortgage, and to all amendments, modifications, replacements and extensions thereof, to the full extent of the principal interest, fees, expenses and all other amounts secured thereby.
- C. In the event Mortgagee elects to foreclose the Mortgage, Mortgagee will not join Tenant in summary or foreclosure proceedings unless required by applicable law (and then only to the extent so required) as long as Tenant has not amended the Lease without Mortgagee's prior written consent and is not in default under the Lease.
- D. In the event that Mortgagee shall succeed to the interest of Landlord under the Lease and there exists no default by Tenant under the Lease and Tenant has not amended the Lease without Mortgagee's prior written consent, Mortgagee agrees not to disturb or otherwise interfere with Tenant's possession of the leased premises for the unexpired term of the Lease, provided that Mortgagee shall not be:
1. liable for any act or omission of Landlord or any prior landlord under the Lease;
 2. subject to any offsets or defenses which Tenant might have against Landlord or any prior landlord;
 3. bound by any rent or additional rent which Tenant might have paid for more than the current month to Landlord or any prior landlord;
 4. bound by any amendment or modification of the Lease made without Mortgagee's prior written consent; or
 5. liable for any security deposit Tenant might have paid to Landlord or any prior landlord, except to the extent Mortgagee has actually received said security deposit.
- E. Upon Mortgagee's succeeding to Landlord's interest under the Lease, Tenant covenants and agrees to attorn to Mortgagee or a purchaser at a foreclosure or trustee's sale, to recognize such successor landlord as Tenant's landlord under the

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Lease, and to be bound by and perform all of the obligations and conditions imposed upon Tenant by the Lease. If requested by Mortgagee or any subsequent owner, Tenant shall execute a new lease with Mortgagee, for a term equal to the remaining term of the Lease and otherwise containing the same provisions and covenants of the Lease.

- F. Prior to terminating the Lease due to a default by Landlord thereunder, Tenant agrees to notify Mortgagee of such default and give Mortgagee the opportunity to cure such default within thirty (30) days of Mortgagee's receipt of such notice (or, if such default cannot reasonably be cured within such thirty (30) day period, Mortgagee shall have such longer time as may be necessary to cure the default; provided that Mortgagee commences the cure within such period and diligently pursues the cure thereafter).
- G. This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.
- H. This Agreement can be modified only in writing duly executed by both parties.
- I. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: LaSalle Bank National Association
135 S. LaSalle Street
Suite 3410
Chicago, Illinois 60603
Attn: Real Estate Capital Markets

To Tenant: Einstein Bros. Bagels
1687 Cole Boulevard
Golden, Colorado 80401

With a copy to:
LWRCI - Store #2279
co Staubach Portfolio Services
15601 Dallas Parkway, Suite 400
Addison, Texas 75001

Attention Real Estate Department

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

- J. If any action or proceeding is instituted to enforce the terms hereof, the prevailing party in such action or proceeding shall be entitled to reasonable attorneys' fees, costs and expenses of the prevailing party.
- K. This Agreement, and all obligations of Tenant hereunder, shall terminate upon the release and satisfaction of the Mortgage.

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- L. The undersigned representative of Tenant certifies that he/she has full power, authority and right to execute and deliver this Agreement on behalf of Tenant and to bind Tenant to the provisions hereof.
- M. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TENANT:

Einstein and Noah Corp., (f/k/a)

Einstein Acquisition Corp., a Delaware corporation

By: _____

Name: _____

Its: _____

MORTGAGEE:

LaSalle Bank National Association, a national banking association

By: _____

Name: _____

Its: _____

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TENANT:

By: _____

Name: _____

Its: _____

MORTGAGEE:

LaSalle Bank National Association, a national banking association

By: _____

Name: _____

Its: _____

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JOINDER

As an inducement for Mortgagee to execute and deliver this Agreement and close the Loan referenced herein, _____, a _____, the Guarantor of Tenant's obligations under the Lease, hereby (i) acknowledges and consents to the terms of the Agreement, and (ii) agrees to assume all of Tenant's liability arising under the Agreement with respect to a breach by Tenant of any of its obligations contained in the Agreement.

_____ N/A _____

By: _____

Name: _____

Its: _____

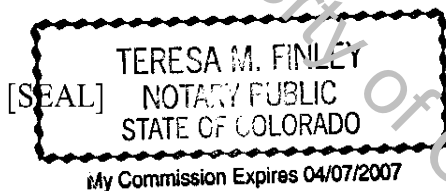
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Colorado
 STATE OF ~~ILLINOIS~~)
) SS.
 COUNTY OF Jefferson)

I, Teresa M. Finley, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Greg Powell, the SF VP of EINSTEIN AND NOAH CORP, a _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said _____, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of OCTOBER, 2004.



Teresa M. Finley

Notary Public

My commission expires: 04.07.07

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EXHIBIT A

LEGAL DESCRIPTION

THE SOUTHEASTERLY 16 FEET OF LOT 2, LOT 3, LOT 4 (EXCEPTING THE SOUTHERLY 15 FEET OF LOT 4), THE EASTERLY 20 FEET OF LOTS 8, 9, 10 AND 11 AND THE WESTERLY 10 FEET OF LOTS 5, 6 AND 7, ALL IN BLOCK 32 IN GLENCOE, A SUBDIVISION OF PARTS OF SECTIONS 5, 6, 7 AND 8, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address Of Property: 670-694 Vernon Avenue
Glencoe, Illinois 60022

P.I.N.(s) – 05-07-205014, 05-07-205-015, 05-07-205-016; 05-07-205-028