



Doc#: 0700339123 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 01/03/2007 02:00 PM Pg: 1 of 15

**FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT**

DATED as of December 15, 2006

between

DENNY'S REALTY, LLC ("MORTGAGOR")

and

BANK OF AMERICA, N.A. ("MORTGAGEE")
as Administrative Agent and Collateral Agent
for premises located at:

Cook County, IL
1380 Torrence Avenue, Calumet City
R.E. Tax No. 29-24-200-013-0000
2447 Mannheim Road, Franklin Park
R.E. Tax No. 12-28-302-053-0000
7627 West 95th Street, Hickory Hills
R.E. Tax No. 23-12-102-017-000
#20 Orland Square Drive, Orland Park
R.E. Tax No. 27-10-300-008-0000

This Instrument was prepared
by

DUSTIN C. SARNOSKI, ESQ.
BINGHAM MCCUTCHEN LLP
150 FEDERAL STREET
BOSTON, MASSACHUSETTS 02110

Legal Description located on Exhibit A hereto

UCC Direct Services
187 WOLF RD. SUITE 101
ALBANY, NY 12205

JB 9973688
MT

RECORD AND RETURN TO: ...

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FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

This FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "**Amendment**") is made as of this 15 day of December, 2006 by and between Denny's Realty, LLC, a Delaware limited liability company, having its principal office at 200 E. Main Street, Spartanburg, South Carolina 29319 (hereinafter, "**Mortgagor**") and Bank of America, N.A., a national banking association, having a place of business at 100 Federal Street, Boston, Massachusetts 02110, as Administrative Agent and Collateral Agent for itself and such other lending institutions (hereinafter, "**Lenders**") who are or may become parties to the Amended Credit Agreement (as defined herein) (in such capacity as Administrative Agent and Collateral Agent, "**Mortgagee**").

WHEREAS, Denny's Inc. and Denny's Realty, Inc. (collectively, the "**Borrowers**"), Denny's Corporation, Denny's Holdings, Inc. and DFO, Inc. (collectively, the "**Guarantors**"), the lenders from time to time party to the First Lien Credit Agreement (as defined herein) (the "**First Priority Lenders**"), including, inter alia, the Mortgagee and the other financial institutions parties thereto and UBS Securities LLC as syndication agent, entered into to that certain Credit Agreement dated as of September 21, 2004 (as in effect on the date hereof, the "**First Lien Credit Agreement**") pursuant to which such financial institutions, upon certain terms and conditions contained therein, made revolving and term loans in a principal amount not to exceed \$300,000,000 to the Borrowers which were evidenced by various notes:

WHEREAS, the Borrowers, the Guarantors, the lenders from time to time party to the Second Lien Credit Agreement (the "**Second Priority Lenders**" and, together with the First Priority Lenders, the "**Lenders**"), including, inter alia, the Mortgagee and the other financial institutions parties thereto, entered into to that certain Credit Agreement dated as of September 21, 2004 (as in effect on the date hereof, the "**Second Lien Credit Agreement**" and, together with the First Lien Credit Agreement, the "**Original Credit Agreement**") pursuant to which such financial institutions, upon certain terms and conditions contained therein, made term loans in a principal amount not to exceed \$120,000,000 to the Borrowers which were evidenced by various notes;

WHEREAS, Mortgagor, to secure the loans extended to the Borrowers pursuant to the Original Credit Agreement, executed and delivered to Mortgagee that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of September 21, 2004 and recorded on October 4, 2004 in Document No. 0427827139 of the Cook County Recorder of Deeds (the "**Original Mortgage**");

WHEREAS, the obligations of the Borrowers set forth in the Original Credit Agreement and originally secured by the Original Mortgage have not been satisfied, discharged or fully repaid, but have been amended in accordance with the terms of a certain Amended and Restated Credit Agreement dated as of even date herewith by and among the Borrowers, the Guarantors, the Mortgagee and the Lenders (as the same may from time to time be amended, supplemented, extended, restated or otherwise modified, the "**Amended Credit Agreement**") pursuant to which the Lenders, upon certain terms

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and conditions have made certain revolving and term loans to the Borrowers which are evidenced by various notes;

WHEREAS, Denny's Realty, Inc. has converted from a Delaware corporation to a Delaware limited liability company and is now known as Denny's Realty, LLC;

WHEREAS, DFO, Inc. has converted from a Delaware corporation to a Delaware limited liability company and is now known as DFO, LLC;

WHEREAS, Mortgagee expects to receive substantial direct and indirect benefits from the extensions of credit to the Borrowers under the Amended Credit Agreement; and

WHEREAS, the parties wish to amend the terms of the Original Mortgage to secure, among other things, the obligations of the Borrowers under the Amended Credit Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. All references in the Original Mortgage to (i) "Denny's Realty, Inc." shall be deemed to be references to "Denny's Realty, LLC" and (ii) "DFO, Inc." shall be deemed to be references to "DFO, LLC".
2. All references to the "Mortgage" contained in the Original Mortgage shall be deemed to be references to the Original Mortgage as amended by this Amendment.
3. All references to the "Credit Agreement," "Credit Agreements," "First Lien Credit Agreement," or "Second Lien Credit Agreement" contained in the Original Mortgage shall be deemed to be references to the Amended Credit Agreement.
4. All paragraphs located in the "WITNESSETH THAT" section of the Original Mortgage are hereby deleted in the entirety and replaced with the following:

"Reference is made to (i) that certain Amended and Restated Credit Agreement dated as of December 15, 2006, among Denny's Inc., a California corporation, Denny's Realty, LLC, a Delaware limited liability company (each of the foregoing, individually, a "Borrower" and, jointly and severally, and collectively, the "Borrowers"), Denny's Corporation, a Delaware corporation, Denny's Holdings, Inc., a New York corporation, DFO, LLC, a Delaware limited liability company, the Lenders (as defined in Article I of the Credit Agreement), Bank of America, N.A., as administrative agent (in such capacity, the "Administrative Agent") and as collateral agent (in such capacity, the "Collateral Agent") for the Lenders, and as syndication agent (in such capacity, the "Syndication Agent") for the Lenders, pursuant to which the Lenders have agreed to make term and revolving credit loans to the Borrowers, as such Amended and Restated

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Credit Agreement is originally executed, or if varied, supplemented, amended or restated from time to time, as so varied, supplemented, amended or restated (the "*Credit Agreement*"), (ii) the guarantee and collateral agreement dated as of the date hereof (as amended, supplemented or otherwise modified from time to time, the "*Guarantee and Collateral Agreement*") among the Borrower, the Guarantors, each Subsidiary named therein and the Collateral Agent, (iii) the Intercreditor Agreement dated as of the date hereof (the "*Intercreditor Agreement*") among Borrower, the Guarantors, and Mortgagee. Capitalized terms used but not defined herein have the meanings given to them in the Credit Agreement (or the Guarantee and Collateral Agreement if so designated).

In the Credit Agreement, (i) the Lenders have agreed to make (a) term loans (the "*Term Loans*") to the Borrower and (b) revolving loans (the "*Revolving Loans*" and, together with the Term Loans, the "*Loans*") to the Borrower and (ii) the Issuing Bank has issued or agreed to issue from time to time Letters of Credit for the account of the Borrower, in each case pursuant to, upon the terms, and subject to the conditions specified in, the Credit Agreement. Amounts paid in respect to the Terms Loans may not be reborrowed. Subject to the terms of the Credit Agreement, Borrower may borrow, prepay and reborrow the Revolving Loans.

Mortgagor, along with Denny's, Inc., is the Borrower and will derive substantial benefit from the making of the Loans by the Lenders and the issuance of the Letters of Credit by the Issuing Bank. In order to induce the Lenders to make Loans and the Issuing Bank to issue Letters of Credit, the Mortgagor has agreed to grant this Mortgage to secure, among other things, the due and punctual payment and performance of all of the obligations of the Borrower under the Credit Agreement.

The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit are conditioned upon, among other things, the execution and delivery by the Mortgagor of this Mortgage in the form hereof to secure (a) Loan Document Obligations (as defined in the Guarantee and Collateral Agreement), (b) the due and punctual payment and performance of all obligations of each Loan Party under each Hedging Agreement that, in either case, if and to the extent permitted by the Credit Agreement (i) is in effect on the Closing Date with a counterparty that is a Lender or an Affiliate of a Lender as of the Closing Date or (ii) is entered into after the Closing Date with any counterparty that is a Lender or an Affiliate of a Lender at the time such Hedging Agreement is entered into, (c) the due and punctual payment and performance of all obligations in respect of overdrafts and related liabilities owed to the Administrative Agent or any of its Affiliates and arising from treasury, depositary, and cash management services in connection with any automated clearinghouse transfers of funds, (d) the due and punctual payment by the Borrowers of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership, or other similar

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proceeding, regardless of whether allowed or allowable in such proceeding) on the Term Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations of the Borrowers to any of the Secured Parties under the Credit Agreement and each of the other Loan Documents, including obligations to pay fees, expense and reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (e) due and punctual performance of all other obligations of the Borrowers under or pursuant to the Credit Agreement and each of the other Loan Documents and (f) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Mortgage and each of the other Loan Documents (all the monetary and other obligations referred to in clauses (a) through (f) being referred to collectively as the "*Obligations*").

As used in this Mortgage, the term "*Secured Parties*" shall mean (a) the Lenders (and any Affiliate of any Lender to which any obligation referred to in clause (c) of the definition of the term "*Obligations*" is owed), (b) the Administrative Agent, (c) the Collateral Agent, (d) the Issuing Bank, (e) each counterparty to any Hedging Agreement entered into with a Loan Party the obligations under which constitute Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the successors and assigns of each of the foregoing.

Pursuant to the requirements of the Credit Agreement, the Mortgagor is granting this Mortgage to create liens on the security interest in the Trust Property (as hereinafter defined) to secure the performance and payment by the Mortgagor of the Obligations. The Credit Agreement also requires the granting by other Loan Parties of mortgages, deeds of trust and/or deeds to secure debt (the "*Other Mortgages*") that create liens on and security interests in certain real and personal property other than the Trust Property to secure the performance of the Obligations.

This Mortgage secures all debt and Obligations of the Borrower, Guarantors, and their affiliates, as the same may be refinanced, modified, and amended from time to time, which are incurred pursuant to or described in the Credit Agreement, as it may be amended and restated. The Obligations shall include without limitations all refinancings, extensions or reissuance of the Revolving Loans or any Letter of Credit, together with any other undertakings by the Loan Parties under the Credit Agreement. The parties intend for Secured Parties and Obligations to be construed in the broadest possible sense so as to allow this Mortgage to secure the senior secured debt of the Loan Parties, including without limitation debt which extends beyond the original maturity date of the

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Credit Agreement. There shall be no impairment or termination of this Mortgage as a result of any interest of the Lenders, Secured Parties, Administrative Agent, Syndication Agent, Issuing Bank, Mortgagee and Collateral Agent, or any of them, being assigned, consolidated or eliminated. Notwithstanding the foregoing, (i) any transfer of interest or modification of Obligations shall be subject to and as provided in the Credit Agreement and other Loan Documents, and (ii) no debt or obligations which arise outside the Credit Agreement and which are not incorporated into the Credit Agreement with the consent of the Required Lenders shall be secured by this Mortgage.”

5. All references in the Original Mortgage to (i) “First Priority Lenders” or “Second Priority Lenders” shall be deemed to be references to “Lenders”.
6. Mortgagor hereby ratifies and confirms the lien and security interest of Mortgage upon and in any and all property, real, personal or mixed, tangible or intangible, now or hereafter encumbered by the Original Mortgage as security for the Obligations (as defined in the Original Mortgage as amended by this Amendment).
7. Except as expressly amended herein, all of the terms and conditions of the Original Mortgage remain unchanged and in full force and effect.
8. This Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

*[Remainder of page intentionally left blank--
signatures on the following page]*

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first above-written.

Attest:

Kristin N. Timmons

Name: Kristin N. Timmons

Title:

MORTGAGOR:

DENNY'S REALTY, LLC

By: DFO, LLC

Its: Sole Member

By: Denny's Inc.

Its: Sole Member

By: S. Alex Lewis

Name: S. Alex Lewis

Title: Vice President & Treasurer

Attest:

Carol G. Alm

Name:

Title:

Carol G. Alm
Assistant to the President

MORTGAGEE:

BANK OF AMERICA, N.A.,
as Administrative Agent and Collateral
Agent

By: Tamisha U. Easley

Name: Tamisha U. Easley
Title: Vice President

(corporate seal)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that S. Alex Lewis, as Vice President and Treasurer of Denny's, Inc., the sole member of DFO, LLC, the sole member of Denny's Realty, LLC, on behalf of said corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



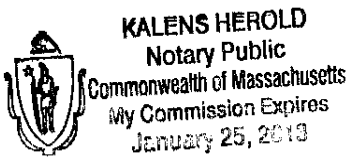
Witness my hand and official seal this 12th day of December, 2006.

Alan T. Young
 Alan T. Young
 Notary Public for South Carolina
 My Commission Expires: October 13, 2010

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this 12th day of December, 2006 before me, the undersigned notary public, personally appeared Tamisha U. Evans, as V.P. of Bank of America, N.A., as Administrative Agent and Collateral Agent, proved to me through satisfactory evidence of identification, which was Driver License to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as V.P. of Bank of America, N.A., as Administrative Agent and Collateral Agent.



Kalens Herold
 Notary Public
 My commission expires:

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Calumet City, IL

EXHIBIT A

The land referred to in this mortgage is described as follows:

Lot A, in R.O.W. Subdivision, being a subdivision of part of Lot 2, in River Oaks West Unit Number 2, being a part of the Northeast 1/4 of Section 24, Township 36 North, Range 14, East of the Third Principal Meridian, according to a plat thereof recorded August 9, 1973, as document Number 22433855, all in Cook County, Illinois.

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Franklin Park, ILEXHIBIT A

The land referred to in this mortgage is described as follows:

Land in the City of Taylor, Wayne County, Michigan, described as:

A parcel of land in the Northwest 1/4 of Section 16, Town 3 South, Range 10 East, City of Taylor, Wayne County, Michigan, being described as:

Beginning at a point on the West line of Section 16, thence North 0 degrees 5 minutes 3 seconds East 523.35 feet from the West 1/4 corner of Section 16; thence along said West line, North 0 degrees 5 minutes 3 seconds East 141.42 feet; thence North 89 degrees 1 minute 33 seconds East 353.00 feet; thence South 0 degrees 5 minutes 3 seconds West 140.98 feet; thence South 88 degrees 57 minutes 17 seconds West 353.00 feet to the point of beginning. Subject to the rights of the public and of any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

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Franklin Park, IL

SCHEDULE "A"

THE SOUTH 150 FEET OF THE FOLLOWING DESCRIBED TRACT OF LAND; THAT PART OF THE SOUTH 1/2 OF THE SOUTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN. DESCRIBED BY CONNECTING AT THE NORTH WEST CORNER OF SAID SOUTH 1/2 OF THE SOUTH WEST 1/4 OF SAID SECTION AND THENCE RUNNING SOUTH ON THE SECTION LINE 304.94 FEET FOR A POINT OF BEGINNING, THENCE EAST ON A LINE WHICH FORMS AN ANGLE OF 89 DEGREES 40 MINUTES WITH THE SECTION LINE MEASURED FROM SOUTH TO EAST, 300.00 FEET; THENCE SOUTH PARALLEL WITH THE SECTION LINE 275.8 FEET, THENCE WEST 300.0 FEET TO A POINT IN THE SECTION LINE WHICH IS 275.8 FEET SOUTH FROM THE POINT OF BEGINNING, THENCE NORTH 275.8 FEET TO THE POINT OF BEGINNING, (EXCEPTING THAT PART THEREOF FALLING ON THE EAST 17 FEET OF THE WEST 50 FEET OF THE SOUTH 150 OF THE NORTH 150 FEET OF THE NORTH 380.74 FEET OF THE SOUTH WEST 1/4 OF SECTION 28 AFORESIAD, AS CONVETED TO THE PEOPLE OF THE STATE OF ILLINOIS FOR THE USE OF THE DEPARTMENT OF TRANSPORTATION BY DEED RECORDED AS DOCUMENT 23625902) IN COOK COUNTY, ILLINOIS

Cook County Clerk's Office

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Hickory Hills, IL

EXHIBIT A

Hickory Hills, County of Cook, State of Illinois, and more particularly described as follows:

That part of Lots 1 and 2, taken as a tract, in Cody and Others Subdivision of the East half of the Northwest quarter and the Northwest quarter of the Northwest quarter of Section 12, Township 37 North, Range 12 East of the Third Principal Meridian described as follows: Beginning at a point in the East line of said Lot 1 which is 70 feet South of the Northeast corner of said Lot 1; thence West along a line 70 feet South of, measured at right angles to, and parallel with the North line of said Lot 1 and 2, a distance of 296 feet; thence South at right angles to the last described course, a distance of 56 feet; thence Southeasterly on a curved line, tangent to the last described course, convex to the Southwest, having a radius of 254.94 feet, a distance of 161.91 feet to a point in a line extending from a point in the West line of said Lot 2 which is 428.97 feet South of the Northwest corner of said Lot 2 to a point in the East line of said Lot 1, which is 71.97 feet South of the Northeast corner of said Lot 1; thence Northeasterly along said line extending from the West line of said Lot 2 to the East line of said Lot 1, a distance of 320.62 feet to the East line of said Lot 1; thence North 1.97 feet to the place of beginning, excepting therefrom the East 50 feet as measured along the North line thereof; together with all of the right, title and interest of the Seller in and to the land lying in the streets abutting the property, all in accordance with the terms and provisions hereinafter set forth.

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Orland Park, IL

EXHIBIT A

The land covered by this mortgage is described as follows:

Lot G-2 in the subdivision of Orland Square planned development in the West 1/2 of the Southwest 1/4 of Section 10, Township 36 North, Range 12, East of the Third Principal Meridian, per plat of subdivision recorded as document 23679530, in Cook County, Illinois.

Property of Cook County Clerk's Office

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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "DENNY'S REALTY, INC." TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "DENNY'S REALTY INC." TO "DENNY'S REALTY, LLC", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF JUNE, A.D. 2006, AT 9:22 O'CLOCK A.M.



2216733 8100V

060665998

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4898573

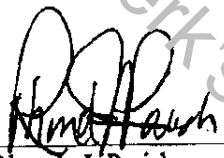
DATE: 07-13-06

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STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A CORPORATION TO A
LIMITED LIABILITY COMPANY PURSUANT TO
SECTION 18-214 OF THE LIMITED LIABILITY ACT

- 1) The jurisdiction where the Corporation first formed is Delaware.
- 2) The jurisdiction immediately prior to filing this Certificate is Delaware.
- 3) The date the corporation first formed is December 19, 1989.
- 4) The name of the Corporation immediately prior to filing this Certificate is "Denny's Realty, Inc."
- 5) The name of the Limited Liability Company as set forth in the Certificate of Formation is "Denny's Realty, LLC".
- 6) The Certificate of Conversion shall be effective on June 28, 2006.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on the 23rd day of June, 2006.

By: 
Rhonda J. Parish
Executive Vice President and Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:28 AM 06/28/2006
FILED 09:22 AM 06/28/2006
SRV 060619314 - 2216733 FILE