



Doc#: 0701142126 Fee: \$34.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/11/2007 01:10 PM Pg: 1 of 6

8336520 C. Hayes 01

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Panera, LLC
Three Charles River Place
63 Kendrick Street
Needham, MA 02494
Attn: Development Counsel

PROPERTY ADDRESS:

2300 West Logan Avenue
Chicago, Illinois

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement is dated this 21 day of December, 2006 between ^{**}Oak Brook Bank, an Illinois banking corporation ("Lender"), and Panera, LLC, a Delaware limited liability company ("Tenant").

**MB Financial Bank, N.A.,
successor in interest to

RECITALS

A. Tenant has entered into a certain lease (the "Lease") dated December 21, 2006 with Elston Logan Holdings LLC, an Illinois limited liability company ("Landlord") of a portion of a certain building commonly known as Elston/Logan Retail, in Chicago, Illinois. The leased premises described in the Lease are hereinafter referred to as the "Premises".

B. A Memorandum/Notice of Lease dated 12-21, 2006 by and between Tenant and Landlord regarding the Lease is to be recorded with the Cook County Recorder of Deeds (the "Registry").

C. Lender has made a loan to Landlord, which loan is secured by a mortgage and security agreement dated December 23, 2004 (as modified from time to time, the "Mortgage") and recorded with the Registry as Document No. 0500433025 and an assignment of rents and of lessor's interest in leases dated December 23, 2004 (as modified from time to time, the "Assignment") and recorded with said Registry as Document No. 0500433026, both with respect to the Premises.

For mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Box 400-CTCC

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1. Tenant agrees that the lien of the Lease is and shall be subject and subordinate to the lien of the Mortgage and to the lien of the Assignment and to all renewals, amendments, modifications, consolidations, replacements and extensions thereof, now or hereafter executed, to the full extent of all amounts secured thereby, said subordination to have the same force and effect as if the Mortgage, the Assignment, and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, and amendments or modifications or any notice thereof. Provided, however, that the foregoing subordination provision shall not be deemed or construed as limiting Tenant's rights under the Lease and/or Landlord's obligations thereunder, including without limitation, the use of insurance proceeds and condemnation awards, and notwithstanding any inconsistent provisions of the Mortgage with respect thereto, such proceeds and awards shall be applied as set forth in the Lease.

2. Lender agrees that Tenant shall not be named or joined as a party defendant in any action, suit or proceeding which may be instituted by Lender to foreclose or seek other remedies under the Mortgage or the Assignment by reason of a default or event of default under the Mortgage or the Assignment, unless applicable law requires Tenant to be made a party thereto as a condition to Lender's proceeding against Landlord or prosecuting such rights and remedies. Lender further agrees that, in the event of any entry by Lender pursuant to the Mortgage, a foreclosure of the Mortgage, or the exercise by Lender of any of its rights under the Mortgage or Assignment, Lender shall not disturb Tenant's right of possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Mortgage by Lender, the acceptance of a deed in lieu of foreclosure by Lender, or Lender's exercise of any of its rights under the Mortgage or Assignment, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease:

(a) Lender shall not be liable in damages for any act or omission of any prior landlord (including Landlord), provided nothing herein shall derogate from the obligation of Lender to perform all of the obligations of Landlord pursuant to the Lease once Lender succeeds to the interest of Landlord under the Lease;

(b) Lender shall not be liable for the return of any security deposit unless such security deposit is actually received by Lender;

(c) Lender shall not be bound by any rent or Additional Rental which Tenant might have prepaid for more than one (1) month in advance under the Lease (unless so required under the Lease);

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(d) Lender shall not be bound by any amendments or modifications of the Lease (which has the effect of reducing rent, decreasing the term or canceling the Lease prior to its expiration except as a result of either the exercise of a right to terminate as set forth in the Lease or as provided by law, or as a result of a default of Landlord) made without the consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned; and

(e) Lender shall not be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) except in cases where Tenant has given Lender written notice of the event or circumstances giving rise to such damages, offsets or defenses and the same period of time to cure as is provided to Landlord under the Lease.

5. Lender hereby approves of, and consents to, the Lease. Notwithstanding anything to the contrary contained in the Mortgage or the Assignment, Tenant shall be entitled to use and occupy the Premises and exercise all its rights under the Lease, and the Lease and Landlord's and Tenant's performance thereunder shall not constitute a default under the Mortgage or Assignment. Tenant agrees to give Lender a copy of any notice of default under the Lease served upon Landlord at the same time as such notice is given to Landlord, and allow Lender the same period of time permitted to Landlord under the Lease to cure such default on Landlord's behalf.

6. The terms and provisions of this agreement shall be automatic and self-operative without execution of any further instruments on the part of any of the parties hereto. Without limiting the foregoing, Lender and Tenant agree, within thirty (30) days after request therefor by the other party, to execute an instrument in confirmation of the foregoing provisions, in form and substance reasonably satisfactory to Lender and Tenant, pursuant to which the parties shall acknowledge the continued effectiveness of the Lease in the event of such foreclosure or other exercise of rights.

7. Any notice to be delivered hereunder shall be in writing and shall be sent registered or certified mail, return receipt requested, postage prepaid, or overnight delivery by Federal Express, Purolator Courier, United Parcel Service, U.S. Postal Service Express Mail, or similar overnight courier which delivers only upon signed receipt of the addressee, or its agent. The time of the giving of any notice shall be the time of receipt thereof by the addressee or any agent of the addressee, except that in the event that the addressee shall refuse to receive any notice, or there shall be no person available (during normal business hours) to receive such notice, the time of giving notice shall be deemed to be the time of such refusal or attempted delivery as the case may be. All notices addressed to Lender or Tenant, as the case may be, shall be delivered to the respective addresses set forth opposite their names below, or such other addresses as they may hereafter specify by written notice delivered in accordance herewith:

If to Tenant:

Panera, LLC
6710 Clayton Road
Richmond Heights, MO 63117
Attn: General Counsel

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With a copy to: Panera, LLC
Three Charles River Place
63 Kendrick Street
Needham, MA 02494
Attn: Development Counsel


If to Lender: ** Oak Brook Bank **MB Financial Bank, N.A., successor in
1400 Sixteenth Street interest to
Oak Brook, Illinois 60523
Attn: Christopher Hutter

With a copy to: Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062
Attn: Bruce A. Salk

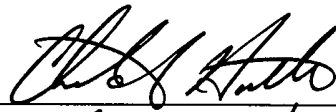
8. The term "Lender" as used herein includes any direct or more remote successor or assign of the named Lender herein, including without limitation, any purchaser at a foreclosure sale, and any successor or assign thereof, and the term "Tenant" as used herein includes any direct or more remote successor and assign of the named Tenant herein.

Executed under seal as of the day and year first above written.

TENANT:
PANERA, LLC,
a Delaware limited liability company

By: 
Name: Patricia Gray
Title: Senior Vice President
Chief Legal Officer

LENDER: *MB Financial Bank, N.A., successor**
*****OAK BROOK BANK,** in interest to
an Illinois banking corporation

By: 
Name: CHRISTOPHER HUTTER
Title: VICE PRESIDENT

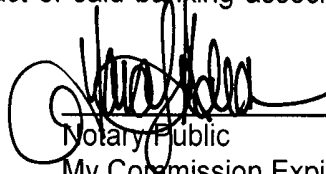
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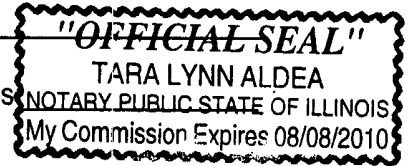
STATE OF ILLINOIS)
) ss:
COUNTY OF DUPAGE)

December 21, 2006

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Christopher Hutter, of OAK BROOK BANK, an Illinois banking corporation, 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 the said instrument as his own free and voluntary act, and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

**MB Financial Bank, N.A., successor in interest to


Notary Public
My Commission Expires:



STATE OF Massachusetts)
) ss:
COUNTY OF Norfolk)

December 11, 2006

Then personally appeared the above-named Patricia Gray, of PANERA, LLC, and acknowledged the foregoing instrument to be the free act and deed of said limited liability company.

Suda Palmuro
Notary Public
My Commission Expires: 11-5-10

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Legal Description

PARCEL 1:

THE NORTHEASTERLY ½ OF VACATED HOLLY AVENUE, LYING SOUTHWESTERLY OF AND ADJOINING LOTS 26, 27 AND 28 IN BLOCK 1 IN JONES' SUBDIVISION OF LOT 6 IN THE SNOW ESTATE SUBDIVISION IN THE SOUTHWEST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; AND LOT 5 IN COLBERT'S SUBDIVISION OF LOTS 29 TO 33, BOTH INCLUSIVE; AND LOTS 38 TO 42, BOTH INCLUSIVE IN BLOCK 1 OF JONES' SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 18, 19, 20 AND 21 (**EXCEPT THE NORTHWESTERLY 16.00 FEET OF SAID LOT 21**) AND THE 16-FOOT VACATED ALLEY, LYING SOUTHWESTERLY OF AND ADJOINING SAID LOTS 18, 19, 20 AND 21 (**EXCEPT THE NORTHWESTERLY 16.00 FEET OF SAID LOT 21**) AND LOTS 26, 27 AND 28 ALL IN BLOCK 1 IN JONES' SUBDIVISION OF LOT 6 IN SNOW ESTATE SUBDIVISION IN THE SOUTHWEST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 1 TO 5 IN COLBERT'S SUBDIVISION OF LOTS 29 TO 33, BOTH INCLUSIVE AND LOTS 38 TO 42 BOTH INCLUSIVE IN BLOCK 1 IN JONES' SUBDIVISION OF LOT 6 IN SNOW ESTATE SUBDIVISION IN THE SOUTHWEST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Pin #'s : 14-30-304-004-0000
 14-30-304-012-0000
 14-30-304-014-0000
 14-30-304-014-0000
 14-30-304-018-0000