

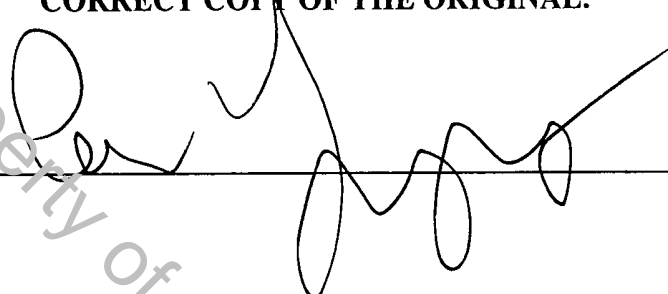
UNOFFICIAL COPY



Doc#: 0720735006 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/28/2007 08:03 AM Pg: 1 of 10

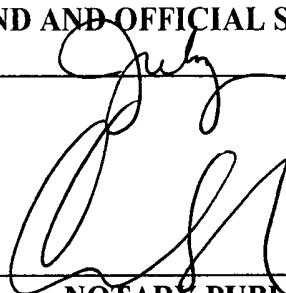
PLEASE RECORD DOCUMENT:

THIS IS TO CERTIFY THAT THE ATTACHED DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE ORIGINAL.

BY: 

I, THE UNDERSIGNED, A NOTARY IN AND FOR THE COUNTY OF \_\_\_\_\_,  
STATE OF ILLINOIS, DO HEREBY CERTIFY THAT  
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  
THE SAID INSTRUMENT AS A FREE AND VOLUNTARY ACT, FOR THE  
USES AND PURPOSES THEREIN SET FORTH.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, THIS 24 DAY OF  
July, 2007.

  
NOTARY PUBLIC



BOX 333-CP

**UNOFFICIAL COPY**

This instrument prepared by  
and please return to:  
Kimberly K. Enders, Esq.  
Polsinelli Shalton Welte Suelthaus PC  
180 N. Stetson, Suite 4525  
Chicago, Illinois 60601

8328924  
27069771

We certify that this is a true, correct, and  
accurate copy of the original instrument.

Chicago Title and Trust Company

By \_\_\_\_\_

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the \_\_\_\_\_ day of October, 2006, among Labe Bank, an Illinois banking corporation ("Mortgagee"), Rand River, L.L.C., an Illinois limited liability company ("Landlord"), and Des Plaines Donuts, Inc., an Illinois corporation ("Tenant"), which has leased the property commonly known as 1584 Rand Road, Unit A, Des Plaines, Illinois.

#### RECITALS:

A. Tenant has entered into that certain lease agreement dated September 6, 2006, with Landlord as Lessor, which lease agreement covers certain premises (the "Premises") in that certain real property (the "Property") commonly known as 1584 Rand Road, Unit A, Des Plaines, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (herein, said lease agreement, together with the Lease Rider with Baskin-Robbins USA, Co. Dunkin' Donuts Incorporated, Togo Eateries, Inc. ("Franchisor") and any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, are collectively the "Lease");

B. Mortgagee has agreed to make a loan to Landlord, to be secured by the lien of a mortgage from Landlord to the Mortgagee (herein, together with all amendments modifications, extensions, renewals, consolidations and replacements thereof now existing or hereafter entered into, collectively, the "Mortgage") on the Property; and

C. Tenant has agreed to subordinate the Lease to the lien of the Mortgage and Mortgagee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

# UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the Premises and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subordination. The Lease (including all of the terms, covenants and provisions thereof) is and shall be subject and subordinate in all respects to the Mortgage, to the full extent of any and all amounts from time to time secured thereby and interest thereon, all with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Attornment. Tenant, for itself and its successors and assigns, agrees that it will attorn to and recognize any purchaser of the Property at a foreclosure sale under the Mortgage or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if previously, at that time or thereafter exercised by Tenant) of the term of the Lease upon the same terms and conditions set forth in the Lease.

3. Non-Disturbance. Mortgagee, for itself and its successors and assigns, for any purchaser at a foreclosure sale under the Mortgage, for any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and for the successors and assigns of such purchaser and transferee (herein, Mortgagee and each such other party is called a "New Landlord"), hereby covenants and agrees with Tenant that if Mortgagee or other New Landlord shall commence any proceedings to foreclose the Mortgage for any reason whatsoever or shall succeed to the interest of the Landlord by foreclosure, deed in lieu thereof or otherwise, provided Tenant is not then in default (after expiration of any applicable grace period) under the Lease, and so long as Tenant is not in default (after expiration of any applicable grace period) under the Lease, that: (a) Tenant shall not be named as a party defendant in any foreclosure action unless Tenant is deemed to be a necessary party; (b) subject to the next succeeding grammatical paragraph, the Lease shall, in accordance with its terms, remain in full force and effect as a direct indenture of lease between Mortgagee, or such other New Landlord (as the case may be), and Tenant, with the same force and effect as if originally entered into with Mortgagee, or such other New Landlord (as the case may be); and (c) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, including but not limited to Tenant's right to the quiet enjoyment of the Premises, shall not be diminished, interfered with, affected or disturbed by such Mortgagee or such other New Landlord by such foreclosure under the Mortgage or by any such attempt to foreclose or to succeed to the interests of Landlord by foreclosure, deed in lieu thereof or otherwise.

If Mortgagee or any other New Landlord shall succeed to the interest of Landlord under the Lease, Tenant agrees as follows:

(a) Except to the extent set forth in the Lease regarding Landlord's work, Tenant's right of set off in Section 39(d) of the Lease and right of first refusal in section 39(n) of the Lease, Mortgagee or such other New Landlord shall not be: (i) subject to any credits, offsets, defenses, claims or counterclaims which Tenant might have against any prior landlord, (ii) bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any

# UNOFFICIAL COPY

prior landlord (including Landlord), (iii) bound by any covenant to undertake any improvement to the Premises or the Property, or (iv) bound by any amendment or modification to the Lease, or waiver of any provision of the Lease, which has not yet been consented to in writing by Mortgagee;

(b) Except as provided in Section 3 (a) hereof, no New Landlord (including, without limitation, Mortgagee) shall be liable for: (i) any act or omission of any prior landlord (including Landlord), (ii) return of any security deposit made by tenant to Landlord unless such New Landlord shall have actually received such security deposit from Landlord, or (iii) any payment to Tenant of any sums, or the granting to Tenant of any credit, in the nature of a contribution towards the cost of preparing, furnishing or moving into the Premises or any portion thereof; and

(c) Except as provided in Section 3 (a) hereof, Tenant shall look solely to the Property for recovery of any judgment or damages from Mortgagee or such other New Landlord, and neither Mortgagee, such other New Landlord, any partner, officer, director, shareholder or agent of them nor any successor or assign of any of the foregoing shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability applicable to Mortgagee or such other New Landlord provided by law or by any other contract, agreement or instrument.

4. Mortgagee's Consent. The Landlord's consent, approval or waiver under or with respect to the Lease or the Premises or any matter related thereto shall not be effective unless such consent, approval or waiver is accompanied by the written consent of Mortgagee, not to be unreasonably withheld or delayed. Without limiting the generality of the foregoing, without the prior written consent of Mortgagee not to be unreasonably withheld or delayed, Tenant will not, except as expressly set forth in the Lease: (a) enter into any agreement amending or terminating the Lease, (b) cancel the term of, or surrender, the Lease, or (c) assign or sublet all or any part of the Premises, except only pursuant to any assignment or sublease which, under the express provisions of the Lease, Tenant is entitled to make without the consent of the Landlord.

5. Landlord's Default. Tenant hereby agrees to provide Mortgagee with written notice of any casualty damage to the Premises and any default under the Lease by the Landlord and to provide the Mortgagee the greater of: (a) thirty (30) days, or (b) such reasonable period of time as is necessary thereafter to cause such damage to be repaired (if the Landlord is obligated under the Lease to repair or cause such damage to be repaired) or to remedy such default, as the case may be, prior to exercising any right or remedy of Tenant under the Lease. Notwithstanding the foregoing, Tenant agrees that Mortgagee shall have no obligation to remedy any such default unless Mortgagee succeeds to the interest of Landlord and then to the extent set forth in this Agreement.

6. Estoppel Certificate. Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Landlord, to Mortgagee or to any third party designated by Landlord or by Mortgagee within ten (10) days following Landlord's or Mortgagee's written request therefor, to

# UNOFFICIAL COPY

the extent it is accurate (a) a statement in writing certifying that the Lease is in full force and effect, that Landlord is not in default thereunder (or specifying any defaults by Landlord which Tenant alleges), that rent has not been prepaid more than one (1) month in advance, and specifying any further information about the Lease or the Premises which Landlord or Mortgagee or said third party may reasonably request; (b) a statement in writing that Tenant will recognize the Mortgagee as assignee of the Landlord's rights under the Lease, provided Tenant's right to the quiet enjoyment of the Premises is not disturbed and all obligations of the Landlord under the Lease are fulfilled after notice and cure periods as promised herein and in the Lease; and (c) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Lease to any third party. Tenant understands that Mortgagee and/or prospective purchasers, other mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligations to deliver such certificates within ten (10) days as described above is a material obligation of Tenant hereunder and under the Lease.

7. Further Subordination. Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, not to be unreasonably withheld or delayed, Tenant will not: (a) enter into any subordination agreement of the Lease with any person other than Mortgagee; or (b) agree to attorn to or recognize any purchaser of the Property at any foreclosure sale under any lien other than that of the Mortgagee or any transferee who acquires the Property by deed in lieu of foreclosure or otherwise under any lien other than that of the Mortgagee (provided, however, that this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Property). The foregoing shall not preclude Tenant from granting security interests or otherwise encumbering Tenant's own property.

8. Notice. Each notice, demand or other communication in connection with this Agreement shall be in writing and shall be deemed to be given to and served upon the addressee thereof on the earlier of: (a) actual delivery to such addressee at its address set out above, or (b) the third business day after the deposit thereof in the United States mail, registered or certified mail, return receipt requested, first-class postage prepaid, addressed to such addressee at its address set out above. By notice complying with this section, any party may from time to time designate a different address in the forty-eight (48) contiguous continental United States as its address for the purpose of the receipt of notice hereunder.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

10. Recording. The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located; however, if this Agreement is not recorded its validity will not be affected.

11. Counterparts. This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

# UNOFFICIAL COPY

12. Certificate. Tenant certifies to Mortgagee that the Lease is in full force and effect and has not been modified, amended or supplemented in any way. There are no other representations, warranties, agreements, concessions, commitments, or other understandings between Tenant and Lessor regarding the Property other than as set forth in the Lease. To the best of Tenant's knowledge, Lessor is not in default under any of the requirements, provisions, terms, conditions or covenants of the Lease to be performed or complied with by Lessor, and no event has occurred or situation exists which would, with the passage of time and/or the giving of notice, constitute a default by Lessor under the Lease. Tenant is not in default under any of the terms, conditions, or covenants of the Lease to be performed or complied with by Tenant, and no event has occurred or situation exists which would, with the passage of time and/or the giving of notice, constitute a default by Tenant under the Lease. There are no actions, voluntary or otherwise pending against Tenant under any bankruptcy, reorganization, arrangement, insolvency or similar federal or state law. Tenant represents that it has all licenses, permits and other authorizations necessary for operation of its business and the Property.

At the time Tenant takes possession of the Property, Tenant agrees to certify to Mortgagee that it has received the Property in good condition and repair and has accepted the Property as satisfactory in all respects for the purposes of the Lease. Except as set forth in the Lease and/or this Agreement, Tenant further acknowledges that it has selected the Property so received and Tenant agrees that Lessor and Mortgagee have made no representations or warranties whatever, directly or indirectly, express or implied, as to the suitability, durability, fitness or use, merchantability, condition, quality or otherwise of such Property. Tenant agrees to pay the rent provided under the Lease absolutely and unconditionally and specifically waives all rights to make any claims against Lessor or Mortgagee for breach of any warranty, or to interpose or assert any such defense, counterclaim or setoff except as set forth in the Lease. Tenant further acknowledges that Lessor and Mortgagee shall not be liable to Tenant for any loss, damage or expense caused directly or indirectly by such Property, or the use or maintenance thereof, or the failure or defective operation thereof, or the repairs, service or adjustment thereto or by any delay in or failure to provide any such, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever or howsoever caused except as set forth in the Lease and/or this Agreement.

*Signature page follows*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed and delivered this document as of the day and year first above written.

**MORTGAGEE:**

Labe Bank, an Illinois banking corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_

**TENANT:**

Des Plaines Donuts, Inc. an Illinois corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest \_\_\_\_\_  
Its \_\_\_\_\_

**LANDLORD:**

Rand River L.L.C., an Illinois limited liability company

By: *Daniel R. Pontarelli*  
Daniel R. Pontarelli, manager

Consented to by  
**FRANCHISOR:**

Baskin-Robbins USA, Co.  
Dunkin' Donuts Incorporated  
Togo's Eateries, Inc.

By: \_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS        )  
  )       SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that \_\_\_\_\_, \_\_\_\_\_ of Labe Bank, 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, respectively, of Des Plaines Donuts, Inc., an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the 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 \_\_\_\_\_, 2006.

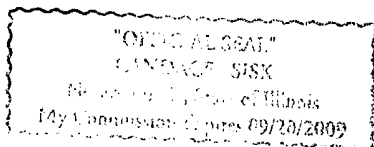
\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Daniel R. Pontarelli, Manager of Rand River, L.L.C., an Illinois limited liability company, 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 10/30 2006.

  
\_\_\_\_\_  
Notary Public





# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
   )        SS  
 COUNTY OF COOK         )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that \_\_\_\_\_, Assistant Secretary of Baskin-Robbins USA, Co., Dunkin' Donuts Incorporated, Togo's Eateries, Inc., a(n) \_\_\_\_\_, 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 (s)he 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 \_\_\_\_\_, 2006.

\_\_\_\_\_  
 Notary Public

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 6, 7, 8, 10, 11 AND 12 (EXCEPT THE SOUTHWESTERLY 17.00 FEET OF LOTS 10, 11 AND 12) IN BLOCK 3 IN RIVER RAND SUBDIVISION OF LOTS 1 TO 8 IN BLOCK 18 (OR BENNETT BLOCK) AND LOTS 1 TO 13 IN BLOCK 19 (OR RAND BLOCK) IN PARK ADDITION TO DES PLAINES, A SUBDIVISION OF LOTS 17 TO 20 IN HODGE'S SUBDIVISION OF SECTIONS 16 AND 17, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1584 Rand Road, Des Plaines, Illinois  
P.I.N.: 09-16-104-002-0000; 09-16-104-003-0000;  
09-16-104-004-0000; 19-16-104-012-0000;  
09-16-104-013-0000; 09-16-104-014-0000  
09-16-104-014-0000