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THIS INSTRUMENT PREPARED BY:
Diane Pickett *+ mail to*
EverBank, a federal savings bank
501 Riverside Ave., Suite 501
Jacksonville, FL 32202
RECORDED DOCUMENT RETURN TO:



Doc#: 1400222045 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 01/02/2014 10:52 AM Pg: 1 of 9



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as ~~November 12~~ ^{December 12}, 2013 between EVERBANK, a federal savings bank ("Lender"), OSA, INC., D/B/A/ TCBY/MRS FIELDS, an Illinois Corporation ("Tenant"), and 6760 West 95th Street, LLC, an Illinois Limited Liability Company ("Landlord"), with respect to the following facts.

- A. Lender is making a loan to Landlord to be evidenced by a Promissory Note (the "Note") payable to Lender and secured by a mortgage, deed of trust or deed to secure debt (the "Mortgage") encumbering the property described in Exhibit A attached hereto and the buildings and improvements thereon (collectively, the "Property").
- B. Landlord has leased to Tenant all or portion of the Property (the "Premises") by that certain lease agreement dated as of March 9, 2013, between Landlord and Tenant (the "Lease").
- C. Lender will not make the loan to Landlord to be secured by the Mortgage unless Landlord and Tenant enter into this Agreement with Lender.

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender, Tenant and Landlord agree as follows:

- 1. Lease. The Lease is in good standing, and in full force and effect without any modification or amendment as of the date hereof. The Lease shall not be amended without the written approval of Lender and shall not be terminated or canceled except as expressly provided in the Lease.

*Box 334
12-27-13
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2. Subordination. The Lease is and shall be subject and subordinate to the lien and all of the terms, covenants and conditions of the Mortgage, to all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewals, modifications and extensions or modifications thereof, including any increase in the indebtedness secured thereby or supplements thereto, subject to the terms and conditions set forth in this Agreement.

3. Non-disturbance. So long as Tenant is not in default (beyond any periods given under the Lease to Tenant to cure such default) in (i) the payment of any monetary obligation under the Lease, or (ii) the performance of any of the other terms, covenants or conditions with which Tenant is obligated to comply pursuant to the Lease, then:

(a) The right of possession of Tenant to the Premises shall not be affected or disturbed by Lender in the exercise of any of its rights under the Mortgage or the Note; nor shall Tenant be named as a party defendant to any foreclosure of the lien of the Mortgage, nor in any other way be deprived of its rights under the Lease except in accordance with the terms of the Lease and this Agreement; and

(b) In the event Lender succeeds to the interest of Landlord under the Lease, the Lease shall not be terminated or affected thereby, and any sale of the Premises by Lender or pursuant to the judgment of any court in an action to enforce the remedies provided for in the Mortgage shall be made subject to the Lease and the rights of Tenant thereunder.

Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the grant of non-disturbance in favor of Tenant.

4. Recognition and Attornment. If Lender succeeds to the interest of Landlord under the Lease and all terms therein and the rights of Landlord thereunder, the Lease shall continue in effect, shall not be altered, terminated or disturbed, and Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease as specified in the Lease (the "Term") with the same force and effect as if Lender were the landlord under the Lease. In such event, Tenant shall attorn to Lender as its landlord, such attornment to be effective and self-operative without the execution of any other instruments on the part of Lender or Tenant, immediately upon Lender succeeding to the interest of Landlord under the Lease. Upon receipt by Tenant of such notice from Lender, Tenant shall make all payments due by Tenant under the Lease to Lender or as Lender may in writing direct. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the Term, shall be and are the same as are then in existence, as set forth in the Lease.

(a) Rights Under the Lease. If Lender shall succeed to the interests of Landlord in and to the Premises or under the Lease, Lender's responsibility under the terms of the lease will be effective only if the Lender takes ownership of the collateral property. Lender will not accept responsibility for any act or action of the former owner or its agents.

5. Collection of Rents and/or Possession of the Premises by Lender. Upon receipt of written notice from Lender, Landlord and Tenant agree that Tenant shall pay all rent and other amounts owing under the Lease to a bank account or accounts designated by Lender.

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Any such payment by Tenant made in the manner directed by Lender shall be credited against the rental obligations of Tenant under the Lease in the direct order of maturity of the rental and other installments due thereunder, and Landlord hereby releases Tenant from all claims and liabilities as to the payment of rent or any other amount due under the Lease if such payment is made pursuant to the written direction of Lender.

6. Notice and Opportunity to Cure Landlord Default.

(a) Tenant shall furnish to Lender copies of all notices which Landlord is entitled to receive under the Lease, and upon request by Lender, Tenant agrees to certify in writing to Lender whether or not any default on the part of Landlord exists under the Lease and the nature of any such default.

(b) Tenant shall notify Lender in writing of the occurrence of any default by Landlord and shall permit Lender a period of thirty (30) days from the date of such notice (the "Cure Period") in which to cure such default prior to proceeding to exercise any of the rights or remedies of Tenant under the Lease, including termination of the Lease, abatement of rental payments due thereunder, or performance of Landlord's covenants or obligations which Tenant asserts to be in default.

(c) The Cure Period (i) shall be extended by any period of time during which Lender is diligently pursuing the cure of a default which can not reasonably be expected to be cured within the initial thirty (30) day Cure Period, and (ii) shall not be deemed to commence until after any period of time during which Lender is pursuing acquisition of title to the Premises through foreclosure or otherwise, such period to include, without limitation, any period of time (a) during which Lender's acquisition of title to the Premises is stayed by any proceeding in bankruptcy, any injunction or other judicial process, and (b) after acquisition of title by Lender during which Landlord or any other party is contesting the validity of the acquisition of Lenders title to the Premises.

(d) With respect to defaults which are personal to Landlord, such as bankruptcy, and thus not capable of being cured by Lender, or with respect to defaults which are not capable of being cured without possession of the Premises, then Lender shall be deemed to be diligently pursuing a cure of such default if, within the above-described Cure Period, Lender commences and thereafter pursues (subject to any judicial stays, injunctions or other delays) foreclosure proceedings for the Premises. Furthermore, in the case of defaults personal to Landlord, Lender shall be deemed to have cured such defaults upon final foreclosure of the Premises.

7. Limitation of Lender Liability. Notwithstanding anything to the contrary contained in this Agreement or the Lease, in the event of any default or breach by Lender with respect to any of the terms, covenants and conditions of the Lease to be observed, honored or performed by Lender as Landlord, Tenant shall look solely to the estate and property of Lender in the Premises for the recovery of any judgment (or any other judicial procedures requiring the payment of money by Lender) from Lender, it being agreed that Lender shall never be personally liable for any such judgment and that no property or assets of Lender other than Lender's interest in the Premises shall be subject to levy, execution or other procedures for satisfaction of Tenant's remedies. Lender shall not be required to respond in monetary damages from any of its properties or assets other than Lender's

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interests in the Premises. Lender shall not be bound hereunder or under the Lease subsequent to the date upon which Lender transfers its interest in the Premises to any third party.

8. Succession in Interest. For purposes of this Agreement, Lender will be deemed to have succeeded to the interest of Landlord under the Lease upon (i) the transfer of title to the Premises to Lender, whether by virtue of foreclosure, sale or transfer in lieu of foreclosure, or pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, or (ii) the occurrence of any other event as a result of which Lender may acquire the right, title and interest of Landlord in and to the Lease or the Premises. If a purchaser other than Lender acquires the Property upon foreclosure of the Mortgage, and if such purchaser provides written notice to Tenant that such purchaser shall be bound by this Agreement, then such purchaser shall have the same rights as Lender would have if Lender had purchased at the foreclosure sale.

9. Notices. All notices, requests and communications ("Notice") hereunder shall be given in writing and shall be delivered or mailed (i) personally, (ii) by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing the same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses listed next to the signature of each of the foregoing parties. Notice shall be deemed given when delivered personally, or four (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party may, by proper written notice hereunder to the other parties, change the individual address to which such Notice shall thereafter be sent to such party.

10. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by the Agreement. For purposes of this Agreement, all references herein to "Lender" shall be deemed to include also any subsequent holder of the Mortgage who has given notice to Tenant of its ownership of the Mortgage and who has furnished to Tenant its mailing address and/or any other person succeeding to title to the Premises and/or the Lease encumbered by the Mortgage or any part thereof and who claims by, through or under Lender, whether by virtue of foreclosure, or sale or transfer in lieu of foreclosure, or pursuant to the exercise of any rights and remedies under the Mortgage or otherwise.

11. Attorneys' Fees. In the event any legal action or proceeding is commenced to interpret or enforce, the terms of, or obligations arising out of this Agreement, or to recover damages for the breach thereof; the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party as shall be plead and proven by such party and awarded by a court of competent jurisdiction.

12. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision

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hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. Headings. The headings of this Agreement are for convenience of reference only.

14. Modification. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.

15. Counterparts. This Agreement may be signed in counterparts.

16. Termination. From and after payment in full of the loan secured by the Mortgage and the recordation of a release or satisfaction thereof without the transfer of the Property to Lender as a purchaser, this Agreement shall become void and of no further force or effect.

17. Not Merger. Landlord, Tenant and Lender agree that the fee (or ground leasehold) title to the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the unification of said estates in Landlord, Tenant, Lender or any third party by purchase, assignment or otherwise.

18. Reliance by Lender. Tenant and Landlord acknowledge that Lender shall rely on this Agreement in connection with the making of a mortgage loan to Landlord.

19. Governing Law. This Agreement shall be governed by and construed under the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed effective as of the day and year first above written although actually executed on the date(s) set forth in the acknowledgments below:

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LENDER ADDRESS:
501 Riverside Avenue
Jacksonville, FL 32202

LENDER:

EVERBANK,
a federal savings bank

By: Bryan P. Russell
Name: Bryan P. Russell
Title: Vice President

LANDLORD ADDRESS:

2711 Mannheim
Des Plaines, IL 60018

LANDLORD:

6760 West 95th Street LLC

By: [Signature]
Name: [Signature]
Title: Manager

TENANT ADDRESS:

17641 Mayher Drive
Orland Park, IL 60467

TENANT:

OSA, INC., D/B/A TCBY/MRS FIELDS

By: Rami Karkash
Name: Rami Karkash
Title: CEO

THIS DOCUMENT MUST BE SIGNED BEFORE A NOTARY PUBLIC

ADD LOCAL NOTARIAL ACKNOWLEDGEMENTS

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Lender NOTARY ACKNOWLEDGMENTS

STATE OF Florida

COUNTY OF Duval

NOTARY

I, Stacy D. Myers, a Notary Public in and for the aforesaid State and County, do hereby certify that Brian P. Russell, the Vice President of EverBank, personally appeared before me this day and that by the authority duly given and on behalf of EverBank, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this the 18th day of December, 2013.



Stacy D. Myers
Notary Public

NOTARY ACKNOWLEDGMENTS

STATE OF IL

COUNTY OF Cook

NOTARY

I, Cheryl Ann Nutley, a Notary Public in and for the aforesaid State and County, do hereby certify that John G. Janicek, the Manager of 6760 West 95th St LLC, personally appeared before me this day and that by the authority duly given and on behalf of 6760 West 95th St LLC, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this the 27th day of Dec, 2013.



Cheryl Ann Nutley
Notary Public

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NOTARY ACKNOWLEDGMENTS

STATE OF Illinois

COUNTY OF Cook

NOTARY

I, Julia Blough, a Notary Public in and for the aforesaid State and County, do hereby certify that RAMI KASHKESL, the CFO of OSA, INC, personally appeared before me this day and that by the authority duly given and on behalf of OSA, INC, the foregoing instrument was signed and executed by him for the purposes therein expressed.

WITNESS my hand and notarial seal this the 10TH day of DECEMBER, 2013.

Julia Blough
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT A****Legal Description**

Tax Parcel Number: 24-06-420-004-0000, 24-06-421-008-0000 and 24-06-421-011-0000

That certain tract of land situated in the County of Cook, State of Illinois and more particularly described below:

Lot 1 in Ghaben Subdivision, a Subdivision in the Southwest Quarter of Section 5, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, recorded September 21, 2007, as Document No. 0726415114.

PARCEL 1:

THE SOUTH 280 FEET OF LOTS 1 AND 2 IN BLOCK 7, TOGETHER WITH THE WEST 1/2 OF VACATED RUTHERFORD AVENUE LYING EAST OF AND ADJOINING LOT 1 AFORESAID, IN FREDERICK H. BARTLETT'S 95TH STREET ACRES, BEING A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 AND OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

THE SOUTH 280 FEET OF LOT 2 IN BLOCK 6, TOGETHER WITH THE EAST 1/2 OF VACATED RUTHERFORD AVENUE, LYING WEST AND ADJOINING LOT 2, AFORESAID, IN FREDERICK H. BARTLETT'S 95TH STREET ACRES, BEING A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 AND OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 7 IN FINN'S RESUBDIVISION OF LOT 1 IN BLOCK 6 IN FREDERICK H. BARTLETT'S 95TH STREET ACRES, BEING A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 AND OF THE SOUTHWEST 1/4 OF SAID SECTION 6, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS