

This Document Prepared By And
When Recorded Return To:

Matthew B. Brotschul
BROTSCHUL POTTS LLC
30 N. LaSalle
Suite 1402
Chicago, Illinois 60602
(312) 551-9003



Doc#: 1521845058 Fee: \$52.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/06/2015 12:54 PM Pg: 1 of 8

For Recorder's Use Only

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), is made as of July 13, 2015, by and between RAINFOREST CAFÉ, INC., a Minnesota corporation ("Tenant"), and LAKE FOREST BANK & TRUST COMPANY ("Lender").

WITNESSETH

WHEREAS, 605 N. CLARK LLC, an Illinois limited liability company, 1102 WEST LAKE, LLC, an Illinois limited liability company (collectively, "Borrower"), has executed and delivered to Lender that certain Mortgage, to be recorded with the Cook County Recorder of Deeds (such mortgage as the same may be amended, modified or restated from time to time being hereinafter referred to as the "Mortgage") encumbering, inter alia, that certain property legally described on Exhibit A, attached hereto and incorporated herein (the "Property") to secure the repayment of that certain indebtedness (all such indebtedness, collectively, the "Loan") advanced by Lender to Borrower pursuant to that certain Notes, by Borrower in favor of Lender (collectively, the "Note" together with the Mortgage and all other documents which evidence and/or secure the Loan, collectively, the "Loan Documents"); and

WHEREAS, Borrower is the "Landlord" under that certain Lease dated December 3, 1996 (such Lease, together with all amendments and modifications thereto, being hereinafter referred to as the "Lease") under which Tenant leases a portion of the Property subject to the terms and provision of the Lease; and

WHEREAS, prior to providing the Loan, Lender has required the execution of this Agreement and Lender intends to rely on the provisions hereof.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein contained, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Tenant agrees that the Lease is and shall be subject and subordinate to the Loan Documents (which shall mean all documents which evidence and/or secure the Loan) and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to

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time. Said subordination is to have the same force and effect as if the Loan Documents and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. Lender agrees that, if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of the Mortgage, Lender shall not disturb Tenant's right of quiet possession of the Property under the terms of the Lease so long as Tenant is not in default of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, 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 pay and 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, Lender shall not be:

- a. liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord);
- b. subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord);
- c. bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord);
- d. bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest;
- e. accountable for any monies deposited with any prior Landlord (including security deposits); or
- f. bound by any surrender, termination, amendment or modification of the Lease made without the written consent of Lender after the date hereof.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender a thirty (30) day period of time to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist as long as Lender, in good

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faith, shall have commenced to cure such default within the above referenced time period. Tenant shall not pursue any remedy available to Tenant as a result of any default by Landlord under the Lease unless Lender fails to cure such default as provided herein.

6. Tenant hereby acknowledges that existence (or future existence) of that certain Assignment of Rents to be recorded with the Cook County Recorder of Deeds, from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Property. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

7. The Lease shall not be modified or amended without Lender's prior written consent in each instance. The Lease shall not be assigned or terminated by Tenant except in accordance with the terms of the Lease and this Agreement.

8. Tenant acknowledges and agrees that: (i) if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of the Mortgage, and (ii) if Tenant is in default of the terms, covenants or conditions of the Lease, the Lender, at its option, may exercise any and all of the rights and remedies at law and/or in equity against Tenant as if it were Landlord under the Lease and to join Tenant in a foreclosure action thereby termination Tenant's right, title and interest in and to any portion of the Property.

9. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

IF TO TENANT:

Rainforest Café, Inc.
1510 West Loop South
Houston, Texas 77027
ATTN: General Counsel

IF TO LENDER:

LAKE FOREST BANK & TRUST COMPANY
727 N. Bank Lane
Lake Forest, Illinois 60045
Attn: Chris Baker

UNOFFICIAL COPY**WITH A COPY TO:**

BROTSCHUL POTTS LLC
 30 N. LaSalle
 Suite 1402
 Chicago, Illinois 60602
 Attn: Matthew B. Brotschul

10. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

11. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

12. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

13. This Agreement shall be construed in accordance with the laws of the State of Illinois.

14. The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

15. If this Agreement is not fully executed, without further changes, by all parties and an original returned to Tenant within six (6) weeks of the date of Tenant's execution below (as evidenced by the acknowledgment below), the execution and partial delivery of this Agreement shall be deemed null and void.

16. THE UNDERSIGNED HEREBY CONSENTS TO THE JURISDICTION OF ANY CIRCUIT COURT LOCATED WITHIN THE STATE OF ILLINOIS. TENANT WAIVES, AT THE OPTION OF LENDER, TRIAL BY JURY AND WAIVES ANY OBJECTION BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS IN ANY ACTION OR PROCEEDING TO WHICH TENANT AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO THIS AGREEMENT AND/OR ANY OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TENANT, AND TENANT HEREBY REPRESENTS THAT NO REPRESENTATIONS

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OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO, IN ANY WAY, MODIFY OR NULLIFY ITS EFFECT. TENANT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

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IN WITNESS WHEREOF, Lender and Tenant have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

TENANT:

RAINFOREST CAFÉ, INC.

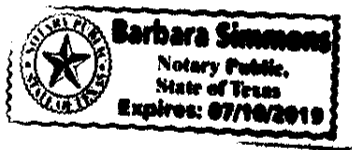
By: [Signature]
Name: Steven L. Scheinthal
Its: Vice President
Legal: LF

STATE OF TEXAS)
) SS

COUNTY OF HARRIS)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that Steven L. Scheinthal, as the Vice President of RAINFOREST CAFÉ, INC. 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 to me that they signed and delivered the said instrument as their own free and voluntary act and for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of July, 2015.



[Signature]
NOTARY PUBLIC

My Commission Expires:

7-10-2019

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EXHIBIT A

THE PROPERTY -- LEGAL DESCRIPTION

The West 140.00 feet of the following described property, all taken as one tract: Lots 5 and 6 in Ogden's Subdivision of Block 18 in Wolcott's Addition to Chicago, and Lots 1 to 5, both inclusive, in John Seba's Subdivision of Lots 7 and 8 in Ogden's Subdivision of Block 18 in Wolcott's Addition to Chicago, in the East Half of the Northeast Quarter of Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 17-09-233-012-0000; 17-09-233-013-0000; 17-09-233-014-0000; 17-09-233-022-0000;

**CKA:605 North Clark Street
Chicago, IL 60654**

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