

UNOFFICIAL COPY

Doc#: 1730357110 Fee: \$60.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/30/2017 11:09 AM Pg: 1 of 7

Prepared by, and
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Harold L. Lewis, Esq.
PATHMAN LEWIS, LLP
One Biscayne Tower, Suite 2400
2 South Biscayne Boulevard
Miami, FL 33131

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT is made this 28 day of September, 2017, by and among: (i) **CJS BERWYN, LLC**, a Delaware limited liability company, ("Borrower"), whose address is 200 South Biscayne Blvd. Sixth Floor, Miami, FL 33131, (ii) **EDDIES RESTAURANT COMPANY**, an Illinois corporation ("Tenant"), whose address is 151 N Thurston Avenue, Los Angeles, CA 90049; and (iii) **TOTALBANK**, a Florida banking corporation ("Lender"), whose address is Attn: Loan Administration 100 S.E. 2nd Street, 14th Floor, Miami, Florida 33131, with reference to the following:

A. Lender has made a loan to Borrower (the "Loan") which is secured by a Mortgage and Security Agreement (which together with all increases, renewals, extensions and other amendments thereto, is hereinafter called the "Mortgage") on the property legally described on Exhibit A attached hereto (the "Property"), and which Loan is additionally secured by the assignment by Landlord to Lender of all leases of the Property;

B. Tenant is the lessee under a certain lease dated the 19th day of March, 2012, and any and all assignments, amendments, modifications, and/or supplements, if any (the "Lease") demising a portion of the Property (the "Premises") to Tenant for a term of years; and

C. The Borrower is either the landlord or lessor under the Lease or the successor in interest to landlord or lessor.

D. The Loan terms require that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage and that Tenant attorn to Lender; and

E. In return, Lender is agreeable to not disturbing Tenant's possession of the Premises, subject to the terms set forth hereinbelow.

NOW, THEREFORE, the parties hereby agree as follows:

UNOFFICIAL COPY

1. Subordination. The Lease, and the rights of Tenant in, to and under the Lease and the Premises, are hereby subjected and subordinated to the lien of the Mortgage, it being understood and agreed that the foregoing subordination shall apply to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, and all other documents which evidence or secure the obligations secured by the Mortgage, provided that any and all such increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to the terms of this Agreement.

2. Tenant Not to Be Disturbed. So long as Tenant is not in default in the payment of rent or of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond any period given Tenant in the Lease to cure such default) and Tenant attorns to Lender as provided herein: (a) except as provided in this Agreement, Tenant's possession of the Premises shall not be diminished or interfered with by Lender, and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant to Attorn to Lender. If the Premises is transferred to Lender or the Premises shall be transferred by reason of foreclosure or other proceedings brought to enforce the Mortgage or the Premises shall be transferred by deed in lieu of foreclosure (the date of any such transfer is called the "Transfer Date"), the Lease shall continue in full force and effect as a direct Lease between Tenant and Lender or such other transferee (hereinafter called the "Successor Landlord"). Tenant shall attorn to such Successor Landlord, said attornment to be effective and self-operative without the execution of any further instruments. Tenant hereby waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or deed-in-lieu of foreclosure.

4. Limitations. No Successor Landlord shall, by reason of its acceptance of attornment or otherwise, be liable for any obligations of any Prior Landlord under the Lease. A "Prior Landlord" shall mean Borrower or any other landlord or lessor under the Lease prior to the Transfer Date. By way of example, and not by way of limitation, neither Lender nor any other Successor Landlord shall be (a) liable for any act or omission of any Prior Landlord; (b) liable for the return of any security deposit paid to a Prior Landlord but not actually received by (or expressly shown as a credit on a closing statement signed by) Successor Landlord, (c) subject to any offsets, counterclaims or defenses which Tenant might have against any Prior Landlord; (d) bound by any payment of rent or additional rent to a Prior Landlord more than 30 days in advance of the period to which it applies; (e) bound by any amendment or modification of the Lease made without the express prior written consent of Lender; (f) bound to effect or pay for any construction for Tenant's occupancy; (g) obligated to expand or construct additional improvements to the Property or the Premises, or to otherwise expend funds which are capital in nature (other than items of ordinary maintenance and repair arising after the Transfer Date). Nothing herein shall limit or impair any right of Tenant: (i) to terminate the Lease in accordance with its terms on account of any default by any Prior Landlord, to the extent that such default continues past the Transfer Date, if Successor Landlord fails to cure such default after expiration of the notice and cure period set forth in Section 5 hereinbelow; or (ii) to seek any remedy Tenant may have against any party other than Lender or any other Successor Landlord on account of any such breach.

5. Notice and Cure. Tenant will notify Lender at 100 S.E. 2nd Street, 14th Floor, Miami, Florida 33131, Attn: Loan Administration by registered or certified mail, return receipt requested, of any default of Landlord which would entitle Tenant to cancel the Lease or abate the rent payable

UNOFFICIAL COPY

thereunder, and agrees that notwithstanding any provision of the Lease, no notice of cancellation thereof, nor any abatement, shall be effective unless Lender has received the notice aforesaid and has failed to cure same within 30 days after receiving such notice, or any longer time allowed by the Lease, or, if the default cannot reasonably be cured within 30 days, Lender has failed to commence and diligently prosecute thereafter cure of that default. The address of Tenant for purposes of notice hereunder is as set forth on the first page hereof.

6. Successors. This Agreement shall inure to the benefit of and be binding upon Tenant and any successor or assignee of Tenant. This Agreement shall inure to the benefit of and be binding upon Lender and its successors and assigns, including any purchaser of the Premises at a foreclosure sale or any other Successor Landlord.

7. Notice to Tenant. If the Lease entitles Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Mortgage and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage.

8. Miscellaneous. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Florida and the law of the United States applicable to transactions within such state. This Agreement may be executed in multiple counterparts, and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be one and the same instrument with the same signature as if all parties to this Agreement had signed the same signature page.

9. Modification of Lease. From and after the Transfer Date, references herein to the Lease shall mean the Lease as modified by the provisions of this Section 9. Effective on the Transfer Date (if it shall occur), and notwithstanding any contrary term of the Lease, the Lease is hereby modified so that the following terms are in effect, automatically and without notice to or action of any person, and such terms shall control any conflicting provisions in the Lease:

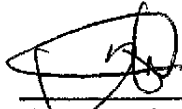
(a) No environmental or hazardous material covenant, indemnity and/or reimbursement provision under the Lease, as to any matter which occurred prior to the Transfer Date, shall be applicable to, or enforceable against, Lender, any other Successor Landlord or any party claiming by, through or under any of them.

(b) From and after the Transfer Date, neither Lender nor any other Successor Landlord shall have any personal liability to Tenant under the Lease, and Tenant shall look solely to the interest of its Successor Landlord in the Project, to the net proceeds of sale thereof, or the rentals received therefrom, for the satisfaction of Tenant's remedies in the event of any default or breach by such Successor Landlord of any of the terms, covenants, and conditions of the Lease and any other obligation of the Successor Landlord created by or under the Lease. No other property or assets of any Successor Landlord or of its partners, officers, beneficiaries, members, shareholders, directors, or other principals (as the case may be) shall be subject to levy, execution or other enforcement procedures for the satisfaction of any of Tenant's remedies under the Lease. In the event of any transfer by any Successor Landlord of its interest in the Lease, such Successor Landlord and its partners, members,

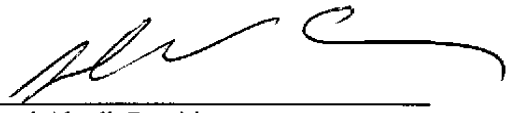
UNOFFICIAL COPY

"Tenant"

Eddies Restaurant Company,
an Illinois corporation



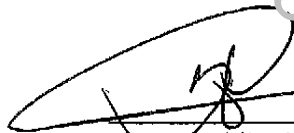
signature of witness
name of witness: STANTOLESNIKOV
(legibly printed)

By: 
Ahmad Abadi, President

signature of witness
name of witness:
(legibly printed)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } s:

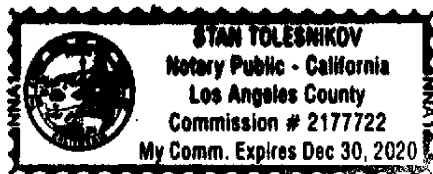
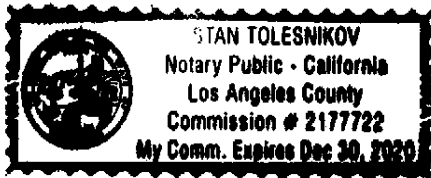
The foregoing instrument was acknowledged before me this 20 day of 7, 2017, by STANTOLESNIKOV, as AHMAD ABADI of Eddies Restaurant Company, an Illinois corporation, on behalf of the corporation. He/she is personally known to me or has produced DRIVERS LICENSE as identification.



Notary Public, State of CALIFORNIA

printed name of notary public: STANTOLESNIKOV

Commission # 2177722



UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

LOTS 15, 16, 17 AND 18 IN BLOCK 8 IN PINKERT AND SONS 22ND STREET SUBDIVISION OF LOT 6 (EXCEPT THE NORTH 66 FEET) IN CIRCUIT COURT PARTITION OF THE WEST ½ OF THE SOUTHWEST ¼ AND THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

STORE ID: Y713102

PIN: 16-20-332-027-0000

Address Reference: 6200 CERMAK ROAD, BERWIN, IL

Property of Cook County Clerk's Office