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Doc#: 1930416022 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 10/31/2019 09:48 AM Pg: 1 of 13

RECORDING REQUESTED BY AND
AFTER RECORDING, RETURN TO:

Nixon Peabody LLP
70 W. Madison, Suite 3500
Chicago, IL 60602
Attn: Daniel P. Strzalka

COH1 1003 797 40XK0

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement is dated this 24 day of October, 2019 between CIBC BANK USA ("Lender"), VIENNA BEEF, LTD, an Illinois corporation ("Landlord"), and PANERA LLC, a Delaware limited liability company ("Tenant").

RECITALS

- A. Landlord owns that certain real property located at 2501 N. Damen and W. Fullerton Avenues, in the City of Chicago, Cook County, Illinois, as more particularly described in Exhibit A attached hereto (the "Land"), and Landlord proposes to construct or cause to be constructed upon the Property certain improvement consisting of a multi-tenant outlet building (the "Building") together with other site improvements (collectively, the "Project")
- B. Landlord and Tenant have entered into that certain Lease Agreement dated as of July 31, 2018, (as supplemented and amended from time to time, the "Lease"), pursuant to which Landlord has agreed to lease to Tenant a portion of the Building consisting of approximately 4,300 square feet of rentable area, all as more particularly described and defined as the "Premises" in the Lease (and hereinafter referred to as the "Premises").
- C. Lender has made a loan to Landlord in the original aggregate principal amount of \$9,925,000 (the "Loan"). The Loan is (a) evidenced by (i) that certain Construction Loan Note of even date herewith (as the same may be amended, modified and/or supplemented from time to time, the "Note"), (b) governed by, among other things, that certain Second Amendment to Second A&R Loan and Security Agreement of even date herewith by and between Landlord and Lender (as the same may be amended, restated and/or supplemented from time to time, the "Loan Agreement"), and (c) secured by, among other things, the Construction and Permanent Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith made by Landlord to and in favor of Lender (the "Security Instrument"), encumbering the Project and assigning Landlord's interest in all leases affecting the Building (including the Lease) to Lender. All capitalized

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terms used herein without definition shall have the meanings given to such terms in the Loan Agreement.

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

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 except as otherwise provided in Sections 3 and 5 below.

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 to give Lender pursuant to paragraphs below, at the address for notices as provided herein, a copy of any notice or claim of default served upon the Landlord by Tenant.

4. 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.

5. 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 arising pursuant to the Lease from and after the date Lender succeeds to the interest of Landlord under the Lease;

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(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);

(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 expressly set forth in the Lease or as provided by law, or, subject to Section 3 above, as a result of a default of Landlord) made without the consent of Lender; 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.

6. 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.

7. 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.

8. Any notice to be delivered hereunder shall be in writing and shall be sent registered Federal Express, 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:

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If to Tenant: Panera, LLC
3630 South Geyer Road
Suite 100
St. Louis, MO 63127
Attention: Lease Accounting

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

If to Lender: CIBC Bank USA
120 S. LaSalle St.
Chicago, Illinois 60603
Attn: Mr. Thomas G. Estey
Mr. Christopher M. Trimbach

If to Landlord: Vienna Beef, Ltd.
2501 N. Damen Ave.
Chicago, IL 60647

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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

TENANT:

PANERA, LLC

By: 

Name: Barry J. Barth

Title: Director, Development Counsel

LENDER:

CIBC BANK USA

By: _____

Name:

Title:

LANDLORD:

VIENNA BEEF, LTD.

By: _____

Name:

Title:

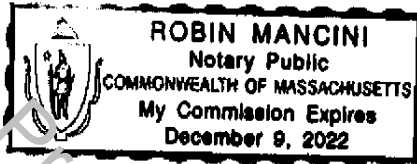
Property of Cook County Clerk's Office

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COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF NORFOLK)

October 21, 2019

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



Robin Mancini
Notary Public
My Commission Expires:

STATE OF _____)
)
COUNTY OF _____)

_____, 2019

Then personally appeared the above-named _____, of CIBC BANK USA, and acknowledged the foregoing instrument to be the free act and deed of said limited liability company.

Notary Public
My Commission Expires:

STATE OF _____)
)
COUNTY OF _____)

_____, 2019


Then personally appeared the above-named _____, of VIENNA BEEF, LTD. as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

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LENDER:

CIBC BANK USA

By: 
 Name: Chris Trimbach
 Title: AMP

Lender Notice Address:

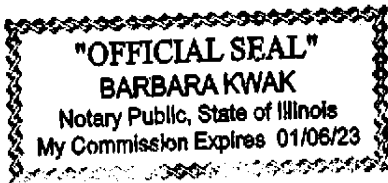
CIBC Bank USA
 120 S. LaSalle St.
 Chicago, Illinois 60603
 Attn: Mr. Thomas G. Estey
 Mr. Christopher M. Trimbach

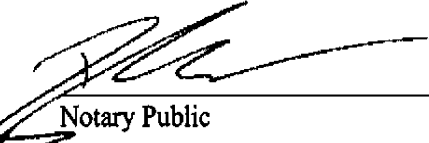
Notary Acknowledgement for Lender:

STATE OF IL)
) ss:
 COUNTY OF COOK)

On this, the 22 day of Sept, 2019, before me, the undersigned Notary Public, personally appeared Chris Trimbach known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is AMP of CIBC Bank USA in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.




 Notary Public

{seal}

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

TENANT:

PANERA, LLC

By: _____

Name: Barry J. Barth

Title: Director, Development Counsel

LENDER:

CIBC BANK USA

By: _____

Name:

Title:

LANDLORD:

VIENNA BEEF LTD.

By:  _____

Name: John P. Bodman

Title: President

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COMMONWEALTH OF MASSACHUSETTS) _____, 2019
)
COUNTY OF NORFOLK)

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

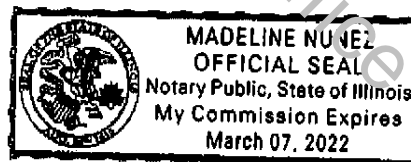
STATE OF _____) _____, 2019
)
COUNTY OF _____)

Then personally appeared the above-named _____, of CIBC BANK USA, and acknowledged the foregoing instrument to be the free act and deed of said limited liability company.

STATE OF Illinois) _____, 2019
)
COUNTY OF COOK)

Then personally appeared the above-named John F. Bodman, of VIENNA BEEF, LTD. as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of said corporation.

Madeline Nunez # 653875
Notary Public
My Commission Expires: March 07, 2022



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Exhibit "A"
(Legal Description of the Property)

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EXHIBIT A

Legal Description

PARCEL A:

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST AND SOUTH OF THE NORTH BRANCH OF THE CHICAGO RIVER, NORTH OF FULLERTON AVENUE, NORTHEAST OF ELSTON AVENUE AND EAST OF THE EAST LINE OF ROBEY STREET, NOW KNOWN AS DAMEN AVENUE, AS NOW LOCATED; AND PART OF LOTS 21 THROUGH 32 BOTH INCLUSIVE IN BLOCK 8 AND THAT PART OF THE VACATED 16 FOOT EAST/WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 21 TO 31 IN BLOCK 8, ALL IN FULLERTON'S ADDITION TO CHICAGO, SAID FULLERTON ADDITION BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE NORTH BRANCH OF THE CHICAGO RIVER AND THAT PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO RIVER AND WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD;

DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 15; THENCE ON AN ASSUMED BEARING OF NORTH 01 DEGREES 49 MINUTES 39 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 15, ALSO BEING THE WEST LINE OF WOLCOTT AVENUE, PREVIOUSLY KNOWN AS BRAND STREET, A DISTANCE OF 1.70 FEET TO A POINT ON THE NORTH LINE OF FULLERTON AVENUE AS CONVEYED BY SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074; THENCE SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST, ALONG THE NORTH LINE OF SAID FULLERTON AVENUE, A DISTANCE OF 173.96 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST, ALONG THE NORTH LINE OF SAID FULLERTON AVENUE, A DISTANCE OF 288.89 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF VACATED ELSTON AVENUE; THENCE NORTH 46 DEGREES 44 MINUTES 02 SECONDS WEST ALONG THE LAST DESCRIBED LINE 28.44 FEET TO A POINT ON THE WESTERLY LINE OF SAID VACATED ELSTON AVENUE, ALSO BEING A POINT ON THE SOUTHERLY EXTENSION OF THE EAST LINE OF DAMEN AVENUE AS CONVEYED TO THE CITY OF CHICAGO PER DEED RECORDED AS DOCUMENT NUMBER 1334339074; THENCE NORTH 01 DEGREE 59 MINUTES 09 SECONDS WEST ALONG THE LAST DESCRIBED LINE 136.50 FEET; THENCE NORTH AND EAST THE FOLLOWING THREES COURSES

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ALONG THE EASTERLY AND SOUTHERLY LINES OF SAID PROPERTY CONVEYED TO THE CITY OF CHICAGO PER DEED RECORDED AS DOCUMENT NUMBER 1334339074; 1) NORTH 05 DEGREES 41 MINUTES 38 SECONDS WEST 35.91 FEET; 2) NORTH 40 DEGREES 56 MINUTES 13 SECONDS EAST 12.37 FEET; 3) NORTH 87 DEGREES 34 MINUTES 04 SECONDS EAST 308.76 FEET; THENCE SOUTH 00 DEGREES 20 MINUTES 12 SECONDS EAST, A DISTANCE OF 207.05 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL B:

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST AND SOUTH OF THE NORTH BRANCH OF THE CHICAGO RIVER, NORTH OF FULLERTON AVENUE, NORTHEAST OF ELSTON AVENUE AND EAST OF THE EAST LINE OF ROBEY STREET, NOW KNOWN AS DAMEN AVENUE, AS NOW LOCATED; AND PART OF LOTS 15 THROUGH 21 BOTH INCLUSIVE IN BLOCK 8 AND THAT PART OF THE VACATED 16 FOOT EAST/WEST ALLEY LYING NORTH OF AND ADJOINING LOTS 15 TO 21 IN BLOCK 8 AND PART OF WOLCOTT AVENUE, ALSO KNOWN AS BRAND STREET, ALL IN FULLERTON'S ADDITION TO CHICAGO, SAID FULLERTON ADDITION BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE NORTH BRANCH OF THE CHICAGO RIVER AND THAT PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO RIVER AND WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD;

DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 15; THENCE ON AN ASSUMED BEARING OF NORTH 01 DEGREES 49 MINUTES 39 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 15, ALSO BEING THE WEST LINE OF SAID WOLCOTT AVENUE, PREVIOUSLY KNOWN AS BRAND STREET, A DISTANCE OF 1.70 FEET TO A POINT ON THE NORTH LINE OF FULLERTON AVENUE AS CONVEYED BY SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST, ALONG THE NORTH LINE OF SAID FULLERTON AVENUE, A DISTANCE OF 173.96 FEET; THENCE NORTH 00 DEGREES 20 MINUTES 12 SECONDS WEST, A DISTANCE OF 207.05 FEET TO A POINT ON THE SOUTH LINE OF PARCEL OJ80002-A, PER SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074, ALSO KNOWN AS RE-LOCATED ELSTON AVENUE; THENCE NORTH 87 DEGREES 34 MINUTES 04 SECONDS EAST ALONG SAID SOUTH LINE OF PARCEL OJ80002-A, A DISTANCE OF 85.99 FEET, TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG SAID PARCEL OJ80002-A AND IT'S SOUTHEASTERLY EXTENSION A DISTANCE OF 317.53 FEET, SAID LINE BEING THE ARC OF A TANGENT CIRCLE TO THE RIGHT HAVING A

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RADIUS OF 206.50 FEET AND WHOSE CHORD BEARS SOUTH 48 DEGREES 22 MINUTES 54 SECONDS EAST, A DISTANCE OF 287.16 FEET TO A POINT; THENCE SOUTH 40 DEGREES 57 MINUTES 08 SECONDS WEST, A DISTANCE OF 17.15 FEET, TO A POINT ON THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID FULLERTON AVENUE AS CONVEYED BY SPECIAL WARRANTY DEED RECORDED DECEMBER 9, 2013 AS DOCUMENT NUMBER 1334339074; THENCE SOUTH 88 DEGREES 36 MINUTES 10 SECONDS WEST ALONG THE LAST DESCRIBED LINE, A DISTANCE OF 114.26 FEET THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

*1436 01/04/07-07, 01/07/07
Corner Danon + Elston
WJ
6/26/07*

Property of Cook County Clerk's Office