

UNOFFICIAL COPY

Doc#: 2214039124 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 05/20/2022 10:52 AM Pg: 1 of 9

*This Document Prepared by
and after Recording Return to:*

Michael A. Alesia
Michael A. Alesia & Associates, P.C.
1701 E Woodfield Road
Suite 925
Schaumburg, IL 60173

This space reserved for Recorder's use only

CCHI2202714LD CA 3 of 3

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“Agreement”) is made and entered into as of the 18th day of May, 2022, by and between FAT ROSIE’S OF SCHAUMBURG, LLC, an Illinois limited liability company, d/b/a Fat Rosie’s (“Tenant”), whose address is 870 N Meacham Road, Schaumburg, Illinois 60173, and DOMINIC STRAMAGLIA and DOMINIC GAMBINO, whose address is 220 East North Avenue, Villa Park, Illinois 60181 (collectively, “Mortgagee”).

RECITALS

A. MEACHAM ACQUISITION COMPANY, LLC, an Illinois limited liability company (“Landlord”), is the fee owner of all of that certain real property located at 870 N Meacham Road, Schaumburg, Illinois 60173, legally described in **Exhibit A** attached hereto (the “Property”).

B. Mortgagee is the holder of a certain Mortgage, Assignment of Leases and Rents and Security Agreement dated May 18, 2022 (the “Mortgage”) encumbering the Property;

C. Tenant is a lessee of the Property pursuant to a lease agreement (any such lease agreement hereinafter being referred to as “Lease Agreement”, and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as “Lease”) with Landlord.

NOW, THEREFORE, in consideration of entering into the Mortgage and the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The Tenant represents and warrants to the Mortgagee that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Property and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Property.

2. The Tenant agrees to execute and deliver to the Mortgagee upon request a Tenant Estoppel Certificate.

UNOFFICIAL COPY

3. The Tenant covenants with the Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Property, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

4. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee the Lease and the rents due and payable under the Lease. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee.

5. The Mortgagee agrees that so long as the Tenant is not in default under the Lease:

(a) The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law); and

(b) possession by the Tenant of the Property and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Property, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "**Landlord's Default**"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the Section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to obtain possession and control of the Property and to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

UNOFFICIAL COPY

7. If Mortgagee or any future holder of the Mortgage shall become the owner of the Property by reason of foreclosure of the Mortgage or otherwise, or if the Property shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Property as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 1 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

UNOFFICIAL COPY

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Property.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: Dominic Stramaglia and Dominic Gambino
c/o Supreme Lobster
220 East North Avenue
Villa Park, IL 60181

with a copy to: Michael A. Alesia & Associates, P.C.
1701 E Woodfield Road, Suite 925
Schaumburg, IL 60173

To Landlord: Meacham Acquisition Company, LLC
890 Supreme Drive
Bensenville, IL 60106

To Tenant: Fat Rosie's of Schaumburg, LLC
870 N Meacham Road
Schaumburg, IL 60173

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Property.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

(signature page to follow)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

Tenant:

Fat Rosie's of Schaumburg, LLC

By: Scott A. Harris

Name: SCOTT A. HARRIS

Title: MANAGER

Landlord:

Meacham Acquisition Company, LLC

By: Scott A. Harris

Name: SCOTT A. HARRIS

Title: MANAGER

Mortgagees:

Dominic Stramaglia
Dominic Stramaglia

Dominic Gambino
Dominic Gambino

Property of Cook County Clerk's Office

UNOFFICIAL COPY

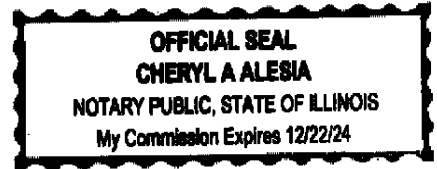
STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS.

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Dominic Stramaglia and Dominic Gambino, who is personally known to be 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 such instrument as their own free and voluntary act for the uses and purposes set forth therein.

Given under my hand and notarial seal on May 18, 2022.

C Cheryl A. Alesia

 Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

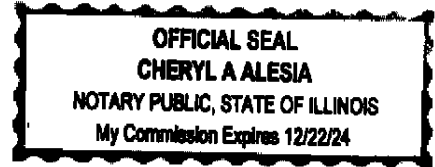
STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Scott Harris, a Manager of Meacham Acquisition Company, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said central credit union, for the uses and purposes set forth therein.

Given under my hand and notarial seal on May 18, 2022.

Cheryl A Alesia

 Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

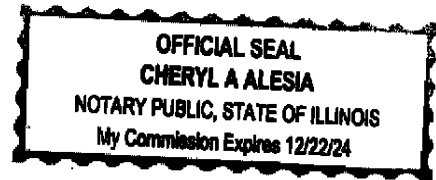
STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Scott Harris, a Manager of Fat Rosie's of Schaumburg, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said central credit union, for the uses and purposes set forth therein.

Given under my hand and notarial seal on May 18, 2022.

Cheryl Alesia

 Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description of Property

PARCEL 1:

LOT 2 IN SDG SCHAUMBURG RESUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 18, 2014 AS DOCUMENT 1435234060, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 CREATED BY THE DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED DECEMBER 17, 2013 AS DOCUMENT 1335119128 AND AMENDED BY DOCUMENT 1435234061 FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS BETWEEN LOTS 1 AND 2 IN THE SDG SCHAUMBURG RESUBDIVISION.

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE RECIPROCAL EASEMENT AGREEMENT RECORDED JULY 8, 2003 AS DOCUMENT 0318919006 AND AMENDED BY DOCUMENT NO. 1333750128 FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS OVER A PORTION OF THE SOUTHEAST CORNER OF LOT 13 IN ANDERSON'S WOODFIELD PARK SUBDIVISION AS DEPICTED ON EXHIBIT 'D' ATTACHED THERETO.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY RECIPROCAL ACCESS EASEMENT AGREEMENT DATED May 13, 2019 AND RECORDED May 16, 2019 AS DOCUMENT 1913606045 FOR THE PURPOSE OF INGRESS AND EGRESS OF PEDSTRIAN AND VEHICULAR TRAVEL OVER THOSE PORTIONS OF THE FOLLOWING DESCRIBED LAND, DEPICTED ON THE SITE PLAN:

LOT 1 IN ANDERSON'S SECOND RESUBDIVISION OF LOT 2 IN ANDERSON'S RESUBDIVISION OF LOT 11 (EXCEPTING THAT PART THEREOF TAKEN FOR THE WIDENING OF THE STATE PARKWAY PER DOCUMENT NO. 24197568 RECORDED NOVEMBER 16, 1977) IN ANDERSON'S WOODFIELD PARK, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 14, 1980 AS DOCUMENT 25547924.

PIN: 07-13-101-021-0000

COMMON ADDRESS: 870 North Meacham Road, Schaumburg, IL 60173