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Cook County Recorder 59.111

#2279

COLLATERAL ASSIGNMENT OF TENANT'S RIGHTS IN LEASE

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THIS COLLATERAL ASSIGNMENT OF TENANT'S RIGHTS IN LEASE (this "Assignment") is made as of the 18th day of February, 1998 by **EINSTEIN/NOAH BAGEL PARTNERS, L.P.**, a DELAWARE LIMITED PARTNERSHIP ("Tenant") to **BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION**, as Agent for the Lenders (as such terms are defined in that certain amended and restated secured credit agreement dated as of November 21, 1997 among Einstein/Noah Bagel Corp. and such Agent and Lenders (as the same may be amended, restated or renewed from time to time in whole or in part, the "Credit Agreement")) ("Assignee").

WITNESSETH:

WHEREAS, the Lenders have made, and from time to time hereafter may make, loans, advances and/or financial accommodations (the "Credit Facilities") to or for the benefit of Einstein/Noah Bagel Corp. ("ENBC");

WHEREAS, ENBC has licensed the Tenant to operate retail bagel stores under certain brand names the rights to which are owned by ENBC;

WHEREAS, ENBC has also committed to make certain loans to the Tenant, subject to the terms and conditions of the loan agreement between ENBC and the Tenant, as it may hereafter be amended, restated or renewed from time to time in whole or in part;

WHEREAS, Tenant will directly benefit from loans, advances and/or financial accommodations made by the Lenders to or for the benefit of ENBC;

WHEREAS, Tenant has therefore guaranteed certain loans from the Lenders to ENBC (as such guarantee may hereafter be amended, restated or renewed from time to time, the "Guarantee");

WHEREAS, Tenant has entered into a commercial lease with the Landlord identified on Exhibit A for occupancy of the property described on Exhibit A attached hereto and made a part hereof (the "Premises") (which lease, together with all renewals, amendments, or replacements, all of the Tenant's rights and remedies thereunder, and all proceeds payable under any policy of insurance covering loss resulting from untenability caused by destruction or damage to the Premises, is hereinafter referred to as the "Lease");

WHEREAS, Tenant has agreed to grant to the Assignee for the benefit of the Lenders, to secure Tenant's obligations under the Guarantee, a security interest in all of Tenant's rights under the Lease.

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **The Assignment.** In order to induce Assignee to make advances under the Credit Facilities and as additional security for the payment of the Guarantee and for the performance and observance of all the agreements contained herein or in any documents now or hereafter evidencing or securing any Credit Facility (all such instruments, together with this Assignment, are hereinafter referred to as the "Loan Documents"), Tenant does hereby set over, and transfer to Assignee, upon the terms and conditions hereinafter contained, a continuing collateral security interest in the Lease, together with all the right, title and interest of Tenant therein and thereto, to have and to hold the same unto Assignee, its successors and assigns, forever, or for such shorter period as hereinafter may be indicated, as additional security for the payment of the Guarantee and for the performance and observance of all the agreements contained in the Loan Documents.

2. Warranties, Representations and Covenants. Tenant hereby covenants, represents, warrants and agrees as follows:

A. At all times, Assignee shall have the right to verify the validity, amount of or any other matter relating to the Lease, by mail, telephone, telegraph or otherwise, in the name of Tenant, Assignee, a nominee of Assignee, or any or all of said names, all in accordance with the terms and conditions of the Lease.

B. Unless Assignee notifies Tenant in writing that it dispenses with any one or more of the following requirements, Tenant shall: (i) inform Assignee, in writing, of any assertion of any material defaults, claims, offsets or counterclaims under the Lease; and (ii) not permit or agree to any termination or surrender, or to any material extension, settlement or amendment modification of, the Lease.

C. The Lease is in full force and effect; a complete and correct copy of the Lease has been furnished to Assignee; Tenant is the lessee under the Lease and has good right to collaterally assign its interest in the same (subject, however, to the rights, if any, of the Landlord to consent to such collateral assignment); no other person, firm or corporation has any right, title or interest therein except as expressly set forth herein; and Tenant has not previously sold, assigned, transferred, mortgaged or pledged its interest in the Lease to any other person or entity.

D. Tenant has and shall: (i) observe, perform and discharge, duly and punctually, all the obligations, terms, covenants, conditions and warranties of the Loan Documents and the Lease, on the part of Tenant to be kept, observed and performed; and (ii) give prompt notice to Assignee of any failure on the part of Tenant to observe, perform and discharge same. Tenant has and shall: (i) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Lease or the obligations, duties or liabilities of Tenant and/or Landlord thereunder; (ii) upon request by Assignee, will do so in the name and behalf of Assignee but at the expense of Tenant; and (iii) pay all costs and expenses of Assignee, including reasonable attorneys' fees in any action or proceeding in which Assignee may appear.

E. Tenant has entered or will enter into occupancy of the Premises in accordance with the terms and conditions of the Lease; to the best of Tenant's knowledge, Landlord is not in default in performing or complying with any of its obligations under the Lease; Landlord has completed, or will complete within the time period provided in the Lease, all improvements required by the terms of the Lease; and the Premises are, or will be within the due course of construction: completion, open for the use of Tenant, its customers, employees and invitees.

F. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises nor shall Assignee nor any Secondary Assignee assume any obligation, duty or liability under the Lease.

G. Tenant hereby agrees to indemnify and hold Assignee harmless of, from and against any and all liability, loss, damage or expense which Assignee may or might incur by reason of this Assignment. Should Assignee incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorneys' fees) shall be payable by Tenant immediately upon demand, shall bear interest (at the rate due on monies after a default) from the date of payment by Assignee thereof until repaid by Tenant, and shall be secured hereby.

H. The failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time or at any time or times, shall not be construed or deemed to be a waiver by Assignee of any of its rights and remedies hereunder. The rights and remedies of Assignee under this Assignment are and shall be cumulative and in addition to any and all rights and remedies otherwise available to Assignee.

I. Upon payment in full of all of the Liabilities, this Assignment shall become and be void and of no further effect, and Assignee shall, upon demand by Tenant, execute a release to be filed of record.

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J. This Assignment was executed and delivered in, and, except as otherwise specifically stated in any given paragraph hereof, shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

3. Power of Attorney. Upon the occurrence of an Event of Default under the terms of the Loan Documents, Tenant further irrevocably appoints Assignee as Tenant's attorney-in-fact to exercise any or all of Tenant's rights in, to, and under the Lease and to do any or all other acts, in Tenant's name or in the Assignee's own name, that Tenant could do under the Lease, with the same force and effect as if this Assignment had not been made.

4. Exercise of Rights. Upon the occurrence of an Event of Default under the terms of the Loan Documents, Assignee, in its sole discretion, may do any one or more of the following, subject to the terms and conditions contained in the Lease:

A. Enter upon, take possession of, manage and operate the Premises or any part thereof pursuant to the terms and conditions of the Lease, and Tenant agrees to surrender possession of the same.

B. If such Event of Default under the Loan Documents occurs due to Tenant's default under the Lease, Assignee may cure any such default under the Lease within the curative times provided in the Lease, or any longer period granted to Assignee by Landlord.

C. Exercise any and all rights and remedies afforded to Assignee under the Loan Documents, the Uniform Commercial Code, and any and all other applicable provisions of law, including the right to sell Tenant's interest in the Lease at a public or private sale.

5. Successors and Assigns. This Assignment shall inure to the benefit of and be binding on Tenant and Assignee and the successors and assigns of each.

IN WITNESS WHEREOF, this Assignment has been duly exercised the day and year first above written.

EINSTEIN/NOAH BAGEL PARTNERS, L.P.
a Delaware limited partnership

By: Einstein/Noah Bagel Partners, Inc.
a California corporation
its general partner

By: Paul A. Strasen
Paul A. Strasen
Vice President

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Exhibit A

[ATTACHED TO AND MADE A PART OF A COLLATERAL ASSIGNMENT OF TENANT'S RIGHTS IN LEASE BETWEEN EINSTEIN/NOAH BAGEL PARTNERS, L.P. AND BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, AS AGENT]

STORE NO: 2279

ADDRESS: 682 Vernon Avenue, Glencoe, IL 60022

LANDLORD: Friedman Properties, Ltd., an Illinois corporation, as agent of the beneficiaries of Harris Bank Glencoe-Northbrook, N.A., not personally but solely as trustee under bank Trust Agreement dated 1/1/95 and known as Trust No. L-580.

DATE OF LEASE: 10/23/98

PERMANENT TAX INDEX NUMBER: 05-07-205-014-0000
05-07-205-015-0000
05-07-205-016-0000

LEGAL DESCRIPTION: Attached

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EXHIBIT A

SITE PLAN AND LEGAL DESCRIPTION OF THE PROPERTY

THE SOUTHEASTERLY 16 FEET OF LOT 2, LOT 3, LOT 4 (EXCEPTING THE SOUTHERLY 15 FEET OF LOT 4), THE EASTERLY 20 FEET OF LOTS 8, 9, 10 AND 11 AND THE WESTERLY 10 FEET OF LOTS 5, 6 AND 7, ALL IN BLOCK 32 IN GLENCOE, A SUBDIVISION OF PARTS OF SECTIONS 5, 6, 7 AND 8, TOWNSHIP 42 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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