

COUNTER BD C.E. BD
VERIFY BD D.E. BD
PROOF P
FEES \$ 104.00
CHECK# 300671
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2018-25665

10/30/2018 10:22:46 AM

Lloyd J. Dowding

REGISTER OF DEEDS



**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046-2842
402-593-5773

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "*Agreement*") is made this 18th day of October 2018, by and among KEYBANK NATIONAL ASSOCIATION, its successors and assigns, as Administrative Agent, having an address of 4910 Tiedeman Road, 3rd Floor, Mail Code: OH-01-51-0311, Brooklyn, OH 44144, Attn: Real Estate Capital Servicing, Reference: PPG Shadow Real Estate LLC & Loan No. _____, on behalf of certain other lenders ("*Mortgagee*"); TEXAS ROADHOUSE HOLDINGS LLC, a Kentucky limited liability company, having an address of 6040 Dutchmans Lane, Louisville, KY 40205 ("*Tenant*"); and PPG SHADOW REAL ESTATE LLC, a Delaware limited liability company, a _____, having an address of _____ ("*Landlord*").

WITNESSETH:

WHEREAS, Mortgagee has made a loan (the "*Loan*") in the original principal sum of \$ 50,274,586.00 to Landlord secured, in part, by a ** _____ dated August 27, 2018 and recorded in the Office of Register of Deeds Sarpy County, State of Nebraska, in ~~Deed~~ Inst. No. 2018-20360 ~~Record xxx, Volume xxx, Page xxx~~, (together with all other instruments securing the Loan, the "*Mortgage*") covering a parcel or parcels of land owned by Landlord and described on Exhibit "A" (the "*Mortgaged Property*"); and **Construction Security Agreement, Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement and Fixture Filing

WHEREAS, Landlord, as landlord, and Texas Roadhouse, Inc., as tenant, entered into that certain Ground Lease Agreement dated June 6, 2007, as amended pursuant to that certain First Amendment dated as of November 9, 2007, and as assigned to Tenant pursuant to that certain Assignment dated as of November 9, 2007 (collectively, the "*Lease*"), whereby Landlord leased a portion of the Mortgaged Property to Tenant, as legally described on Exhibit "B" (said premises and the improvements on or to be erected thereon being hereinafter called the "*Premises*"); and

WHEREAS, a Memorandum of the Lease has been recorded with the Sarpy County Register of Deeds as Instrument No. 2007-35748; and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

AFTER RECORDING RETURN TO:
TEXAS ROADHOUSE HOLDINGS LLC
6040 Dutchmans Lane,
Louisville, Kentucky 40205
Attention: Legal Department

RAR Bricker + Eckler LLP
100 South Third St.
Columbus, OH 43215

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WHEREAS, the parties hereto desire to acknowledge the subordination of the Lease to the lien of the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease.
2. Tenant covenants and agrees with Mortgagee that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended), without regard to the order of priority of recording the Mortgage or the Memorandum of the Lease, subject, however, to the provisions of this Agreement.
3. Tenant certifies that the Lease is presently in full force and effect.
4. Mortgagee agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable notice or cure period:

(a) Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby;

(b) The possession by Tenant of the Premises 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 affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Mortgagee, or by any judicial sale or execution or other sale of the Mortgaged Property, or by any deed given in lieu of foreclosure, or by the exercise of any other rights given to the Mortgagee by any other documents or as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby; and

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises, whether or not received by the Mortgagee, shall be applied and paid in the manner set forth in the Lease.

5. Mortgagee hereby acknowledges and agrees that all fixtures and equipment whether owned by Tenant or any subtenant or leased by Tenant from a lessor/owner (hereinafter called the "**Equipment Lessor**") installed in or on the Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant or any such Equipment Lessor and may be removed by Tenant or any such Equipment Lessor at any time. In no event (including a default under the Lease or Mortgage) shall Mortgagee have any liens, rights or claims in Tenant's or Equipment Lessor's fixtures and equipment, whether or not all or any part thereof shall be deemed fixtures; and Mortgagee expressly waives all rights of levy, distraint, or execution with respect to said fixtures and equipment.

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6. If the Mortgagee shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Landlord's interest in the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed or assignment 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, as tenant thereunder, and the then owner of the Landlord's interest in the Premises, as landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, 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 renewal 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; and

(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 renewal periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform; provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) occurring prior to the date upon which the new owner succeeds to the interest of such prior landlord;

(ii) subject to any defenses or claims which Tenant may have against any prior landlord (including Landlord) resulting from any default or breach by such prior landlord occurring prior to the date upon which the new owner succeeds to the interest of such prior landlord, unless such default or breach continues from and after a date which is the later of (A) thirty (30) days from notice of such default or breach of prior landlord, or (B) the date of succession;

(iii) subject to any offsets which Tenant may have against any prior landlord (including Landlord) resulting from any default or breach by such prior landlord and occurring prior to the date upon which the new owner succeeds to the interest of such prior landlord; however, such new owner shall be subject to offsets to the extent such offsets are expressly permitted under the Lease and Mortgagee or such new owner has received notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such new owner acknowledges receipt of such prepayment;

(v) bound by any Material Modification (as hereinafter defined) of the Lease made without Mortgagee's, or such new owner's consent (such consent not to be unreasonably withheld, conditioned or delayed). As used in this Agreement, the term "**Material Modification**" shall mean any amendment or modification of the Lease which (i) shortens or extends the term of the Lease (excluding Tenant's renewal option(s) set forth in Section 3 of the

D

Lease), (ii) results in a reduction of rent or other sums due and payable by Tenant pursuant to the Lease, (iii) increases Landlord's obligations under the Lease by more than a de minimus extent, or (iv) decreases Tenant's obligations under the Lease by more than a de minimus extent. Notwithstanding the foregoing, the parties acknowledge and agree that in no event shall a Material Modification include any amendment or modification of the Lease arising from the exercise of an express right granted to the Tenant under the Lease; and

(vi) be obligated to construct or finish the construction or to renovate or finish the renovation of any part of the Premises.

7. Any and all notices required under this Agreement shall be deemed to be properly served if delivered in writing personally, or sent by certified mail with return receipt requested, or by facsimile or electronic mail followed with a copy thereof by U.S. mail the following business day, or by nationally recognized overnight delivery service, pre-paid, for overnight delivery with receipt requested, to the address for the respective party set forth in the introductory paragraph above. Any notice required under this Agreement shall be deemed to have been delivered and received on the date of actual receipt, or if receipt is refused, then (i) one (1) business day following deposit with such nationally recognized overnight courier, (ii) five (5) business days after deposit in the U.S. mails by certified mail, return receipt requested, and/or (iii) on the date of delivery or refusal if by hand delivery.
8. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.
9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or cancelled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

(SIGNATURE PAGE FOLLOWS)

E

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MORTGAGEE:

KeyBank National Association
a national banking association

By: [Signature]

Name: Peter J. Schmitt

Title: Senior V.P.

STATE OF Ohio

§

§

COUNTY OF Franklin

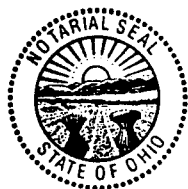
§

Before me, the undersigned authority, on this day personally appeared Peter J. Schmitt, the Senior V.P. of KeyBank National Association, a national banking association known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he ~~has~~ executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this 18th day of October, 2018.

Teresa A. Ehmann

Notary Public, State of Ohio



TERESA A. EHMANN
Notary Public, State of Ohio
My Commission Expires November 6, 2022

Teresa A. Ehmann

Printed Name

My Commission Expires: 11-6-22

TENANT:

TEXAS ROADHOUSE HOLDINGS LLC,
a Kentucky limited liability company

By: Texas Roadhouse, Inc.,
a Delaware corporation
its Manager

RA Russell Arbuckle
Name: Russell Arbuckle
Title: Sr. Director of Real Estate

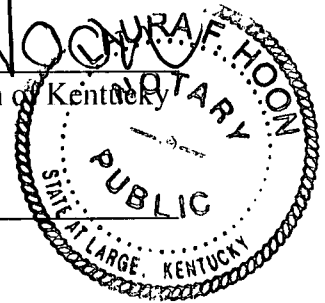
COMMONWEALTH OF KENTUCKY §

COUNTY OF JEFFERSON §

Before me, the undersigned authority, on this day personally appeared Russell Arbuckle the Sr. Director of Real Estate of Texas Roadhouse, Inc., a Delaware corporation, Manager of **TEXAS ROADHOUSE HOLDINGS LLC**, a Kentucky limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this 22nd day of August, 2018

Yamaf. Hoov
Notary Public, Commonwealth of Kentucky
Notary Public, State at Large, KY
My commission expires Feb. 28, 2020
Printed Name
My Commission Expires: _____



The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to be bound by, Section 4 of the Agreement.

LANDLORD:

~~**BORROWER:**~~

PPG SHADOW REAL ESTATE LLC,
a Delaware limited liability company

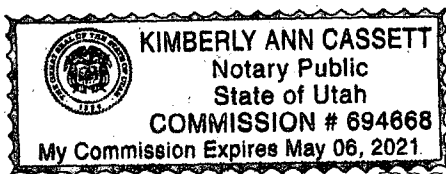
By: Sara Brennan
Name: Sara J. Brennan
Title: Chief Operating Officer

Notary Acknowledgement for Borrower:

STATE OF Utah)
) ss.:
COUNTY OF Summit)

On this, the 22 day of August, 2018, before me, the undersigned Notary Public, personally appeared Sara J. Brennan 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 an officer of PPG Shadow Real Estate LLC, a Delaware limited liability company 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.



K. A. Cassett
Notary Public

[PPG Shadow Real Estate LLC SNDA Signature Page]

H

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is described as follows:

Lots Four (4), Seven (7), Eight (8) and Nine (9), and Outlots A and B, Shadow Lake Towne Center, an Addition to the City of Papillion, in Sarpy County, Nebraska;

Lots One (1), Two (2) and Outlots A, B and C, Shadow Lake Towne Center Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska;

Lot Two (2), Shadow Lake Towne Center Replat 2, an Administrative Subdivision in Sarpy County, Nebraska;

Lot (1), Shadow Lake Towne Center Replat 3, an Administrative Subdivision in Sarpy County, Nebraska; and

Lots One (1) and Two (2), Shadow Lake Town Center Replat 5, an Addition to the City of Papillion, in Sarpy County, Nebraska.

Together with rights as contained in Declaration for Ingress and Egress, recorded May 8, 2006 as Inst. No. 2006-15269; records of Sarpy County, Nebraska.

And together with rights as contained in Declaration of Reciprocal Easements, Covenants and Restrictions, recorded June 20, 2006 as Inst. No. 2006-20802; Assignment and Assumption of Rights Under ECR, recorded October 18, 2007 as Inst. No. 2007-31850; Assignment and Assumption of Rights Under ECR recorded June 3, 2009 as Inst. No. 2009-16845; amended by First Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions, recorded March 21, 2012 as Inst. No. 2012-08360; and Assignment and Assumption of Rights Under ECR recorded January 5, 2012 as Inst. No. 2012-00472; records of Sarpy County, Nebraska.

And together with rights as contained in Declaration of Restrictive Covenants recorded January 5, 2012 as Inst. No. 2012-00474; records of Sarpy County, Nebraska.

2018-25665 I

EXHIBIT "B" TO SNDA

LEGAL DESCRIPTION OF THE PREMISES

**Lot 2, SHADOW LAKE TOWNE CENTER REPLAT 2, an Addition to the City of Papillion,
Sarpy County, Nebraska**